

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1685

By: Ericson

AS INTRODUCED

An Act relating to schools; creating the Education Quality and Protection Act; stating Legislative findings; stating purpose of the Act; providing definitions; limiting the liability of educational entities and education employees for certain actions; stating standard of proof; limiting the liability of educational entities and education employees for certain reporting; prohibiting punitive or exemplary damages against an educational entity or education employee; 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; 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 24-201 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 "Education Quality and Protection Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-202 of Title 70, unless there is created a duplication in numbering, reads as follows:

The Legislature finds that ensuring the quality of education is a compelling state interest. The educational environment of students is often not conducive to learning. Violence is sometimes a threat, while at other times educators may lack the authority to

maintain safety and discipline in the public schools. The filing of meritless lawsuits against school districts, teachers, administrators, and other school employees interferes with attempts to ensure the quality of public education, particularly when such lawsuits arise out of the good faith efforts of educators to maintain classroom discipline or address threats to student safety. Meritless litigation also diverts financial and personnel resources to litigation defense activities and reduces the availability of such resources for education opportunities for students. The Legislature further finds that legislation to deter meritless lawsuits and sanction deliberately false reports against educators is a rational and appropriate method to address this compelling public interest.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-203 of Title 70, unless there is created a duplication in numbering, reads as follows:

As used in the Education Quality and Protection Act:

1. "Educational entity" means the State Board of Education or the board of education of a public school district; and
2. "Education employee" means any individual elected or appointed to an educational entity or any individual who is an employee of an educational entity.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-204 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. An educational entity or education employee shall not be subject to liability for any of the following:

1. Taking any action regarding the control, grading, suspension, expulsion, or discipline of students while such students are on the property of the educational entity or under the supervision of the education entity or education employee; and

2. 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.

B. The immunity provided for in Subsection A of this section shall not apply if the action of the educational entity or the education employee violates an express law, rule, regulation, or clearly articulated policy of the state or educational entity. The burden of proof of such violation shall rest with the plaintiff and shall be established by clear and convincing evidence to the court as part of a summary proceeding.

C. An educational entity or education employee shall not be subject to liability for making a report consistent with federal law to the appropriate law enforcement authority or school official if the individual making the report has reasonable grounds to suspect a student is:

1. Under the influence of alcoholic beverages or a controlled substance not lawfully prescribed to that student;

2. In possession of a firearm, alcoholic beverages, or a controlled substance not lawfully prescribed to that student; or

3. Involved in the illegal sale or distribution of firearms, alcoholic beverages, or a controlled substance.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-205 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. An educational entity shall not be liable for punitive or exemplary damages. An education employee shall not be liable for punitive or exemplary damages for acts or omissions within the course and scope of employment.

B. For purposes of this section, an education employee shall not be considered as acting within the course and scope of employment if the employee acted with specific intent to cause harm.

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. Suspended out-of-school for a period of time to be determined by the court, subject to the provisions of Section 24-101.3 of Title 70 of the Oklahoma Statutes;

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

3. 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 an educational entity or an education employee in which the educational entity 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 such 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 judgement rendered against an educational entity 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 an educational entity 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 Education Quality and 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 November 1, 2003.

49-1-5691 SD 01/12/03