

1 ENGROSSED SENATE  
2 BILL NO. 642

By: Paxton of the Senate

and

Hilbert of the House

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6 An Act relating to workers' compensation; amending  
7 85A O.S. 2021, Section 5, which relates to exclusive  
8 liability; expanding rights and remedies granted to  
9 certain persons; stating effect of provisions to  
10 certain contracts; making language gender neutral;  
11 updating statutory references; defining terms;  
12 authorizing agreement between contractors to provide  
13 certain insurance coverage; providing for deduction  
14 of premiums under certain agreements; clarifying  
15 application of certain rights and remedies;  
16 prohibiting coverage for certain contractors without  
17 agreement; providing for codification; and declaring  
18 an emergency.

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

20 SECTION 1. AMENDATORY 85A O.S. 2021, Section 5, is  
21 amended to read as follows:

22 Section 5. A. The rights and remedies granted to an employee  
23 subject to the provisions of the Administrative Workers'  
24 Compensation Act shall be exclusive of all other rights and remedies  
of the employee, his or her legal representative, dependents, next  
of kin, or anyone else claiming rights to recovery on behalf of the  
employee against the employer, including a general contractor that  
provides workers' compensation insurance coverage to a subcontractor

1 pursuant to Section 2 of this act, or any principal, officer,  
2 director, employee, stockholder, partner, or prime contractor of the  
3 employer on account of injury, illness, or death. Negligent acts of  
4 a co-employee may not be imputed to the employer. No role,  
5 capacity, or persona of any employer, principal, officer, director,  
6 employee, or stockholder other than that existing in the role of  
7 employer of the employee shall be relevant for consideration for  
8 purposes of ~~this act~~ the Administrative Workers' Compensation Act,  
9 and the remedies and rights provided by ~~this act~~ the Administrative  
10 Workers' Compensation Act to an employee or other person claiming  
11 rights to recovery on behalf of the employee shall be exclusive  
12 regardless of the multiple roles, capacities, or personas the  
13 employer may be deemed to have.

14 B. Notwithstanding the date of the injury, illness, or death of  
15 an employee, nothing in subsection A of this section shall affect  
16 any provision in an executed contract that requires the employer, or  
17 any principal, officer, director, stockholder, partner, or prime  
18 contractor of the employer, to indemnify, defend, or hold harmless  
19 another person or entity against liability for the injury, illness,  
20 or death of an employee, including, but not limited to, the ability  
21 or requirement to insure for such claims.

22 C. Exclusive remedy shall not apply if:

23 1. An employer fails to secure the payment of compensation due  
24 to the employee as required by ~~this act~~ the Administrative Workers'

1 Compensation Act. An injured employee, or his or her legal  
2 representative in case death results from the injury, may, at his or  
3 her option, elect to claim compensation under ~~this act~~ the  
4 Administrative Workers' Compensation Act or to maintain a legal  
5 action in court for damages on account of the injury or death; or

6 2. The injury was caused by an intentional tort committed by  
7 the employer. An intentional tort shall exist only when the  
8 employee is injured as a result of willful, deliberate, specific  
9 intent of the employer to cause such injury. Allegations or proof  
10 that the employer had knowledge that the injury was substantially  
11 certain to result from the employer's conduct shall not constitute  
12 an intentional tort. The employee shall plead facts that show it is  
13 at least as likely as it is not that the employer acted with the  
14 purpose of injuring the employee. The issue of whether an act is an  
15 intentional tort shall be a question of law.

16 ~~C.~~ D. The immunity from civil liability described in subsection  
17 A of this section shall apply regardless of whether the injured  
18 employee is denied compensation or deemed ineligible to receive  
19 compensation under ~~this act~~ the Administrative Workers' Compensation  
20 Act.

21 ~~D.~~ E. If an employer has failed to secure the payment of  
22 compensation for his or her injured employee as provided for in ~~this~~  
23 ~~act~~ the Administrative Workers' Compensation Act, an injured  
24 employee, or his or her legal representative if death results from

1 the injury, may maintain an action in the district court for damages  
2 on account of such injury.

3 ~~E.~~ F. The immunity created by the provisions of this section  
4 shall not extend to action against another employer, or its  
5 employees, on the same job as the injured or deceased worker where  
6 such other employer does not stand in the position of an  
7 intermediate or principal employer to the immediate employer of the  
8 injured or deceased worker.

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

18 ~~G.~~ H. This section shall not be construed to abrogate the  
19 loaned servant doctrine in any respect other than that described in  
20 subsection ~~F~~ G of this section. Nothing in ~~this act~~ the  
21 Administrative Workers' Compensation Act shall be construed to  
22 relieve the employer from any other penalty provided for in ~~this act~~  
23 the Administrative Workers' Compensation Act for failure to secure  
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1 the payment of compensation under ~~this act~~ the Administrative  
2 Workers' Compensation Act.

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

9 ~~I.~~ J. If the employer has failed to secure the payment of  
10 compensation as provided in ~~this act~~ the Administrative Workers'  
11 Compensation Act or in the case of an intentional tort, the injured  
12 employee or his or her legal representative may maintain an action  
13 either before the Oklahoma Workers' Compensation Commission or in  
14 the district court, but not both.

15 SECTION 2. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 126 of Title 85A, unless there  
17 is created a duplication in numbering, reads as follows:

18 A. For the purposes of this section:

19 1. "General contractor" means a person who undertakes to  
20 procure the performance of work or a service, either separately or  
21 through the use of subcontractors. General contractor shall  
22 include, but is not limited to, a principal contractor, an original  
23 contractor, a prime contractor or other analogous term, and a  
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1 premises owner who contracts all or part of the work being performed  
2 on the premises;

3 2. "Provides workers' compensation insurance coverage" means to  
4 make available workers' compensation insurance coverage. Workers'  
5 compensation insurance coverage may be provided, even if it does not  
6 ultimately cover an incident, so long as it was made available to  
7 the subcontractor. The following does not constitute acceptable or  
8 relevant evidence to suggest that workers' compensation insurance  
9 made available to a subcontractor was not provided to the  
10 subcontractor:

- 11 a. timing discrepancies between the issuance of workers'  
12 compensation insurance policies and contracts between  
13 and among general contractors and subcontractors,
- 14 b. factual discrepancies in secondary documentation such  
15 as certificates of insurance or enrollment forms,
- 16 c. a general contractor's lack of notice of election of  
17 coverage, or
- 18 d. payment of premiums, or lack thereof, by the general  
19 contractor; and

20 3. "Subcontractor" means a person who contracts with a general  
21 contractor to perform all or part of the work or services that the  
22 general contractor has undertaken to perform.

23 B. A general contractor and a subcontractor may enter into a  
24 written agreement under which the general contractor provides

1 workers' compensation insurance coverage to the subcontractor and  
2 employees of the subcontractor.

3 C. If a general contractor has workers' compensation insurance  
4 to protect the general contractor's employees and if, in the course  
5 and scope of the general contractor's business, the general  
6 contractor enters into a contract with a subcontractor who does not  
7 have employees, the general contractor shall be treated as the  
8 employer of the subcontractor for the purposes of the Administrative  
9 Workers' Compensation Act and may enter into an agreement for the  
10 deduction of premiums paid in accordance with subsection D of this  
11 section. A premises owner who acts as a general contractor shall be  
12 treated as the employer of all subcontractors for the purposes of  
13 the Administrative Workers' Compensation Act and may enter into an  
14 agreement for the deduction of premiums paid in accordance with  
15 subsection D of this section.

16 D. If a general contractor elects to provide coverage, then the  
17 actual premiums based on payroll that are paid or incurred by the  
18 general contractor for the coverage may be deducted from the  
19 contract price or other amount owed to the subcontractor by the  
20 general contractor.

21 E. An agreement under this section makes the general contractor  
22 the employer of the subcontractor and the subcontractor's employees  
23 only for the purposes of this title. A subcontractor or  
24 subcontractor's employee's rights and remedies against the general

1 contractor or any principal, officer, director, employee,  
2 stockholder, partner, or prime contractor of the general contractor  
3 shall be subject to the limitations pursuant to Section 5 of Title  
4 85A of the Oklahoma Statutes.

5 F. Notwithstanding subsection C of this section, a person who  
6 performs work or provides a service for an oil or gas well operator  
7 and who is an independent contractor that has no employees shall be  
8 treated in the same manner as an independent contractor with  
9 employees and is not entitled to coverage under the general  
10 contractor's workers' compensation insurance policy unless the  
11 independent subcontractor and the general contractor enter into an  
12 agreement under this section.

13 SECTION 3. It being immediately necessary for the preservation  
14 of the public peace, health or safety, an emergency is hereby  
15 declared to exist, by reason whereof this act shall take effect and  
16 be in full force from and after its passage and approval.

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