

THE HOUSE OF REPRESENTATIVES
Thursday, February 18, 2010

Committee Substitute for
House Bill No. 2650

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2650 - By: SULLIVAN of the House and SYKES of the Senate.

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

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

1 SECTION 1. AMENDATORY 85 O.S. 2001, Section 12, as amended by Section
2 14, Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (85 O.S. Supp. 2009, Section 12), is
3 amended to read as follows:
4 Section 12. The liability prescribed in Section 11 of this title shall be exclusive and
5 in place of all other liability of the employer and any of his employees, any architect,
6 professional engineer, or land surveyor retained to perform professional services on a
7 construction project, at common law or otherwise, for such injury, loss of services, or
8 death, to the employee, or the spouse, personal representative, parents, or dependents of
9 the employee, or any other person. If an employer has failed to secure the payment of
10 compensation for his injured employee, as provided for in this title, an injured employee,

1 or his legal representatives if death results from the injury, may maintain an action in
2 the courts for damages on account of such injury; however, the injured employee shall
3 maintain an action in workers' compensation or intentional tort, but not both, and in
4 such action the defendant may not plead or prove as a defense that the injury was caused
5 by the negligence of a fellow servant, or that the employee assumed the risk of his
6 employment, or that the injury was due to the contributory negligence of the employee;
7 provided:

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

14 (ii) The immunity created by the provisions of this section shall not extend to action
15 against another employer, or its employees, on the same job as the injured or deceased
16 worker even though such other employer may be considered as standing in the position of
17 a special master of a loaned servant where such special master neither is the immediate
18 employer of the injured or deceased worker nor stands in the position of an intermediate
19 or principal employer to the immediate employer of the injured or deceased worker; and

20 (iii) This provision shall not be construed to abrogate the loaned servant doctrine in
21 any respect other than that described in paragraph (ii) of this section. This section shall

1 not be construed to relieve the employer from any other penalty provided for in this title
2 for failure to secure the payment of compensation provided for in this title.

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

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

10 (vi) The immunity created by the provisions of this section shall not extend to action
11 by the employee against the employer if the injury resulted from the “willful intention” of
12 the employer. For purposes of this section, the term “willful intention” means the
13 following:

- 14 a. the employer committed a conscious, voluntary and deliberate act with
15 the specific intent of causing the injury, and such act was the
16 foreseeable, proximate and actual cause of the injury, or
17 b. a dangerous condition existed in the workplace; the existence of such
18 condition was a violation of the Occupational Safety and Health Act of
19 1970 or its regulations; the condition presented a high degree of risk
20 and a strong probability of serious injury or death; the employer had
21 actual knowledge that the condition existed; the employer deliberately
22 ignored the condition with the specific intent that it would result in the

1 injury; and the condition was the foreseeable, proximate and actual
2 cause of the injury.

3 Allegations or proof that the employer acted with conduct that constitutes negligence, no
4 matter how gross or aggravated, or acted with willful, wanton or reckless misconduct
5 shall not constitute a willful intention.

6 (vii) All claims made under paragraph (vi) of this section shall be stated with
7 sufficient particularity so that a reasonable person would find it more probable that the
8 employer acted with willful intention than any other possible alternative. General
9 averments of willful intention and the elements thereof as described in paragraph (vi) of
10 this section shall not be sufficient to meet the pleading requirements in this paragraph.

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

12 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND
13 FINANCIAL SERVICES, dated 02-17-10 - DO PASS, As Amended and Coauthored.