STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 789 By: Laster

AS INTRODUCED

An Act relating to workers' compensation; making certain records exempt from disclosure under the Open Records Act under certain circumstances; amending 85 O.S. 2001, Sections 12 and 24.1, which relate to exclusive remedy and employer's record of injuries; making certain records confidential under certain circumstances; providing for application of certain defense under certain circumstances; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24A.29 of Title 51, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided by this section and Section 211 of Title 85 of the Oklahoma Statutes, the Workers' Compensation Court shall keep confidential all records filed pursuant to Section 24.1 of Title 85 of the Oklahoma Statutes, known as an employer's first notice of injury. However, if an injured employee files an employee's first notice of injury and claim for compensation, as required by Section 26 of Title 85 of the Oklahoma Statutes, the employer's first notice of injury for the same injury may be made available to the public as otherwise provided for by law. Nothing in this section shall prohibit the Administrator of the Court from accessing an employer's first notice of injury.

SECTION 2. AMENDATORY 85 O.S. 2001, Section 12, is amended to read as follows:

Section 12. The liability prescribed in Section 11 of this title shall be exclusive and in place of all other liability of the

employer and any ~~of his~~ employees, any architect, professional engineer, or land surveyor retained to perform professional services on a construction project, at common law or otherwise, for such injury, loss of services, or death, to the employee, or the spouse, personal representative, parents, or dependents of the employee, or any other person. If an employer has failed to secure the payment of compensation for ~~his~~ an injured employee, as provided for in this title, an injured employee, or ~~his~~ legal representatives if death results from the injury, may maintain an action in the courts for damages on account of such injury, and in such action the defendant may not plead or prove as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of ~~his~~ employment, or that the injury was due to the contributory negligence of the employee; however, if the employee was at the time of the injury or accident under the influence of substances defined and consumed, pursuant to Section 465.20 of Title 63 of the Oklahoma Statutes, alcohol, illegal drugs, medication without a prescription, or was impaired as a result of illegally using chemicals, an employer may plead or prove as a defense that the injury was due to the contributory negligence of the employee; provided:

(i) The immunity created by the provisions of this section shall not extend to action by an employee, or the spouse, personal representative, parents, or dependents of the employee, or any other person against another employer, or its employees, on the same job as the injured or deceased worker where such other employer does not stand in the position of an intermediate or principal employer to the immediate employer of the injured or deceased worker;

(ii) The immunity created by the provisions of this section shall not extend to action against another employer, or its employees, on the same job as the injured or deceased worker even though such other employer may be considered as standing in the

position of a special master of a loaned servant where such special master neither is the immediate employer of the injured or deceased worker nor stands in the position of an intermediate or principal employer to the immediate employer of the injured or deceased worker; and

(iii) This provision shall not be construed to abrogate the loaned servant doctrine in any respect other than that described in paragraph (ii) of this section. This section shall not be construed to relieve the employer from any other penalty provided for in this title for failure to secure the payment of compensation provided for in this title.

(iv) For the purpose of extending the immunity of this section, any architect, professional engineer, or land surveyor shall be deemed an intermediate or principal employer for services performed at or on the site of a construction project, but this immunity shall not extend to the negligent preparation of design plans and specifications.

SECTION 3. AMENDATORY 85 O.S. 2001, Section 24.1, is amended to read as follows:

Section 24.1 A. Every employer shall keep a record of injuries, which result in the loss of time beyond the shift or which require medical attention away from the work site, fatal or otherwise, ~~received~~ incurred by ~~his~~ employees in the course of their employment.

B. Within ten (10) days or a reasonable time thereafter, after the occurrence of such injury a report thereof shall be made in writing by the employer to the Court and to the employer's workers' compensation insurance carrier, if any, upon ~~blanks~~ forms to be procured from the Workers' Compensation Court for that purpose. Such reports shall state the name and nature of the business of the employer, the location of ~~his~~ the establishment or place of work, the name, address and occupation of the injured employee, the time,

nature, and cause of the injury and such other information as may be required by the Administrator. Such reports shall be kept confidential by the Administrator, except as otherwise provided by this section and Section 211 of this title. If an injured employee files an employee's first notice of injury and claim for compensation, as provided by Section 26 of this title, then the employer's first notice of injury filed for the same injury shall be made available to the public as otherwise provided for by law. Nothing in this section shall prohibit the Administrator from accessing an employer's first notice of injury.

C. Any employer who refuses or neglects to make a report as required by this section shall be liable for an administrative violation and subject to a fine by the Administrator of not more than One Thousand Dollars ($1,000.00).

SECTION 4. This act shall become effective November 1, 2005.

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