

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

2ND CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1269

By: Trebilcock and Liotta of
the House

and

Pruitt of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to civil procedure; amending 12 O.S. 2001, Section 990.4, which relates to stay of enforcement; clarifying designation of certain manufacturer; amending 12 O.S. 2001, Section 1148.14, which relates to forcible entry and detainer action; providing that certain actions pertaining to certain dwellings be directed to small claims docket; amending 12 O.S. 2001, Section 1651, which relates to declaratory judgments; removing reference to certain delegations; amending 76 O.S. 2001, Section 5A, which relates to immunity from civil liability for medical care or treatment by use of automated external defibrillator; modifying certain qualifications; providing certain immunity to course directors and trainers; providing certain immunity to prescribing physicians under certain circumstances; providing certain duties of entities that own, lease, possess, or otherwise control an automated external defibrillator; adding certain definitions; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2001, Section 990.4, is amended to read as follows:

Section 990.4 A. Except as provided in subsection C of this section, a party may obtain a stay of the enforcement of a judgment, decree or final order:

1. While a post-trial motion is pending;
2. During the time in which an appeal may be commenced; or
3. While an appeal is pending.

Such stay may be obtained by filing with the court clerk a written undertaking and the posting of a supersedeas bond or other security as provided in this section. In the undertaking the appellant shall agree to satisfy the judgment, decree or final order, and pay the costs and interest on appeal, if it is affirmed. The undertaking and supersedeas bond or security may be given at any time. The stay is effective when the bond and the sufficiency of the sureties are approved by the trial court or the security is deposited with the court clerk. The enforcement of the judgment, decree or order shall no longer be stayed, and the judgment, decree or order may be enforced against any surety on the bond or other security:

1. If neither a post-trial motion nor a petition in error is filed, and the time for appeal has expired;

2. If a post-trial motion is no longer pending, no petition in error has been filed, and the time for appeal has expired; or

3. If an appeal is no longer pending.

B. The amount of the bond or other security shall be as follows:

1. When the judgment, decree or final order is for payment of money:

- a. The bond shall be double the amount of the judgment, decree or final order, unless the bond is executed or guaranteed by a surety as hereinafter provided. The bond shall be for the amount of the judgment, decree or order including costs and interest on appeal where it is executed or guaranteed by an entity with suretyship powers as provided by the laws of Oklahoma.

- b. Instead of filing a supersedeas bond, the appellant may obtain a stay by depositing cash with the court clerk in the amount of the judgment or order plus an amount that the court determines will cover costs and interest on appeal. The court shall have discretion

to accept United States Treasury notes or general obligation bonds of the State of Oklahoma in lieu of cash. If the court accepts such notes or bonds, it shall make appropriate orders for their safekeeping and maintenance during the stay;

2. When the judgment, decree or final order directs execution of a conveyance or other instrument, the amount of the bond shall be determined by the court. Instead of posting a supersedeas bond or other security, the appellant may execute the conveyance or other instrument and deliver it to the clerk of the court for deposit with a public or private entity for safekeeping, as directed by the court in writing;

3. When the judgment, decree or final order directs the delivery of possession of real or personal property, the bond shall be in an amount, to be determined by the court, that will protect the interests of the parties. The court may consider the value of the use of the property, any waste that may be committed on or to the property during the pendency of the stay, the value of the property, and all costs. When the judgment, decree or final order is for the sale of mortgaged premises and the payment of a deficiency arising from the sale, the bond must also provide for the payment of the deficiency;

4. When the judgment or final order directs the assignment or delivery of documents, they may be placed in the custody of the clerk of the court in which the judgment or order was rendered, for deposit with a public or private entity for safekeeping during the pendency of the stay, as directed by the court in writing, or the bond shall be in such sum as may be prescribed by the court; or

5. In order to protect any monies payable to the Tobacco Settlement Fund as set forth in Section 50 of Title 62 of the Oklahoma Statutes, the bond in any action or litigation brought under any legal theory involving a tobacco product manufacturer that

is a ~~party~~ signatory, successor of a signatory, or an affiliate of a signatory to the Master Settlement Agreement dated November 23, 1998, or a ~~party~~ signatory, successor of a signatory, or an affiliate of a signatory to the Smokeless Tobacco Master Settlement Agreement, also dated November 23, 1998, shall be in an amount not to exceed one hundred percent (100%) of the judgment, exclusive of interest and costs, or Twenty-five Million Dollars (\$25,000,000.00), whichever is less. However, if it is proved by a preponderance of the evidence that the appellant for whom the bond has been limited pursuant to this paragraph is intentionally dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent dissipation or diversion, including, but not limited to, requiring that a bond be posted equal to the full amount of security required pursuant to this section. For purposes of this paragraph, "Master Settlement Agreement" and "tobacco product manufacturer" shall have the same meanings as those terms are defined in paragraphs 5 and 9 of Section 600.22 of Title 37 of the Oklahoma Statutes, and "Smokeless Tobacco Master Settlement Agreement" means the settlement agreement and related documents entered into on November 23, 1998, by this state and leading United States smokeless tobacco product manufacturers.

C. Subsections A and B of this section shall not apply in actions involving temporary or permanent injunctions, actions for divorce, separate maintenance, annulment, paternity, custody, adoption, or termination of parental rights, or in juvenile matters, post-decree matrimonial proceedings or habeas corpus proceedings. The trial or appellate court, in its discretion, may stay the enforcement of any provision in a judgment, decree or final order in any of the types of actions or proceedings listed in this subsection during the pendency of the appeal or while any post-trial motion is pending upon such terms as to bond or otherwise as it considers

proper for the security of the rights of the parties. If a temporary or permanent injunction is denied or dissolved, the trial or appellate court, in its discretion, may restore or grant an injunction during the pendency of the appeal and while any post-trial motions are pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties.

D. In any action not provided for in subsections A, B or C, the court may stay the enforcement of any judgment, decree or final order during the pendency of the appeal or while any post-trial motion is pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties.

E. The trial court shall have continuing jurisdiction during the pendency of any post-trial motion and appeal to modify any order it has entered regarding security or other conditions in connection with a stay.

F. The execution of a supersedeas bond shall not be a condition for the granting of a stay of judgment, decree or final order of any judicial tribunal against any county, municipality, or other political subdivision of the State of Oklahoma.

G. Executors, administrators and guardians who have given bond in this state, with sureties, according to law, are not required to provide a supersedeas bond if they are granted a stay of enforcement of a judgment, decree or final order.

H. After an appeal has been decided, but before the mandate has issued, a party whose trial court judgment has been affirmed, may move the appellate court to order judgment on the bond or other security in the amount of the judgment plus interest, appeals costs and allowable appeal-related attorney's fees. After mandate has issued, a party who has posted a bond or other security may move for exoneration of the bond or other security only in the trial court; and all motions concerning the bond or other security must be addressed to the trial court.

SECTION 2. AMENDATORY 12 O.S. 2001, Section 1148.14, is amended to read as follows:

Section 1148.14 An action for forcible entry and detainer brought pursuant to procedures prescribed otherwise in this title standing alone or when joined with a claim for recovery of rent, damages to the premises, or a claim arising under the Oklahoma Residential Landlord and Tenant Act, or for claims for the recovery of rent or damages to the premises as they pertain to mobile home parks or manufactured home developments whereby a landlord and tenant relationship exists in relation to the lot where a mobile home, manufactured home, or trailer that is used as a dwelling, as defined by the Oklahoma Residential Landlord and Tenant Act, rests, where the total recovery sought, exclusive of ~~attorney's~~ attorney fees and other court costs, does not exceed the jurisdictional amount for the small claims court, shall be placed on the small claims docket of the district court. The district courts may provide by court rule that any action for forcible entry and detainer may be assigned to the small claims division for determination of the right to possession, regardless of the underlying amount in controversy, at the conclusion of which, the matter shall be returned to the assigned judge for further proceedings. The court clerk shall in connection with such actions prepare the affidavit, by which the action is commenced, and the summons, and generally assist unrepresented plaintiffs to the same extent that ~~he~~ a person is now required so to do under the Small Claims Procedure Act, Section 1751 et seq. of this title.

SECTION 3. AMENDATORY 12 O.S. 2001, Section 1651, is amended to read as follows:

Section 1651. District courts may, in cases of actual controversy, determine rights, status, or other legal relations, including but not limited to a determination of the construction or validity of any foreign judgment or decree, deed, contract, trust,

or other instrument or agreement or of any statute, municipal ordinance, or other governmental regulation, whether or not other relief is or could be claimed, except that no such declaration shall be made concerning liability or nonliability for damages on account of alleged tortious injuries to persons or to property either before or after judgment or for compensation alleged to be due under workers' compensation laws for injuries to persons ~~or concerning obligations alleged to arise under policies of insurance covering liability or indemnity against liability for such injuries.~~ The determination may be made either before or after there has been a breach of any legal duty or obligation, and it may be either affirmative or negative in form and effect; provided however, that a court may refuse to make such determination where the judgment, if rendered, would not terminate the controversy, or some part thereof, giving rise to the proceeding.

SECTION 4. AMENDATORY 76 O.S. 2001, Section 5A, is amended to read as follows:

Section 5A. A. 1. A Any person who is qualified pursuant to this subsection and who, in good faith and without expectation of compensation, renders emergency care or treatment outside of a medical facility by the use of an automated external defibrillator shall be immune from civil liability for personal injury which results from the use of the device, except for acts of gross negligence or willful or wanton misconduct in the use of such device.

2. A person is qualified pursuant to this subsection upon successful completion of appropriate training in the use of automated external defibrillators and cardiopulmonary resuscitation. Appropriate training shall consist of a course ~~of at least four (4) hours of training~~ in the use of automated external defibrillators and cardiopulmonary resuscitation. ~~Providers and instructors of these~~ Such courses shall be approved pursuant to rules ~~adopted~~

promulgated by the State Board of Health and shall be subject to approval or disapproval in the discretion of the Commissioner of Health. These rules may include appropriate periodic retraining at intervals established by the Commissioner by rule.

3. Course directors and trainers who have completed the training required by the State Department of Health for teaching courses in the use of automated external defibrillators and cardiopulmonary resuscitation shall be immune from civil liability for personal injury which results from the use of the device, except for acts of gross negligence or willful or wanton misconduct in the teaching of such training courses.

B. ~~1. A qualified person or~~ prescribing physician who, in good faith and without expectation of compensation, writes a prescription for the use of an automated external defibrillator to render emergency care or treatment shall be immune from civil liability for personal injury which results from the use of the device, except for acts of gross negligence or willful or wanton misconduct in the prescribing of the device.

C. An entity which owns, leases, possesses, or otherwise controls an automated external defibrillator shall be immune from civil liability for personal injury which results from the use of the device, except for acts of gross negligence or willful or wanton misconduct.

~~2. A person or entity is qualified pursuant to this subsection,~~
if the ~~person or~~ entity:

~~a.~~

1. If not available to the public, requires users of its own authorized agents who may use the automated external defibrillator to be qualified pursuant to subsection A of this section, ~~and; or~~

~~b. maintains~~

2. If made available to the public, maintains and stores its automated external defibrillator with a usage detection device which

automatically signals first responders or designated qualified employees of the entity; and

3. Maintains and tests its automated external defibrillator according to the manufacturer's instructions.

~~C.~~ D. An entity which owns, leases, possesses or otherwise controls an automated external defibrillator shall communicate to the proper first responder the locations and placements of the automated external defibrillator owned, leased, possessed or otherwise controlled by the entity.

E. For purposes of this section:

1. "Automated external defibrillator" means a medical device consisting of a heart monitor and defibrillator which:

- a. has received approval of its premarket notification, filed pursuant to 21 U.S.C., Section 360(k), from the United States Food and Drug Administration,
- b. is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia, and is capable of determining, without intervention by an operator, whether defibrillation should be performed, and
- c. upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart; ~~and~~

2. "Entity" means public and private organizations including, but not limited to, the State of Oklahoma and its agencies and political subdivisions, a proprietorship, partnership, limited liability company, corporation, or other legal entity, whether or not operated for profit;

3. "First responder" means an individual certified by the State Department of Health to perform emergency medical services in accordance with the Oklahoma Emergency Response Systems Development

Act and in accordance with the rules and standards promulgated by
the State Board of Health; and

4. "Prescribing physician" means a person licensed to practice
medicine in the state pursuant to Chapters 11 and 14 of Title 59 of
the Oklahoma Statutes.

SECTION 5. This act shall become effective November 1, 2003.

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