

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE JOINT
4 RESOLUTION 28

By: Bingman

5
6 AS INTRODUCED

7 A Joint Resolution relating to workers' compensation;
8 ordering a legislative referendum pursuant to the
9 Oklahoma Constitution; clarifying language; providing
10 ballot title; and directing filing.

11 BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE
12 1ST SESSION OF THE 53RD OKLAHOMA LEGISLATURE:

13 SECTION 1. Pursuant to Section 3 of Article V of the Oklahoma
14 Constitution, there is hereby ordered the following legislative
15 referendum which shall be filed with the Secretary of State and
16 addressed to the Governor of the state, who shall submit the same to
17 the people for their approval or rejection at the next General
18 Election.

19 SECTION 2. AMENDATORY 85 O.S. 2001, Section 12, as last
20 amended by Section 3, Chapter 452, O.S.L. 2010 (85 O.S. Supp. 2010,
21 Section 12), is amended to read as 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

1 engineer, or land surveyor retained to perform professional services
2 on a construction project, at common law or otherwise, for such
3 injury, loss of services, or death, to the employee, or the spouse,
4 personal representative, parents, or dependents of the employee, or
5 any other person, except in the case of an intentional tort, or
6 where the employer has failed to secure the payment of compensation
7 for the injured employee as provided for in Section 61 of this
8 title. An intentional tort shall exist only when the employee is
9 injured as a result of willful, deliberate, specific intent of the
10 employer to cause such injury. Allegations or proof that the
11 employer had knowledge that such injury was substantially certain to
12 result from its conduct shall not constitute an intentional tort.
13 The issue of whether an act is an intentional tort shall be a
14 question of law for the court. If an employer has failed to secure
15 the payment of compensation for his injured employee, as provided
16 for in Section 61 of this title, an injured employee, or his legal
17 representatives if death results from the injury, may maintain an
18 action in the courts for damages on account of such injury, and in
19 such action the defendant may not plead or prove as a defense that
20 the injury was caused by the negligence of a fellow servant, or that
21 the employee assumed the risk of his employment, or that the injury
22 was due to the contributory negligence of the employee; provided:
23 ~~(i)~~ 1. The immunity created by the provisions of this section
24 shall not extend to action by an employee, or the spouse, personal

1 representative, parents, or dependents of the employee, or any other
2 person against another employer, or its employees, on the same job
3 as the injured or deceased worker where such other employer does not
4 stand in the position of an intermediate or principal employer to
5 the immediate employer of the injured or deceased worker;

6 ~~(ii)~~ 2. The immunity created by the provisions of this section
7 shall not extend to action against another employer, or its
8 employees, on the same job as the injured or deceased worker even
9 though such other employer may be considered as standing in the
10 position of a special master of a loaned servant where such special
11 master neither is the immediate employer of the injured or deceased
12 worker nor stands in the position of an intermediate or principal
13 employer to the immediate employer of the injured or deceased
14 worker; ~~and~~

15 ~~(iii)~~ 3. This provision shall not be construed to abrogate the
16 loaned servant doctrine in any respect other than that described in
17 paragraph (ii) of this section. This section shall not be construed
18 to relieve the employer from any other penalty provided for in this
19 title for failure to secure the payment of compensation provided for
20 in this title-;

21 ~~(iv)~~ 4. For the purpose of extending the immunity of this
22 section, any architect, professional engineer, or land surveyor
23 shall be deemed an intermediate or principal employer for services
24 performed at or on the site of a construction project, but this

1 immunity shall not extend to the negligent preparation of design
2 plans and specifications-;

3 ~~(v)~~ 5. If, as provided in this section, the employer has failed
4 to secure the payment of compensation as provided for in Section 61
5 of this title or in the case of an intentional tort, the injured
6 employee or his legal representative may maintain an action either
7 in the Workers' Compensation Court or in the courts, but not both-;
8 and

9 ~~(vi)~~ 6. Nothing contained herein shall abrogate any rights
10 arising under the Oklahoma Constitution.

11 SECTION 3. The Ballot Title for the proposed act shall be in the
12 following form:

13 BALLOT TITLE

14 Legislative Referendum No. _____ State Question No. _____

15 THE GIST OF THE PROPOSITION IS AS FOLLOWS:

16 This measure amends Section 12 of Title 85 of the Oklahoma
17 Statutes. It clarifies language.

18 SHALL THE PROPOSAL BE APPROVED?

19 FOR THE PROPOSAL - YES _____

20 AGAINST THE PROPOSAL - NO _____

21 SECTION 4. The President Pro Tempore of the Senate shall,
22 immediately after the passage of this order for legislative
23 referendum, prepare and file in accordance with Section 3 of Article
24 V of the Oklahoma Constitution, one copy of this order for

1 legislative referendum, including the Ballot Title set forth in
2 SECTION 3, with the Secretary of State and one copy with the
3 Attorney General.

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