

THE HOUSE OF REPRESENTATIVES  
Thursday, March 8, 2007

Committee Substitute for  
House Bill No. 1620

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1620 - By: JOHNSON (ROB) AND MCCULLOUGH of the House and WILLIAMSON of the Senate.

An Act relating to tort reform; amending 12 O.S. 2001, Section 990.4, as last amended by Section 6, Chapter 1, O.S.L. 2005 (12 O.S. Supp. 2006, Section 990.4), which relates to stay of enforcement of judgments, decrees and final orders; modifying when a party may obtain a stay; providing maximum amount of appeal bond; requiring the court to enter certain orders to prevent dissipation or diversion; providing that appeal bonds shall not be required for appeals of punitive damages; amending 12 O.S. 2001, Section 2011, as amended by Section 10, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2006, Section 2011), which relates to pleadings; modifying definition; amending Section 1, Chapter 370, O.S.L. 2004 (12 O.S. Supp. 2006, Section 2011.1), which relates to frivolous claims or defenses; modifying definition; amending 12 O.S. 2001, Section 2023, which relates to class actions; requiring potential class members to request inclusion in the class; providing procedure for summary judgment; amending Section 18, Chapter 368, O.S.L. 2004 (23 O.S. Supp. 2006, Section 15), which relates to joint and several liability; modifying exceptions to severability; eliminating exception; amending 23 O.S. 2001, Section 61, which relates to the measure of damages for the breach of obligations not arising from contract; providing that compensation from collateral sources shall be admitted into evidence and may be deducted from damages awarded; providing limits of liability for noneconomic damages for certain actions; providing exception; defining term; creating the Education Quality and Protection Act; providing short title; 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; providing that existence of liability insurance is not a waiver of any defense; providing for the applicability of other laws; providing civil immunity for certain volunteers; repealing 23 O.S. 2001, Section 103, which relates to personal injury actions asserted in bad faith; repealing Section 6, Chapter 390, O.S.L. 2003, as amended by Section 21, Chapter 368, O.S.L. 2004 and Section 22, Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2006, Sections 1-1708.1F and 1-1708.1F-1), which relate to limits on noneconomic damages in medical liability actions; providing for codification; and providing an effective date.

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

1 SECTION 1. AMENDATORY 12 O.S. 2001, Section 990.4, as last amended by  
2 Section 6, Chapter 1, O.S.L. 2005 (12 O.S. Supp. 2006, Section 990.4), is amended to read  
3 as follows:

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

6 1. While a post-trial motion is pending;

7 2. During the time in which an appeal may be commenced in any court in or  
8 outside of this state; or

9 3. While an appeal is pending in any court in or outside of this state.

10 Such stay may be obtained by filing with the court clerk a written undertaking and the  
11 posting of a supersedeas bond or other security as provided in this section. In the  
12 undertaking the appellant shall agree to satisfy the judgment, decree or final order, and  
13 pay the costs and interest on appeal, if it is affirmed. The undertaking and supersedeas

1 bond or security may be given at any time. The stay is effective when the bond and the  
2 sufficiency of the sureties are approved by the trial court or the security is deposited with  
3 the court clerk. The enforcement of the judgment, decree or order shall no longer be  
4 stayed, and the judgment, decree or order may be enforced against any surety on the  
5 bond or other security:

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

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

10 3. If an appeal is no longer pending.

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

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

13 a. subject to the limitations hereinafter provided, the bond shall be  
14 double the amount of the judgment, decree or final order, unless the  
15 bond is executed or guaranteed by a surety as hereinafter provided.  
16 The bond shall be for the amount of the judgment, decree or order  
17 including costs and interest on appeal where it is executed or  
18 guaranteed by an entity with suretyship powers as provided by the  
19 laws of Oklahoma. In no case shall the bond exceed the lesser of  
20 Twenty-five Million Dollars (\$25,000,000.00) or twenty-five percent  
21 (25%) of the net worth of the judgment debtor, regardless of the value  
22 of the judgment. On a showing by the judgment debtor that the

1 judgment debtor is likely to suffer substantial economic harm if  
2 required to post bond in the amount required by this paragraph, the  
3 court shall balance the likely substantial economic harm to the  
4 judgment debtor with the ability of the judgment creditor to collect the  
5 judgment in the event the judgment is affirmed on appeal and may  
6 lower the bond accordingly. “Substantial economic harm” means  
7 insolvency or creating a significant risk of insolvency. ~~The court shall~~  
8 ~~not lower a bond as provided in this paragraph to the extent there is in~~  
9 ~~effect an insurance policy, or agreement under which a third party is~~  
10 ~~liable to satisfy part or all of the judgment entered and such party is~~  
11 ~~required to post all or part of the bond. Upon lowering the bond as~~  
12 ~~provided in this paragraph, the court shall enter an order enjoining a~~  
13 ~~judgment debtor from dissipating or transferring assets to avoid~~  
14 ~~satisfaction of the judgment, but the court shall not make any order~~  
15 ~~that interferes with the judgment debtor’s use of assets in the normal~~  
16 ~~course of business~~ If it is proved by a preponderance of the evidence  
17 that the appellant for whom the bond has been limited pursuant to this  
18 subparagraph is intentionally dissipating or diverting assets outside of  
19 the ordinary course of its business for the purpose of avoiding payment  
20 of the judgment, the court shall enter such orders as are necessary to  
21 prevent dissipation or diversion, including, but not limited to,

1                    requiring that a bond be posted equal to the full amount of security  
2                    required pursuant to this section, and  
3                    b.        instead of filing a supersedeas bond, the appellant may obtain a stay  
4                    by depositing cash with the court clerk in the amount of the judgment  
5                    or order plus an amount that the court determines will cover costs and  
6                    interest on appeal. The court shall have discretion to accept United  
7                    States Treasury notes or general obligation bonds of the State of  
8                    Oklahoma in lieu of cash. If the court accepts such notes or bonds, it  
9                    shall make appropriate orders for their safekeeping and maintenance  
10                    during the stay;

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

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

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

6           5. In order to protect any monies payable to the Tobacco Settlement Fund as set  
7 forth in Section 50 of Title 62 of the Oklahoma Statutes, the bond in any action or  
8 litigation brought under any legal theory involving a signatory, successor of a signatory  
9 or an affiliate of a signatory to the Master Settlement Agreement dated November 23,  
10 1998, or a signatory, successor of a signatory or an affiliate of a signatory to the  
11 Smokeless Tobacco Master Settlement Agreement, also dated November 23, 1998, shall  
12 be in an amount not to exceed one hundred percent (100%) of the judgment, exclusive of  
13 interest and costs, twenty-five percent (25%) of the net worth of the judgment debtor, or  
14 Twenty-five Million Dollars (\$25,000,000.00), whichever is less. However, if it is proved  
15 by a preponderance of the evidence that the appellant for whom the bond has been  
16 limited pursuant to this paragraph is intentionally dissipating or diverting assets outside  
17 of the ordinary course of its business for the purpose of avoiding payment of the  
18 judgment, the court shall enter such orders as are necessary to prevent dissipation or  
19 diversion, including, but not limited to, requiring that a bond be posted equal to the full  
20 amount of security required pursuant to this section. For purposes of this paragraph,  
21 “Master Settlement Agreement” shall have the same meaning as that term is defined in  
22 paragraph 5 of Section 600.22 of Title 37 of the Oklahoma Statutes, and “Smokeless

1 Tobacco Master Settlement Agreement” means the settlement agreement and related  
2 documents entered into on November 23, 1998, by this state and leading United States  
3 smokeless tobacco product manufacturers.

4 C. Subsections A and B of this section shall not apply in actions involving  
5 temporary or permanent injunctions, actions for divorce, separate maintenance,  
6 annulment, paternity, custody, adoption, or termination of parental rights, or in juvenile  
7 matters, post-decree matrimonial proceedings or habeas corpus proceedings. The trial or  
8 appellate court, in its discretion, may stay the enforcement of any provision in a  
9 judgment, decree or final order in any of the types of actions or proceedings listed in this  
10 subsection during the pendency of the appeal or while any post-trial motion is pending  
11 upon such terms as to bond or otherwise as it considers proper for the security of the  
12 rights of the parties. If a temporary or permanent injunction is denied or dissolved, the  
13 trial or appellate court, in its discretion, may restore or grant an injunction during the  
14 pendency of the appeal and while any post-trial motions are pending upon such terms as  
15 to bond or otherwise as it considers proper for the security of the rights of the parties.

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

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

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

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

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

14 I. Appeal bonds shall not be required for appeals of punitive damages.

15 SECTION 2. AMENDATORY 12 O.S. 2001, Section 2011, as amended by  
16 Section 10, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2006, Section 2011), is amended to  
17 read as follows:

18 Section 2011.

19 SIGNING OF PLEADINGS

20 A. SIGNATURE. Every pleading, written motion, and other paper shall be signed  
21 by at least one attorney of record in his individual name, whose Oklahoma Bar  
22 Association identification number shall be stated, or, if the party is not represented by an

1 attorney, shall be signed by the party. Each paper shall state the address of the signer  
2 and telephone number, if any. Except when otherwise specifically provided by rule or  
3 statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper  
4 shall be stricken unless the omission of the signature is corrected promptly after being  
5 called to the attention of the attorney or party.

6 B. REPRESENTATIONS TO COURT. By presenting to the court, whether by  
7 signing, filing, submitting, or later advocating, a pleading, written motion, or other  
8 paper, an attorney or unrepresented party is certifying that to the best of the person's  
9 knowledge, information, and belief, formed after an inquiry reasonable under the  
10 circumstances:

11 1. It is not being presented for any improper or frivolous purpose, such as to harass  
12 or to cause unnecessary delay or needless increase in the cost of litigation;

13 2. The claims, defenses and other legal contentions therein are warranted by  
14 existing law or by a nonfrivolous argument for the extension, modification, or reversal of  
15 existing law or the establishment of new law;

16 3. The allegations and other factual contentions have evidentiary support or, if  
17 specifically so identified, are likely to have evidentiary support after a reasonable  
18 opportunity for further investigation or discovery; and

19 4. The denials of factual contentions are warranted on the evidence or, if  
20 specifically so identified, are reasonably based on a lack of information or belief.

21 C. SANCTIONS. If, after notice and a reasonable opportunity to respond, the court  
22 determines that subsection B of this section has been violated, the court shall, subject to

1 the conditions stated below, impose an appropriate sanction upon the attorneys, law  
2 firms, or parties that have violated subsection B of this section or are responsible for the  
3 violation.

4 1. HOW INITIATED.

5 a. By Motion. A motion for sanctions under this rule shall be made  
6 separately from other motions or requests and shall describe the  
7 specific conduct alleged to violate subsection B of this section. It shall  
8 be served as provided in Section 2005 of this title, but shall not be filed  
9 with or presented to the court unless, within twenty-one (21) days after  
10 service of the motion or such other period as the court may prescribe,  
11 the challenged paper, claim, defense, contention, allegation, or denial  
12 is not withdrawn or appropriately corrected. If warranted, the court  
13 may award to the party prevailing on the motion the reasonable  
14 expenses and attorneys fees incurred in presenting or opposing the  
15 motion. Absent exceptional circumstances, a law firm shall be held  
16 jointly responsible for violations committed by its partners, associates,  
17 and employees.

18 b. On Court's Initiative. On its own initiative, the court may enter an  
19 order describing the specific conduct that appears to violate subsection  
20 B of this section and directing an attorney, law firm, or party to show  
21 cause why it has not violated subsection B of this section with respect  
22 thereto.

1           2. NATURE OF SANCTIONS; LIMITATIONS. A sanction imposed for violation of  
2 this section shall be limited to what is sufficient to deter repetition of such conduct or  
3 comparable conduct by others similarly situated. Subject to the limitations in  
4 subparagraphs a, b and c of this paragraph, the sanction may consist of, or include,  
5 directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on  
6 motion and warranted for effective deterrence, an order directing payment to the movant  
7 of some or all of the reasonable attorneys fees and other expenses incurred as a direct  
8 result of the violation.

9           a. Monetary sanctions shall not be awarded against a represented party  
10 for a violation of paragraph 2 of subsection B of this section.

11           b. Monetary sanctions shall not be awarded on the court's initiative  
12 unless the court issues its order to show cause before a voluntary  
13 dismissal or settlement of the claims made by or against the party  
14 which is, or whose attorneys are, to be sanctioned.

15           c. Monetary sanctions shall be awarded for any violations of paragraph 1  
16 of subsection B of this section. The sanctions shall consist of an order  
17 directing payment of reasonable costs, including attorney fees,  
18 incurred by the movant with respect to the conduct for which the  
19 sanctions are imposed. In addition, the court may impose any other  
20 sanctions authorized by this paragraph.

1           3. ORDER. When imposing sanctions, the court shall describe the conduct  
2 determined to constitute a violation of this section and explain the basis for the sanction  
3 imposed.

4           D. INAPPLICABILITY TO DISCOVERY. This section does not apply to  
5 disclosures and discovery requests, responses, objections, and motions that are subject to  
6 the provisions of Sections 3226 through 3237 of this title.

7           E. DEFINITION. As used in this section, “frivolous” means the action or pleading  
8 was knowingly asserted in bad faith, was unsupported by ~~any~~ sufficiently credible  
9 evidence, was not grounded in fact, or was unwarranted by existing law or ~~a good faith~~  
10 an objectively reasonable argument for the extension, modification, or reversal of existing  
11 law or the establishment of new law. In determining whether an argument is objectively  
12 reasonable, the court shall examine whether or not a reasonable person would consider  
13 the claim or defense reasonable.

14           SECTION 3. AMENDATORY   Section 1, Chapter 370, O.S.L. 2004 (12 O.S.  
15 Supp. 2006, Section 2011.1), is amended to read as follows:

16           Section 2011.1 In any action not arising out of contract, the court shall, upon  
17 granting a motion to dismiss an action or a motion for summary judgment or subsequent  
18 to adjudication on the merits, determine whether a claim or defense asserted in the  
19 action by a nonprevailing party was frivolous. As used in this section, “frivolous” means  
20 the action was knowingly asserted in bad faith, was unsupported by ~~any~~ sufficiently  
21 credible evidence, was not grounded in fact, or was unwarranted by existing law or ~~a~~  
22 ~~good faith~~ an objectively reasonable argument for the extension, modification, or reversal

1 of existing law or the establishment of new law. In determining whether an argument is  
2 objectively reasonable, the court shall examine whether or not a reasonable person would  
3 consider the claim or defense reasonable. Upon so finding, the court shall enter a  
4 judgment ordering such nonprevailing party to reimburse the prevailing party for  
5 reasonable costs, including attorney fees, incurred with respect to such claim or defense.  
6 In addition, the court may impose any sanction authorized by Section 2011 of ~~Title 12 of~~  
7 ~~the Oklahoma Statutes~~ this title.

8 SECTION 4. AMENDATORY 12 O.S. 2001, Section 2023, is amended to read  
9 as follows:

10 Section 2023.

#### 11 CLASS ACTIONS

12 A. PREREQUISITES TO A CLASS ACTION. One or more members of a class may  
13 sue or be sued as representative parties on behalf of all only if:

- 14 1. The class is so numerous that joinder of all members is impracticable;
- 15 2. There are questions of law or fact common to the class;
- 16 3. The claims or defenses of the representative parties are typical of the claims or  
17 defenses of the class; and
- 18 4. The representative parties will fairly and adequately protect the interests of the  
19 class.

20 B. CLASS ACTIONS MAINTAINABLE. An action may be maintained as a class  
21 action if the prerequisites of subsection A of this section are satisfied and in addition:

1           1. The prosecution of separate actions by or against individual members of the class  
2 would create a risk of:

3           a.     inconsistent or varying adjudications with respect to individual  
4               members of the class which would establish incompatible standards of  
5               conduct for the party opposing the class, or

6           b.     adjudications with respect to individual members of the class which  
7               would as a practical matter be dispositive of the interests of the other  
8               members not parties to the adjudications or substantially impair or  
9               impede their ability to protect their interests; or

10          2. The party opposing the class has acted or refused to act on grounds generally  
11 applicable to the class, thereby making appropriate final injunctive relief or  
12 corresponding declaratory relief with respect to the class as a whole; or

13          3. The court finds that the questions of law or fact common to the members of the  
14 class predominate over any questions affecting only individual members, and that a class  
15 action is superior to other available methods for the fair and efficient adjudication of the  
16 controversy. The matters pertinent to the findings include:

17           a.     the interest of members of the class in individually controlling the  
18               prosecution or defense of separate actions,

19           b.     the extent and nature of any litigation concerning the controversy  
20               already commenced by or against members of the class,

21           c.     the desirability or undesirability of concentrating the litigation of the  
22               claims in the particular forum, and

1 d. the difficulties likely to be encountered in the management of a class  
2 action.

3 C. DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE  
4 MAINTAINED; NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS  
5 CLASS ACTIONS.

6 1. As soon as practicable after the commencement of an action brought as a class  
7 action, the court shall determine by order whether it is to be so maintained. An order  
8 under this subsection may be conditional, and may be altered or amended before the  
9 decision on the merits.

10 2. In any class action maintained under paragraph 3 of subsection B of this section,  
11 the court shall direct to the members of the class the best notice practicable under the  
12 circumstances, including individual notice to all potential members who can be identified  
13 through reasonable effort. The notice shall advise each potential member that:

- 14 a. the court will ~~exclude him from~~ include the potential member in the  
15 class only if ~~he~~ the potential member so requests by a specified date,  
16 b. the judgment, whether favorable or not, will include ~~all~~ only members  
17 who ~~do not request exclusion~~ have advised the court by the specified  
18 date, that they desire to be included in the class, and  
19 c. any member who ~~does not request exclusion~~ requests inclusion may, if  
20 ~~he desires,~~ enter an appearance through ~~his~~ counsel.

21 ~~Where~~ If the class contains more than five hundred (500) potential members who  
22 can be identified through reasonable effort, it shall not be necessary to direct individual

1 notice to more than five hundred (500) potential members, but the potential members to  
2 whom individual notice is not directed shall be given notice in such manner as the court  
3 shall direct, which may include publishing notice in newspapers, magazines, trade  
4 journals or other publications, posting it in appropriate places, and taking other steps  
5 that are reasonably calculated to bring the notice to the attention of such members;  
6 provided, that the cost of giving such notice shall be reasonable in view of the amounts  
7 that may be recovered by the class ~~members who are being notified.~~ Potential  
8 members to whom individual notice was not directed may request ~~exclusion from~~  
9 inclusion in the class at any time before the issue of liability is determined, ~~and;~~  
10 provided, commencing an individual action before the issue of liability is determined in  
11 the class action shall be the equivalent of requesting result in exclusion from the class.

12 3. The judgment in an action maintained as a class action under ~~paragraphs~~  
13 paragraph 1 or 2 of subsection B of this section, whether or not favorable to the class,  
14 shall include and describe those whom the court finds to be members of the class. The  
15 judgment in an action maintained as a class action under paragraph 3 of subsection B of  
16 this section, whether or not favorable to the class, shall include and specify or describe  
17 those to whom the notice provided in paragraph 2 of this subsection ~~C of this section~~ was  
18 directed, and who have not requested ~~exclusion~~ inclusion, and whom the court finds to be  
19 members of the class.

20 4. When appropriate:

21 a. an action may be brought or maintained as a class action with respect  
22 to particular issues, or



1 compromise shall be given to all members of the class in such manner as the court  
2 directs.

3 SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma  
4 Statutes as Section 2056 of Title 12, unless there is created a duplication in numbering,  
5 reads as follows:

6 A. FOR CLAIMANT. A party seeking to recover upon a claim, counterclaim, or  
7 cross-claim or to obtain a declaratory judgment may, at any time after the expiration of  
8 twenty (20) days from the commencement of the action or after service of a motion for  
9 summary judgment by the adverse party, move with or without supporting affidavits for  
10 a summary judgment in the party's favor upon all or any part thereof.

11 B. FOR DEFENDING PARTY. A party against whom a claim, counterclaim, or  
12 cross-claim is asserted or a declaratory judgment is sought may, at any time, move with  
13 or without supporting affidavits for a summary judgment in the party's favor as to all or  
14 any part thereof.

15 C. MOTION AND PROCEEDINGS THEREON. The motion shall be served at  
16 least ten (10) days before the time fixed for the hearing. The adverse party prior to the  
17 day of hearing may serve opposing affidavits. The judgment sought shall be rendered  
18 forthwith if the pleadings, depositions, answers to interrogatories, and admissions on  
19 file, together with the affidavits, if any, show that there is no genuine issue as to any  
20 material fact and that the moving party is entitled to a judgment as a matter of law. A  
21 summary judgment, interlocutory in character, may be rendered on the issue of liability  
22 alone although there is a genuine issue as to the amount of damages.

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

1 D. CASE NOT FULLY ADJUDICATED ON MOTION. If, on motion under this  
2 section, judgment is not rendered upon the whole case or for all the relief asked and a  
3 trial is necessary, the court at the hearing of the motion, by examining the pleadings and  
4 the evidence before it and by interrogating counsel, shall if practicable ascertain what  
5 material facts exist without substantial controversy and what material facts are actually  
6 and in good faith controverted. It shall thereupon make an order specifying the facts  
7 that appear without substantial controversy, including the extent to which the amount of  
8 damages or other relief is not in controversy, and directing such further proceedings in  
9 the action as are just. Upon the trial of the action, the facts so specified shall be deemed  
10 established, and the trial shall be conducted accordingly.

11 E. FORM OF AFFIDAVITS; FURTHER TESTIMONY; DEFENSE REQUIRED.  
12 Supporting and opposing affidavits shall be made on personal knowledge, shall set forth  
13 such facts as would be admissible in evidence, and shall show affirmatively that the  
14 affiant is competent to testify to the matters stated therein. Sworn or certified copies of  
15 all papers or parts thereof referred to in an affidavit shall be attached thereto or served  
16 therewith. The court may permit affidavits to be supplemented or opposed by  
17 depositions, answers to interrogatories, or further affidavits. When a motion for  
18 summary judgment is made and supported as provided in this section, an adverse party  
19 may not rest upon the mere allegations or denials of the adverse party's pleading, but the  
20 adverse party's response, by affidavits or as otherwise provided in this section, must set  
21 forth specific facts showing that there is a genuine issue for trial. If the adverse party

1 does not respond, summary judgment, if appropriate, shall be entered against the  
2 adverse party.

3 F. WHEN AFFIDAVITS ARE UNAVAILABLE. Should it appear from the  
4 affidavits of a party opposing the motion that the party cannot for reasons stated present  
5 by affidavit facts essential to justify the party's opposition, the court may refuse the  
6 application for judgment or may order a continuance to permit affidavits to be obtained  
7 or depositions to be taken or discovery to be had or may make such other order as is just.

8 G. AFFIDAVITS MADE IN BAD FAITH. Should it appear to the satisfaction of  
9 the court at any time that any of the affidavits presented pursuant to this section are  
10 presented in bad faith or solely for the purpose of delay, the court shall forthwith order  
11 the party employing them to pay to the other party the amount of the reasonable  
12 expenses which the filing of the affidavits caused the other party to incur, including  
13 reasonable attorney fees, and any offending party or attorney may be adjudged guilty of  
14 contempt.

15 SECTION 6. AMENDATORY Section 18, Chapter 368, O.S.L. 2004 (23 O.S.  
16 Supp. 2006, Section 15), is amended to read as follows:

17 Section 15. A. Except as provided in ~~subsections~~ subsection B and C of this section,  
18 in any civil action based on fault and not arising out of contract, the liability for damages  
19 caused by two or more persons shall be several only and a joint tortfeasor shall be liable  
20 only for the amount of damages allocated to that tortfeasor.

1 B. A defendant shall be jointly and severally liable for the damages recoverable by  
2 the plaintiff if the percentage of responsibility attributed to the defendant with respect to  
3 a cause of action is greater than fifty percent (50%).

4 C. If at the time the incident which gave rise to the cause of action occurred, any  
5 the joint tortfeasors acted with willful and wanton conduct or with reckless disregard of  
6 the consequences of the conduct and such conduct in concert in committing a felony that  
7 proximately caused the damages and the defendants were convicted of the felony legally  
8 recoverable by the plaintiff, the liability for damages shall be joint and several.

9 ~~D. C.~~ This section shall not apply to actions brought by the state or a political  
10 subdivision of the state ~~or any action in which no comparative negligence is found to be~~  
11 ~~attributable to the plaintiff.~~

12 ~~E. D.~~ The provisions of this section shall apply to all civil actions based on fault and  
13 not arising out of contract that accrue on or after November 1, ~~2004~~ 2007.

14 SECTION 7. AMENDATORY 23 O.S. 2001, Section 61, is amended to read as  
15 follows:

16 Section 61. A. For the breach of an obligation not arising from contract, the  
17 measure of damages, except where otherwise expressly provided by ~~this chapter~~ law, is  
18 the amount which will compensate for all detriment proximately caused thereby,  
19 whether it could have been anticipated or not.

20 B. For the breach of an obligation not arising from contract, if the plaintiff receives  
21 compensation or is to receive compensation in the future for the injuries or harm that  
22 gave rise to the cause of action from a source wholly independent of the defendant, such

1 fact may be admitted into evidence and the amount may be deducted from the amount of  
2 damages that the plaintiff recovers from the defendant.

3 SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma  
4 Statutes as Section 61.2 of Title 23, unless there is created a duplication in numbering,  
5 reads as follows:

6 A. Except as provided in subsection B of this section, in any action not arising out  
7 of contract, the amount of noneconomic damages awarded shall not exceed Three  
8 Hundred Thousand Dollars (\$300,000.00), regardless of the number of parties against  
9 whom the action is brought or the number of actions brought with respect to the personal  
10 injury. The dollar amount prescribed by this subsection shall be adjusted annually based  
11 upon any positive increase in the Consumer Price Index that measures the average  
12 changes in prices of goods and services purchased by urban wage earners and clerical  
13 workers' families and single workers living alone (CPI-W) for the preceding calendar  
14 year. The adjustment required by this subsection shall be made on April 1 of each year  
15 or not later than thirty (30) days after the date upon which the Bureau of Labor  
16 Statistics releases the CPI-W inflationary data for the preceding calendar year,  
17 whichever date first occurs. No adjustment to the dollar amount prescribed by this  
18 subsection shall be made for any year in which there is a decline in the Consumer Price  
19 Index.

20 B. If the judge finds beyond a reasonable doubt that the defendant committed  
21 negligence in a malicious and deliberate manner, the judge shall articulate such findings  
22 into the record out of the presence of the jury and shall lift the economic cap.

1 C. As used in this section, “noneconomic damages” means all subjective,  
2 nonmonetary losses including, but not limited to, pain, suffering, inconvenience, mental  
3 anguish, emotional distress, loss of society and companionship, loss of consortium, injury  
4 to reputation and humiliation; provided, however, noneconomic damages do not include  
5 exemplary damages, as provided for in Section 9.1 of Title 23 of the Oklahoma Statutes.

6 D. Nothing in this section shall apply to an action brought for wrongful death.

7 E. The provisions of this section shall apply only to actions that accrue on or after  
8 November 1, 2007.

9 SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma  
10 Statutes as Section 24-201 of Title 70, unless there is created a duplication in numbering,  
11 reads as follows:

12 Sections 9 through 17 of this act shall be known and may be cited as the “Education  
13 Quality and Protection Act”.

14 SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma  
15 Statutes as Section 24-202 of Title 70, unless there is created a duplication in numbering,  
16 reads as follows:

17 The Legislature finds that ensuring the quality of education is a compelling state  
18 interest. The educational environment of students is often not conducive to learning.  
19 Violence is sometimes a threat, while at other times, educators may lack the authority to  
20 maintain safety and discipline in the public schools. The filing of meritless lawsuits  
21 against school districts, teachers, administrators, and other school employees interferes  
22 with attempts to ensure the quality of public education, particularly when such lawsuits

1 arise out of the good-faith efforts of educators to maintain classroom discipline or address  
2 threats to student safety. Meritless litigation also diverts financial and personnel  
3 resources to litigation defense activities and reduces the availability of such resources for  
4 education opportunities for students. The Legislature further finds that legislation to  
5 deter meritless lawsuits and sanction deliberately false reports against educators is a  
6 rational and appropriate method to address this compelling public interest.

7 SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma  
8 Statutes as Section 24-203 of Title 70, unless there is created a duplication in numbering,  
9 reads as follows:

10 As used in the Education Quality and Protection Act:

- 11 1. “Educational entity” means the State Board of Education or the board of  
12 education of a public school district; and  
13 2. “Education employee” means any individual elected or appointed to an  
14 educational entity or any individual who is an employee of an educational entity.

15 SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma  
16 Statutes as Section 24-204 of Title 70, unless there is created a duplication in numbering,  
17 reads as follows:

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

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

1           2. Using corporal punishment, to the extent allowed by law, when and to the extent  
2 reasonably necessary and appropriate to maintain discipline or to promote student  
3 welfare.

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

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

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

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

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

19           SECTION 13.   NEW LAW   A new section of law to be codified in the Oklahoma  
20 Statutes as Section 24-205 of Title 70, unless there is created a duplication in numbering,  
21 reads as follows:

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

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

7 SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma  
8 Statutes as Section 24-206 of Title 70, unless there is created a duplication in numbering,  
9 reads as follows:

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

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

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

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

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

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

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

8           SECTION 15.   NEW LAW   A new section of law to be codified in the Oklahoma  
9 Statutes as Section 24-207 of Title 70, unless there is created a duplication in numbering,  
10 reads as follows:

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

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

18           SECTION 16.   NEW LAW   A new section of law to be codified in the Oklahoma  
19 Statutes as Section 24-208 of Title 70, unless there is created a duplication in numbering,  
20 reads as follows:

21           Unless otherwise provided by law, the existence of any policy of insurance  
22 indemnifying an educational entity or an education employee against liability for

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

3 SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma  
4 Statutes as Section 24-209 of Title 70, unless there is created a duplication in numbering,  
5 reads as follows:

6 The Education Quality and Protection Act shall be in addition to and shall not limit  
7 or amend The Governmental Tort Claims Act or any other applicable law.

8 SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma  
9 Statutes as Section 5B of Title 76, unless there is created a duplication in numbering,  
10 reads as follows:

11 A volunteer who is providing transportation services as an officer, director, trustee  
12 or direct service volunteer of a charitable organization shall not be liable for any act or  
13 omission resulting in bodily injury or property damage if the volunteer was acting in  
14 good faith and in the scope of duties or functions as a volunteer for the charitable  
15 organization, unless the act or omission was intentional, willfully and wantonly negligent  
16 or with reckless disregard for the safety of others.

17 SECTION 19. REPEALER 23 O.S. 2001, Section 103, is hereby repealed.

18 SECTION 20. REPEALER Section 6, Chapter 390, O.S.L. 2003, as amended by  
19 Section 21, Chapter 368, O.S.L. 2004 and Section 22, Chapter 368, O.S.L. 2004 (63 O.S.  
20 Supp. 2006, Sections 1-1708.1F and 1-1708.1F-1), are hereby repealed.

21 SECTION 21. This act shall become effective November 1, 2007.

1 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY,  
2 dated 03-07-07 - DO PASS, As Amended and Coauthored.