

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2429

By: Ervin

AS INTRODUCED

An Act relating to torts; enacting the Volunteer Protection Act; providing short title; providing legislative findings; stating purpose; defining terms; prohibiting liability under certain conditions; specifying exceptions; providing for construction of this act; prohibiting certain punitive damages; providing exception; stating that law does not create a cause of action for punitive damages and does not preempt or supercede any law; providing for misconduct; providing for liability for noneconomic loss; providing for determination of percentage of responsibility; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 32.1 of Title 76, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Volunteer Protection Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 32.2 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. The Legislature finds and declares that:

1. The willingness of volunteers to offer their services is deterred by the potential for liability actions against them;

2. As a result, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, and other civic programs, have been adversely affected by the withdrawal of volunteers from boards of directors and service in other capacities;

3. The contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating;

4. Because state funds are expended on useful and cost-effective social service programs, many of which depend heavily on volunteer participation, and represent some of the most successful public-private partnerships, protection of volunteerism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for state legislation;

5. Services and goods provided by volunteers and nonprofit organizations would often otherwise be provided by private entities;

6. Due to high liability costs and unwarranted litigation costs, volunteers face higher costs in purchasing insurance to cover their activities; and

7. Clarifying and limiting the liability risk assumed by volunteers is an appropriate subject for state legislation because:

- a. of the scope of the problems created by the legitimate fears of volunteers about frivolous, arbitrary, or capricious lawsuits,

- b. the citizens of this state depend on, and the state government expends funds on, and provides tax exemptions and other consideration to, numerous social programs that depend on the services of volunteers,
- c. it is in the interest of the state government to encourage the continued operation of volunteer service organizations and contributions of volunteers because the state government lacks the capacity to carry out all of the services provided by such organizations and volunteers, and
- d. (1) liability reform for volunteers will promote the free flow of goods and services, lessen burdens on interstate commerce and uphold constitutionally protected due process rights, and
(2) therefore, liability reform is an appropriate use of state powers.

B. The purpose of this act is to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs and entities that depend on volunteer contributions by reforming the laws to provide certain protections from liability abuses related to volunteers serving the entities.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 32.3 of Title 76, unless there is created a duplication in numbering, reads as follows:

For purposes of this act:

1. "Economic loss" means any pecuniary loss resulting from harm, including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities, to the extent recovery for such loss is allowed under applicable state law;

2. "Harm" includes physical, nonphysical, economic, and noneconomic losses;

3. "Noneconomic loss" means loss for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, other than loss of domestic service, hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature; and

4. "Volunteer" means an individual performing services for an entity who does not receive:

a. compensation, other than reasonable reimbursement or allowance for expenses actually incurred, or

b. any other thing of value in lieu of compensation, in excess of Five Hundred Dollars (\$500.00) per year,

and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 32.4 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsections B and D of this section, no volunteer entity shall be liable for harm caused by an act or omission of the volunteer on behalf of such person's employment with an entity if:

1. The volunteer was acting within the scope of the volunteer's responsibilities in the entity at the time of the act or omission;

2. The volunteer was properly licensed or certified by the appropriate authorities for the activities or practice in the state where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the entity;

3. The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant

indifference to the rights or safety of the individual harmed by the volunteer; and

4. The harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires the operator or the owner of the vehicle, craft, or vessel to:

- a. possess an operator's license, or
- b. maintain insurance.

B. Nothing in this section shall be construed to affect any civil action brought by any entity against any volunteer of such organization or entity.

C. Nothing in this section shall be construed to affect the liability of any entity with respect to harm caused to any person except as provided herein or in other Oklahoma Statutes.

D. If the laws of this state limit volunteer liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section:

1. Any state law that requires an entity to adhere to risk management procedures, including mandatory training of volunteers;

2. Any state law that makes the entity liable for the acts or omissions of its volunteers to the same extent as an employer is liable for the acts or omissions of its employees;

3. Any state law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a state or local government pursuant to state or local law; and

4. Any state law that makes a limitation of liability applicable only if the entity provides a financially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer on behalf of the entity. A financially secure source of recovery may be an insurance policy within specified limits, comparable coverage from a risk pooling mechanism, equivalent assets, or alternative arrangements that satisfy the

state that the entity will be able to pay for losses up to a specified amount. Separate standards for different types of liability exposure may be specified.

E. 1. Punitive damages may not be awarded against a volunteer in an action brought for harm based on the action of a volunteer acting within the scope of the volunteer's responsibilities to an entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.

2. Paragraph 1 of this subsection does not create a cause of action for punitive damages and does not preempt or supersede any federal or state law to the extent that such law would further limit the award of punitive damages.

F. 1. The limitations on the liability of a volunteer under this act shall not apply to any misconduct that:

- a. constitutes a crime of violence as defined in Section 571 of Title 57 of the Oklahoma Statutes,
- b. constitutes a hate crime,
- c. involves a sexual offense for which the defendant has been convicted in any court,
- d. involves misconduct for which the defendant has been found to have violated a federal or state civil rights law, or
- e. where the defendant was under the influence of intoxicating alcohol or any drug at the time of the misconduct.

2. Nothing in this subsection shall be construed to affect paragraph 3 of subsection A of this section, or subsection E of this section.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 32.5 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. In any civil action against a volunteer, based on an action of a volunteer acting within the scope of the volunteer's responsibilities to an entity, the liability of the volunteer for noneconomic loss shall be determined in accordance with subsection B of this section.

B. 1. Each defendant who is a volunteer shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant, determined in accordance with paragraph 2 of this subsection, for the harm to the claimant with respect to which that defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

2. For purposes of determining the amount of noneconomic loss allocated to a defendant who is a volunteer under this section, the trier of fact shall determine the percentage of responsibility of that defendant for the claimant's harm.

SECTION 6. This act shall become effective November 1, 1998.

46-2-8721 MCD