

1 ENGROSSED HOUSE  
2 BILL NO. 2650

By: Sullivan of the House

3 and

4 Sykes and Coffee of the  
5 Senate

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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

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

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

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

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

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

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

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

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

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.  
4 Passed the House of Representatives the 24th day of February,  
5 2010.

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8 Presiding Officer of the House of  
9 Representatives

10 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2010.

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13 Presiding Officer of the Senate

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