

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2624

By: Pettigrew

AS INTRODUCED

An Act relating to tort reform; amending 12 O.S.

1991, Section 2702, which relates to expert witnesses; providing standards for qualification of expert witnesses for certain issues; providing the standards apply to causes of action filed on or after a certain date; creating the Premises Liability Act; providing short title; providing that Premises Liability Act applies to causes of action filed on or after a certain date; abolishing common law distinction between invitees and licensees for certain purpose; providing that duty owed to entrants on to property is duty of reasonable care under the circumstances; excluding certain duties from scope of duty of reasonable care under the circumstances; providing that Premises Liability Act does not affect law regarding trespassing child; providing circumstances in which an owner or occupier of land has duty to warn of dangerous condition; providing that duty to warn does not include duty to protect from danger; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 2702, is amended to read as follows:

Section 2702. A. If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise.

B. In any case in which the standard of care applicable to a medical professional is at issue, the court shall apply the following standards to determine if a witness qualifies as an expert witness and can testify on the issue of the appropriate standard of care:

1. Whether the witness is board-certified or board-eligible in the same medical specialties as the defendant, the medical problem or problems and the type of treatment administered in the case;

2. Whether the witness has devoted seventy-five percent (75%) or more of his or her time to the practice of medicine, teaching or university-based research in relation to the medical care and type of treatment at issue which gave rise to the medical problem of which the plaintiff complains;

3. Whether the witness is licensed by a state having licensure requirements comparable to this state in the same profession as the defendant; and

4. Whether, in the case against a nonspecialist, the witness can demonstrate a sufficient familiarity with the standard of care practiced in this state.

The provisions of this subsection shall apply to causes of action filed on or after November 1, 1996.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 16.1 of Title 76, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 4 of this act shall be known and may be cited as the "Premises Liability Act". The provisions of the Premises Liability Act shall apply to causes of action filed on or after November 1, 1996.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 16.2 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. For purposes of the Premises Liability Act, the distinction under the common law between invitees and licensees regarding the duty owed by an owner or occupier of any premises to such entrants is abolished.

B. The duty owed to entrants is that of reasonable care under the circumstances regarding the state of the premises or acts done or omitted on them. The duty of reasonable care under the circumstances which an owner or occupier of land owes to entrants shall not include any of the following:

1. A duty to warn of, or otherwise take reasonable steps to protect entrants from, conditions on the premises that are known to the entrants, are open and obvious, or can reasonably be expected to be discovered by the entrants;

2. A duty to warn of latent defects or dangers or defects or dangers unknown to the owner or occupier of the premises;

3. A duty to warn entrants of any dangers resulting from misuse by the entrants of the premises or anything affixed to or located on the premises; or

4. A duty to protect entrants from their own misuse of the premises or anything affixed to or located on the premises.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 16.3 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. The Premises Liability Act shall not affect the law regarding a trespassing child entrant.

B. An owner or occupier of land has the duty of ordinary care to warn an adult entrant of a dangerous condition on the premises only if the adult entrant is physically and actually discovered in a place of danger or if the owner or occupier has affirmatively permitted actual, frequent, and habitual trespass in a place of danger. This duty of ordinary care to warn a discovered or habitual adult entrant shall not include a duty of ordinary care to protect an adult entrant from danger.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 16.4 of Title 76, unless there is created a duplication in numbering, reads as follows:

The provisions of the Premises Liability Act shall not affect the liability imposed by Section 14 of Title 76 of the Oklahoma Statutes. SECTION 6. This act shall become effective November 1, 1996.

45-2-8259

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