

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 3131

By: Glover

AS INTRODUCED

An Act relating to torts; providing for liability of volunteers of nonprofit organizations and governmental entities; providing for determination of liability; providing exceptions; providing for construction of section; providing for punitive damages; providing for limitations on liability; providing for liability for noneconomic loss; defining terms; providing for certain restrictions; providing for codification; and providing an effective date.

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 5.8 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in this subsection, no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if:

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

2. The volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in this state and such activities were or the practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity; and

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.

B. Nothing in this section shall be construed to:

1. Affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity; or

2. Affect the liability of any nonprofit organization or governmental entity with respect to harm caused to any person.

C. 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 a nonprofit organization or governmental 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 shall 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.

D. The limitations on the liability of a volunteer under this section shall not apply to any misconduct:

1. That constitutes a crime of violence for which the defendant has been convicted in any court;

2. That constitutes a hate crime;

3. That involves a sexual offense for which the defendant has been convicted in any court;

4. That involves misconduct for which the defendant has been found to have violated a federal or state civil rights law; or

5. If the defendant was under the influence of intoxicating alcohol or any drug at the time of the misconduct.

E. 1. In any civil action against a volunteer, based on an action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity, the liability of the volunteer for noneconomic loss shall be determined in accordance with this subsection.

2. 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 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.

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

F. For purposes of this section:

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 losses" means losses 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 services, hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature;

4. "Nonprofit organization" means:

- a. any organization which is described in Section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under Section 501(a) of such Code and which does not practice any action which constitutes a hate crime, or
- b. any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes and which does not practice any action which constitutes a hate crime; and

5. "Volunteer" means an individual performing services for a nonprofit organization or a governmental 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.

G. The provisions of this section shall not be construed to limit the right of action to recover damages for injuries resulting

in death nor limit the amount recoverable for actions resulting in death.

SECTION 2. This act shall become effective November 1, 1998.

46-2-9092

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