

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1634

By: Winchester

AS INTRODUCED

An Act relating to torts; amending 76 O.S 2001, Section 31, which relates to immunity from civil liability for volunteers; modifying definition; adding definitions; requiring certain reports; requiring establishment of quality assurance program; and providing an effective date.

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

SECTION 1. AMENDATORY 76 O.S. 2001, Section 31, is amended to read as follows:

Section 31. A. Any volunteer shall be immune from liability in a civil action on the basis of any act or omission of the volunteer resulting in damage or injury if:

1. The volunteer was acting in good faith and within the scope of the volunteer's official functions and duties for a charitable organization or not-for-profit corporation; and

2. The damage or injury was not caused by gross negligence or willful and wanton misconduct by the volunteer.

B. In any civil action against a charitable organization or not-for-profit corporation for damages based upon the conduct of a volunteer, the doctrine of respondeat superior shall apply, notwithstanding the immunity granted to the volunteer in subsection A of this section.

C. Any person who, in good faith and without compensation, or expectation of compensation, donates or loans emergency service equipment to a volunteer shall not be liable for damages resulting from the use of such equipment by the volunteer, except when the donor of the equipment knew or should have known that the equipment

was dangerous or faulty in a way which could result in bodily injury, death or damage to property.

D. Definitions.

1. For the purposes of this section, the term "volunteer" means a person who enters into a service or undertaking of the person's free will without compensation or expectation of compensation in money or other thing of value in order to provide a service, care, assistance, advice, or other benefit ~~where the person does not offer that type of service, care, assistance, advice or other benefit for sale to the public.~~ The term "volunteer" shall include any health care provider who submits reports to the State Department of Health pursuant to subsection E of this section.

2. For the purposes of this section, the term "charitable organization" means any benevolent, philanthropic, patriotic, eleemosynary, educational, social, civic, recreational, religious group or association or any other person performing or purporting to perform acts beneficial to the public.

3. For the purposes of this section, the term "not-for-profit corporation" means a corporation formed for a purpose not involving pecuniary gain to its shareholders or members, paying no dividends or other pecuniary remuneration, directly or indirectly, to its shareholders or members as such, and having no capital stock.

4. As used in this section:

a. "Department" means the Department of Health, and

b. "health care provider" or "provider" means:

(1) an ambulatory surgical center licensed pursuant to Title 63 of the Oklahoma Statutes,

(2) a hospital licensed pursuant to Title 63 of the Oklahoma Statutes,

(3) a physician or physician assistant licensed pursuant to Title 59 of the Oklahoma Statutes,

- (4) an osteopathic physician licensed pursuant to Title 59 of the Oklahoma Statutes,
- (5) a chiropractic physician licensed pursuant to Title 59 of the Oklahoma Statutes,
- (6) a podiatric physician licensed pursuant to Title 59 of the Oklahoma Statutes,
- (7) a registered nurse, nurse midwife, licensed practical nurse, nurse anesthetist, clinical nurse specialist, advanced registered nurse practitioner, or a graduate of a certified program for one of these listed types of nursing pending certification, who is licensed or registered pursuant to Title 59 of the Oklahoma Statutes,
- (8) a dentist, dental hygienist, or dental laboratory licensed or permitted pursuant to Title 59 of the Oklahoma Statutes,
- (9) a pharmacist or assistant pharmacist registered or licensed pursuant to Title 59 of the Oklahoma Statutes,
- (10) any laboratory providing laboratory services for a patient,
- (11) any health care professional registered or licensed under the laws of Oklahoma to provide defined health care services,
- (12) a health care professional association and its employees or a corporate medical group and its employees,
- (13) any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human

medical treatment, and which includes an office maintained by a provider, and

(14) any charitable organization which delivers health care services provided by licensed professionals listed in this paragraph.

E. Any health care provider who provides a service, care, assistance, advice, or other benefit as a volunteer as defined within this section shall report information to the Department on diagnosis and treatment outcomes for any adverse incidents if such incidents and information pertain to a patient treated by the volunteer health care provider. The volunteer health care provider shall, within thirty (30) days of the end of the calendar year, submit an adverse incident report concerning the prior year that includes all information required by the Department. If a volunteer health care provider does not have a patient who incurs an adverse incident during a calendar year the health care provider shall report no adverse incidents in the annual report. All patient medical records and any identifying information contained in adverse incident reports which are obtained by the Department pursuant to this subsection are confidential.

F. The Department shall establish a quality assurance program to monitor services delivered by a volunteer health care provider pursuant to this section.

G. Annually, the Department shall report to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Governor summarizing the efficacy of access and treatment outcomes with respect to providing health care services pursuant to this section.

H. The provisions of this section shall not affect the liability that any person may have which arises from the operation of a motor vehicle, watercraft, or aircraft in rendering the service, care, assistance, advice or other benefit as a volunteer.

~~F.~~ I. The immunity from civil liability provided for by this section shall extend only to the actions taken by a person rendering the service, care, assistance, advice, or other benefit as a volunteer, and does not confer any immunity to any person for actions taken by the volunteer prior to or after the rendering of the service, care, assistance, advice, or other benefit as a volunteer.

~~G.~~ J. This section shall apply to all civil actions filed after ~~the effective date of this act~~ November 1, 2003.

SECTION 2. This act shall become effective November 1, 2003.

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