

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2650 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Daniel Sullivan _____

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2650

By: Sullivan

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to workers' compensation; amending 85
9 O.S. 2001, Section 12, as amended by Section 14,
10 Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (85
11 O.S. Supp. 2009, Section 12), which relates to
12 liability of certain employers; requiring injured
13 employees to select certain type of legal action;
14 prohibiting immunity for certain willful intentional
15 injuries; defining term; specifying burden of proof;
16 and providing an effective date.

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

18 SECTION 1. AMENDATORY 85 O.S. 2001, Section 12, as
19 amended by Section 14, Chapter 1, 1st Extraordinary Session, O.S.L.
20 2005 (85 O.S. Supp. 2009, Section 12), is amended to read as
21 follows:

22 Section 12. The liability prescribed in Section 11 of this
23 title shall be exclusive and in place of all other liability of the
24 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,

1 personal representative, parents, or dependents of the employee, or
2 any other person. If an employer has failed to secure the payment
3 of compensation for his injured employee, as provided for in this
4 title, an injured employee, or his legal representatives if death
5 results from the injury, may maintain an action in the courts for
6 damages on account of such injury; however, the injured employee
7 shall maintain an action in workers' compensation or intentional
8 tort, but not both, and in such action the defendant may not plead
9 or prove as a defense that the injury was caused by the negligence
10 of a fellow servant, or that the employee assumed the risk of his
11 employment, or that the injury was due to the contributory
12 negligence of the employee; provided:

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

20 (ii) The immunity created by the provisions of this section
21 shall not extend to action against another employer, or its
22 employees, on the same job as the injured or deceased worker even
23 though such other employer may be considered as standing in the
24 position of a special master of a loaned servant where such special

1 master neither is the immediate employer of the injured or deceased
2 worker nor stands in the position of an intermediate or principal
3 employer to the immediate employer of the injured or deceased
4 worker; and

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

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

17 (v) Nothing contained herein shall abrogate any rights arising
18 under the Oklahoma Constitution.

19 (vi) The immunity created by the provisions of this section
20 shall not extend to action by the employee against the employer if
21 the injury resulted from the "willful intention" of the employer.
22 For purposes of this section, the term "willful intention" means the
23 following:

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1 a. the employer committed a conscious, voluntary and
2 deliberate act with the specific intent of causing the
3 injury, and such act was the foreseeable, proximate
4 and actual cause of the injury, or

5 b. a dangerous condition existed in the workplace; the
6 existence of such condition was a violation of the
7 Occupational Safety and Health Act of 1970 or its
8 regulations; the condition presented a high degree of
9 risk and a strong probability of serious injury or
10 death; the employer had actual knowledge that the
11 condition existed; the employer deliberately ignored
12 the condition with the specific intent that it would
13 result in the injury; and the condition was the
14 foreseeable, proximate and actual cause of the injury.

15 Allegations or proof that the employer acted with conduct that
16 constitutes negligence, no matter how gross or aggravated, or acted
17 with willful, wanton or reckless misconduct shall not constitute a
18 willful intention.

19 (vii) All claims made under paragraph (vi) of this section shall
20 be stated with sufficient particularity so that a reasonable person
21 would find it more probable that the employer acted with willful
22 intention than any other possible alternative. General averments of
23 willful intention and the elements thereof as described in paragraph

1 (vi) of this section shall not be sufficient to meet the pleading
2 requirements in this paragraph.

3 SECTION 2. This act shall become effective November 1, 2010.

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