

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1491

By: Smith (Dale)

COMMITTEE SUBSTITUTE

An Act relating to schools; creating the School Protection Act; stating purpose of the act; providing definitions; limiting liability of an education employee for certain acts or omissions; limiting liability for use of corporal punishment under certain conditions; establishing burden of proof and level of evidence; specifying certain conditions; making certain conditions consistent with act; prohibiting punitive damages being awarded against an education employee; providing certain exceptions; clarifying application of prohibition; specifying certain exceptions to the limitation of liability; limiting application if misconduct is during the hiring process; limiting application in relation to corporal punishment; providing for the determination of noneconomic loss; providing for liability of an education employee for noneconomic loss; providing for allocation of noneconomic loss; limiting application in relation to joint liability laws; making it unlawful to make a false criminal report against an education employee; providing punishment; limiting application for statements against certain persons; providing for effect on other laws; providing for the award of costs and attorney fees; authorizing expert witness fees; limiting amount of contingency fees by an attorney; providing penalty for violation of limit; providing for waiver of a defense when liability insurance is available; providing for the applicability of other laws; 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 6-140 of Title 70, unless there is created a duplication in numbering, reads as follows:

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-141 of Title 70, unless there is created a duplication in numbering, reads as follows:

The purpose of the School Protection Act is to provide teachers, principals, and other school professionals the tools they need to undertake reasonable actions to maintain order, discipline, and an appropriate educational environment.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-142 of Title 70, unless there is created a duplication in numbering, reads as follows:

As used in the School Protection Act:

1. "Economic loss" means any pecuniary loss resulting from harm, including but not limited to, loss of earning 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 state law;

2. "Education employee" means any individual who is an employee of a school;

3. "Harm" means physical, nonphysical, economic, and noneconomic losses;

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

5. "School" means a public school district, governmental entity that employs teachers as defined in Section 1-116 of Title 70 of the Oklahoma Statutes, or private kindergarten, elementary, or secondary school.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-143 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection D of this section, no education employee in a school shall be liable for harm caused by an act or omission of the employee on behalf of the school if:

1. The employee was acting within the scope of employment or responsibilities to a school;

2. The actions of the employee were carried out in conformity with federal, state, and local laws, rules or policies in furtherance of efforts to control, grade, discipline, expel, or suspend a student or maintain order or control in the classroom or school;

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 employee; and

4. The harm was not caused by the employee operating a motor vehicle, vessel, aircraft, or other vehicle for which the operator or the owner of the vehicle, craft, or vessel is required to possess an operator license or maintain insurance.

B. Except as provided in subsection D of this section, an education employee shall not be subject to liability for using corporal punishment, to the extent allowed by law, when and to the extent reasonably necessary and appropriate to maintain discipline or to promote student welfare.

C. The burden of proof to show violation of federal, state, or local laws, rules or policies shall rest with the plaintiff and shall be established by clear and convincing evidence to the court as part of a summary proceeding.

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

1. A state law that requires a school or governmental entity to adhere to risk management procedures, including mandatory training of employees;

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

3. A 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.

E. 1. Punitive damages shall not be awarded against an education employee in an action brought for harm based on the act or omission of an employee acting within the scope of employment or responsibilities of the employee to a school unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an act or omission of the employee that constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.

2. 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 it would further limit the award of punitive damages.

F. The limitations on the liability of an education employee provided for pursuant to this section shall not apply to any misconduct that:

1. Constitutes a crime of violence or act of international terrorism for which the defendant has been convicted in any court;

2. Involves a sexual offense, as defined by applicable state law, for which the defendant has been convicted in any court;

3. Involves misconduct for which the defendant has been found to have violated Federal or state civil rights law; or

4. Where the defendant was under the influence, as determined by applicable state law, of intoxicating alcohol or any drug at the time of the misconduct.

G. The limitations on the liability of an education employee provided for pursuant to this section shall not apply to misconduct during background investigations, or during other actions, involved in the hiring of an employee.

H. Nothing in this section shall be construed to affect any civil action brought by any school against any education employee.

I. Nothing in this section shall be construed to affect any state or local law or school policy pertaining to the use of corporal punishment.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-144 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. In any civil action against an education employee, based on an act or omission of an employee acting within the scope of employment or responsibilities of the employee to a school, the liability of the employee for noneconomic loss shall be determined in accordance with this section.

B. Each defendant who is an education employee 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 as determined pursuant to this section. The court shall render a separate judgment against each defendant in an amount determined pursuant to this section.

C. For purposes of determining the amount of noneconomic loss allocated to a defendant who is an education employee under this section, the trier of fact shall determine the percentage of

responsibility of each person responsible for the harm to the claimant, whether or not such person is a party to the action.

D. Nothing in this section shall be construed to preempt or supersede any Federal or state law that further limits the application of joint liability in a civil action beyond the limitations established in this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-206 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in this section, any person eighteen (18) years of age or older who acts with specific intent in making a false accusation of criminal activity against an education employee to law enforcement authorities or school district officials, or both, shall be guilty of a misdemeanor and upon conviction punishable by a fine of not more than Two Thousand Dollars (\$2,000.00).

B. Except as otherwise provided in this section, any student between the ages of seven (7) and seventeen (17) who acts with specific intent in making a false accusation of criminal activity against an education employee to law enforcement authorities or school district officials, or both, shall upon conviction, at the discretion of the court, be subject to any of the following:

1. Community service of a type and for a period of time to be determined by the court; or

2. Any other sanction as the court in its discretion may deem appropriate.

C. The provisions of this section shall not apply to statements regarding individuals elected or appointed to an educational entity.

D. This section is in addition to and does not limit the civil or criminal liability of a person who makes false statements alleging criminal activity by another.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-207 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. In any civil action or proceeding against a school or an education employee in which the school or education employee prevails, the court shall award costs and reasonable attorney's fees to the prevailing defendant or defendants. The court in its discretion may determine whether the fees and costs are to be borne by the plaintiff's attorney, the plaintiff, or both.

B. Expert witness fees may be included as part of the costs awarded under this section.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-208 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of twenty five percent (25%) of any civil judgment rendered against a school or education employee, or of any settlement made pursuant to the laws of this state.

B. Any interested person may file a civil action or petition with the appropriate court to rescind any provision of the attorney fee contract inconsistent with this section and to compel the disgorgement of any fees paid in excess of the amounts allowed under this section. In addition, a court with jurisdiction over the matter shall upon conviction impose a fine against the attorney that is equal to or less than the amount of money sought by the attorney in excess of the amount permitted by this section or Two Thousand Dollars (\$2,000.00), whichever amount is more.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-209 of Title 70, unless there is created a duplication in numbering, reads as follows:

Unless otherwise provided by law, the existence of any policy of insurance indemnifying a school or an education employee against

liability for damages is not a waiver of any defense otherwise available to the educational entity or its employees in the defense of the claim.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-210 of Title 70, unless there is created a duplication in numbering, reads as follows:

The School Protection Act shall be in addition to and shall not limit or amend the Governmental Tort Claims Act or any other applicable law.

SECTION 11. This act shall become effective July 1, 2003.

SECTION 12. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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