

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1620

By: Johnson (Rob)

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5
6 AS INTRODUCED

7 An Act relating to tort reform; amending 12 O.S.
8 2001, Section 990.4, as last amended by Section 6,
Chapter 1, O.S.L. 2005 (12 O.S. Supp. 2006, Section
9 990.4), which relates to stay of enforcement of
10 judgments, decrees and final orders; modifying when a
party may obtain a stay; providing maximum amount of
11 appeal bond; requiring the court to enter certain
orders to prevent dissipation or diversion; providing
12 that appeal bonds shall not be required for appeals
of punitive damages; amending 12 O.S. 2001, Section
13 2011, as amended by Section 10, Chapter 368, O.S.L.
2004 (12 O.S. Supp. 2006, Section 2011), which
14 relates to pleadings; modifying definition; amending
Section 1, Chapter 370, O.S.L. 2004 (12 O.S. Supp.
15 2006, Section 2011.1), which relates to frivolous
claims or defenses; modifying definition; amending 12
16 O.S. 2001, Section 2023, which relates to class
actions; requiring potential class members to request
17 inclusion in the class; providing procedure for
summary judgment; amending Section 18, Chapter 368,
18 O.S.L. 2004 (23 O.S. Supp. 2006, Section 15), which
relates to joint and several liability; modifying
19 exceptions to severability; eliminating exception;
amending 23 O.S. 2001, Section 61, which relates to
20 the measure of damages for the breach of obligations
not arising from contract; providing that
21 compensation from collateral sources shall be
admitted into evidence and may be deducted from
22 damages awarded; providing limits of liability for
noneconomic damages for certain actions; providing
23 exception; defining term; creating the Education
Quality and Protection Act; providing short title;
24 stating legislative findings; stating purpose of the
act; providing definitions; limiting the liability of
educational entities and education employees for

1 certain actions; stating standard of proof; limiting
2 the liability of educational entities and education
3 employees for certain reporting; prohibiting punitive
4 or exemplary damages against an educational entity or
5 education employee; making it unlawful to make a
6 false criminal report against an education employee;
7 providing punishment; limiting application for
8 statements against certain persons; providing for
9 effect on other laws; providing for the award of
10 costs and attorney fees; authorizing expert witness
11 fees; providing that existence of liability insurance
12 is not a waiver of any defense; providing for the
13 applicability of other laws; providing civil immunity
14 for certain volunteers; repealing 23 O.S. 2001,
15 Section 103, which relates to personal injury actions
16 asserted in bad faith; repealing Section 6, Chapter
17 390, O.S.L. 2003, as amended by Section 21, Chapter
18 368, O.S.L. 2004 and Section 22, Chapter 368, O.S.L.
19 2004 (63 O.S. Supp. 2006, Sections 1-1708.1F and 1-
20 1708.1F-1), which relate to limits on noneconomic
21 damages in medical liability actions; providing for
22 codification; and providing an effective date.

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

SECTION 1. AMENDATORY 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), 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 in any
court in or outside of this state; or

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

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

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

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

18 3. If an appeal is no longer pending.

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

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

23 a. subject to the limitations hereinafter provided, the
24 bond shall be double the amount of the judgment,

1 decree or final order, unless the bond is executed or
2 guaranteed by a surety as hereinafter provided. The
3 bond shall be for the amount of the judgment, decree
4 or order including costs and interest on appeal where
5 it is executed or guaranteed by an entity with
6 suretyship powers as provided by the laws of Oklahoma.
7 In no case shall the bond exceed the lesser of Twenty-
8 five Million Dollars (\$25,000,000.00) or ten percent
9 (10%) of the net worth of the judgment debtor,
10 regardless of the value of the judgment. On a showing
11 by the judgment debtor that the judgment debtor is
12 likely to suffer substantial economic harm if required
13 to post bond in the amount required by this paragraph,
14 the court shall balance the likely substantial
15 economic harm to the judgment debtor with the ability
16 of the judgment creditor to collect the judgment in
17 the event the judgment is affirmed on appeal and may
18 lower the bond accordingly. "Substantial economic
19 harm" means insolvency or creating a significant risk
20 of insolvency. ~~The court shall not lower a bond as~~
21 ~~provided in this paragraph to the extent there is in~~
22 ~~effect an insurance policy, or agreement under which a~~
23 ~~third party is liable to satisfy part or all of the~~
24 ~~judgment entered and such party is required to post~~

1 ~~all or part of the bond. Upon lowering the bond as~~
2 ~~provided in this paragraph, the court shall enter an~~
3 ~~order enjoining a judgment debtor from dissipating or~~
4 ~~transferring assets to avoid satisfaction of the~~
5 ~~judgment, but the court shall not make any order that~~
6 ~~interferes with the judgment debtor's use of assets in~~
7 ~~the normal course of business~~ If it is proved by a
8 preponderance of the evidence that the appellant for
9 whom the bond has been limited pursuant to this
10 subparagraph is intentionally dissipating or diverting
11 assets outside of the ordinary course of its business
12 for the purpose of avoiding payment of the judgment,
13 the court shall enter such orders as are necessary to
14 prevent dissipation or diversion, including, but not
15 limited to, requiring that a bond be posted equal to
16 the full amount of security required pursuant to this
17 section, and

- 18 b. instead of filing a supersedeas bond, the appellant
19 may obtain a stay by depositing cash with the court
20 clerk in the amount of the judgment or order plus an
21 amount that the court determines will cover costs and
22 interest on appeal. The court shall have discretion
23 to accept United States Treasury notes or general
24 obligation bonds of the State of Oklahoma in lieu of

1 cash. If the court accepts such notes or bonds, it
2 shall make appropriate orders for their safekeeping
3 and maintenance during the stay;

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

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

21 4. When the judgment or final order directs the assignment or
22 delivery of documents, they may be placed in the custody of the
23 clerk of the court in which the judgment or order was rendered, for
24 deposit with a public or private entity for safekeeping during the

1 pendency of the stay, as directed by the court in writing, or the
2 bond shall be in such sum as may be prescribed by the court; or

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

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

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

21 D. In any action not provided for in ~~subsections~~ subsection A,
22 B or C of this section, the court may stay the enforcement of any
23 judgment, decree or final order during the pendency of the appeal or
24 while any post-trial motion is pending upon such terms as to bond or

1 otherwise as it considers proper for the security of the rights of
2 the parties.

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

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

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

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

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

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

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

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

15 C. SANCTIONS. If, after notice and a reasonable opportunity to
16 respond, the court determines that subsection B of this section has
17 been violated, the court shall, subject to the conditions stated
18 below, impose an appropriate sanction upon the attorneys, law firms,
19 or parties that have violated subsection B of this section or are
20 responsible for the violation.

21 1. HOW INITIATED.

22 a. By Motion. A motion for sanctions under this rule
23 shall be made separately from other motions or
24 requests and shall describe the specific conduct

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

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

21 2. NATURE OF SANCTIONS; LIMITATIONS. A sanction imposed for
22 violation of this section shall be limited to what is sufficient to
23 deter repetition of such conduct or comparable conduct by others
24 similarly situated. Subject to the limitations in subparagraphs a,

1 b and c of this paragraph, the sanction may consist of, or include,
2 directives of a nonmonetary nature, an order to pay a penalty into
3 court, or, if imposed on motion and warranted for effective
4 deterrence, an order directing payment to the movant of some or all
5 of the reasonable attorneys fees and other expenses incurred as a
6 direct result of the violation.

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

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

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

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

4 D. INAPPLICABILITY TO DISCOVERY. This section does not apply
5 to disclosures and discovery requests, responses, objections, and
6 motions that are subject to the provisions of Sections 3226 through
7 3237 of this title.

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

17 SECTION 3. AMENDATORY Section 1, Chapter 370, O.S.L.
18 2004 (12 O.S. Supp. 2006, Section 2011.1), is amended to read as
19 follows:

20 Section 2011.1 In any action not arising out of contract, the
21 court shall, upon granting a motion to dismiss an action or a motion
22 for summary judgment or subsequent to adjudication on the merits,
23 determine whether a claim or defense asserted in the action by a
24 nonprevailing party was frivolous. As used in this section,

1 "frivolous" means the action was knowingly asserted in bad faith,
2 was unsupported by ~~any~~ sufficiently credible evidence, was not
3 grounded in fact, or was unwarranted by existing law or ~~a good faith~~
4 an objectively reasonable argument for the extension, modification,
5 or reversal of existing law or the establishment of new law. In
6 determining whether an argument is objectively reasonable, the court
7 shall examine whether or not a reasonable person would consider the
8 claim or defense reasonable. Upon so finding, the court shall enter
9 a judgment ordering such nonprevailing party to reimburse the
10 prevailing party for reasonable costs, including attorney fees,
11 incurred with respect to such claim or defense. In addition, the
12 court may impose any sanction authorized by Section 2011 of ~~Title 12~~
13 ~~of the Oklahoma Statutes~~ this title.

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

16 Section 2023.

17 CLASS ACTIONS

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

21 1. The class is so numerous that joinder of all members is
22 impracticable;

23 2. There are questions of law or fact common to the class;

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1 3. The claims or defenses of the representative parties are
2 typical of the claims or defenses of the class; and

3 4. The representative parties will fairly and adequately
4 protect the interests of the class.

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

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

10 a. inconsistent or varying adjudications with respect to
11 individual members of the class which would establish
12 incompatible standards of conduct for the party
13 opposing the class, or

14 b. adjudications with respect to individual members of
15 the class which would as a practical matter be
16 dispositive of the interests of the other members not
17 parties to the adjudications or substantially impair
18 or impede their ability to protect their interests; or

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

23 3. The court finds that the questions of law or fact common to
24 the members of the class predominate over any questions affecting

1 only individual members, and that a class action is superior to
2 other available methods for the fair and efficient adjudication of
3 the controversy. The matters pertinent to the findings include:

- 4 a. the interest of members of the class in individually
5 controlling the prosecution or defense of separate
6 actions,
- 7 b. the extent and nature of any litigation concerning the
8 controversy already commenced by or against members of
9 the class,
- 10 c. the desirability or undesirability of concentrating
11 the litigation of the claims in the particular forum,
12 and
- 13 d. the difficulties likely to be encountered in the
14 management of a class action.

15 C. DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE
16 MAINTAINED; NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS CLASS
17 ACTIONS.

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

23 2. In any class action maintained under paragraph 3 of
24 subsection B of this section, the court shall direct to the members

1 of the class the best notice practicable under the circumstances,
2 including individual notice to all potential members who can be
3 identified through reasonable effort. The notice shall advise each
4 potential member that:

5 a. the court will ~~exclude him from~~ include the potential
6 member in the class only if he the potential member so
7 requests by a specified date,

8 b. the judgment, whether favorable or not, will include
9 all only members who ~~do not request exclusion~~ have
10 advised the court by the specified date, that they
11 desire to be included in the class, and

12 c. any member who ~~does not request exclusion~~ requests
13 inclusion may, ~~if he desires,~~ enter an appearance
14 through ~~his~~ counsel.

15 ~~Where~~ If the class contains more than five hundred (500)
16 potential members who can be identified through reasonable effort,
17 it shall not be necessary to direct individual notice to more than
18 five hundred (500) potential members, but the potential members to
19 whom individual notice is not directed shall be given notice in such
20 manner as the court shall direct, which may include publishing
21 notice in newspapers, magazines, trade journals or other
22 publications, posting it in appropriate places, and taking other
23 steps that are reasonably calculated to bring the notice to the
24 attention of such members; provided, that the cost of giving such

1 notice shall be reasonable in view of the amounts that may be
2 recovered by the class ~~members who are being notified.~~ ~~Members~~
3 Potential members to whom individual notice was not directed may
4 request ~~exclusion from~~ inclusion in the class at any time before the
5 issue of liability is determined, ~~and;~~ provided, commencing an
6 individual action before the issue of liability is determined in the
7 class action shall ~~be the equivalent of requesting~~ result in
8 exclusion from the class.

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

19 4. When appropriate:

- 20 a. an action may be brought or maintained as a class
21 action with respect to particular issues, or
22 b. a class may be divided into subclasses and each
23 subclass treated as a class.
24

1 The provisions of this section shall then be construed and applied
2 accordingly.

3 D. ORDERS IN CONDUCT OF ACTIONS. In the conduct of actions to
4 which this section applies, the court may make appropriate orders:

5 1. Determining the course of proceedings or prescribing
6 measures to prevent undue repetition or complication in the
7 presentation of evidence or argument;

8 2. Requiring, for the protection of the members of the class or
9 otherwise for the fair conduct of the action, that notice be given
10 in such manner as the court may direct to some or all of the members
11 of any step in the action, or of the proposed extent of the
12 judgment, or of the opportunity of members to signify whether they
13 consider the representation fair and adequate, to intervene and
14 present claims or defenses, or otherwise to come into the action;

15 3. Imposing conditions on the representative parties or on
16 intervenors;

17 4. Requiring that the pleadings be amended to eliminate
18 therefrom allegations as to representation of absent persons, and
19 that the action proceed accordingly; and

20 5. Dealing with similar procedural matters.

21 The orders may be combined with an order under Section ~~16~~ 2016 of
22 this ~~act~~ title and may be altered or amended as may be desirable
23 from time to time.

24

1 E. DISMISSAL OR COMPROMISE. A class action shall not be
2 dismissed or compromised without the approval of the court, and
3 notice of the proposed dismissal or compromise shall be given to all
4 members of the class in such manner as the court directs.

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

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

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

20 C. MOTION AND PROCEEDINGS THEREON. The motion shall be served
21 at least ten (10) days before the time fixed for the hearing. The
22 adverse party prior to the day of hearing may serve opposing
23 affidavits. The judgment sought shall be rendered forthwith if the
24 pleadings, depositions, answers to interrogatories, and admissions

1 on file, together with the affidavits, if any, show that there is no
2 genuine issue as to any material fact and that the moving party is
3 entitled to a judgment as a matter of law. A summary judgment,
4 interlocutory in character, may be rendered on the issue of
5 liability alone although there is a genuine issue as to the amount
6 of damages.

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

20 E. FORM OF AFFIDAVITS; FURTHER TESTIMONY; DEFENSE REQUIRED.
21 Supporting and opposing affidavits shall be made on personal
22 knowledge, shall set forth such facts as would be admissible in
23 evidence, and shall show affirmatively that the affiant is competent
24 to testify to the matters stated therein. Sworn or certified copies

1 of all papers or parts thereof referred to in an affidavit shall be
2 attached thereto or served therewith. The court may permit
3 affidavits to be supplemented or opposed by depositions, answers to
4 interrogatories, or further affidavits. When a motion for summary
5 judgment is made and supported as provided in this section, an
6 adverse party may not rest upon the mere allegations or denials of
7 the adverse party's pleading, but the adverse party's response, by
8 affidavits or as otherwise provided in this section, must set forth
9 specific facts showing that there is a genuine issue for trial. If
10 the adverse party does not respond, summary judgment, if
11 appropriate, shall be entered against the adverse party.

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

19 G. AFFIDAVITS MADE IN BAD FAITH. Should it appear to the
20 satisfaction of the court at any time that any of the affidavits
21 presented pursuant to this section are presented in bad faith or
22 solely for the purpose of delay, the court shall forthwith order the
23 party employing them to pay to the other party the amount of the
24 reasonable expenses which the filing of the affidavits caused the

1 other party to incur, including reasonable attorney fees, and any
2 offending party or attorney may be adjudged guilty of contempt.

3 SECTION 6. AMENDATORY Section 18, Chapter 368, O.S.L.
4 2004 (23 O.S. Supp. 2006, Section 15), is amended to read as
5 follows:

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

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

15 ~~C.~~ If at the time the incident which gave rise to the cause of
16 action occurred, ~~any~~ the joint tortfeasors acted ~~with willful and~~
17 ~~wanton conduct or with reckless disregard of the consequences of the~~
18 ~~conduct and such conduct~~ in concert in committing a felony that
19 proximately caused the damages and the defendants were convicted of
20 the felony legally recoverable by the plaintiff, the liability for
21 damages shall be joint and several.

22 ~~D.~~ C. This section shall not apply to actions brought by the
23 state or a political subdivision of the state ~~or any action in which~~
24

1 ~~no comparative negligence is found to be attributable to the~~
2 ~~plaintiff.~~

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

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

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

13 B. For the breach of an obligation not arising from contract,
14 if the plaintiff receives compensation or is to receive compensation
15 in the future for the injuries or harm that gave rise to the cause
16 of action from a source wholly independent of the defendant, such
17 fact may be admitted into evidence and the amount may be deducted
18 from the amount of damages that the plaintiff recovers from the
19 defendant.

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

23 A. Except as provided in subsection B of this section, in any
24 action not arising out of contract, the amount of noneconomic

1 damages awarded shall not exceed Three Hundred Thousand Dollars
2 (\$300,000.00), regardless of the number of parties against whom the
3 action is brought or the number of actions brought with respect to
4 the personal injury. The dollar amount prescribed by this
5 subsection shall be adjusted annually based upon any positive
6 increase in the Consumer Price Index that measures the average
7 changes in prices of goods and services purchased by urban wage
8 earners and clerical workers' families and single workers living
9 alone (CPI-W) for the preceding calendar year. The adjustment
10 required by this subsection shall be made on April 1 of each year or
11 not later than thirty (30) days after the date upon which the Bureau
12 of Labor Statistics releases the CPI-W inflationary data for the
13 preceding calendar year, whichever date first occurs. No adjustment
14 to the dollar amount prescribed by this subsection shall be made for
15 any year in which there is a decline in the Consumer Price Index.

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

20 C. As used in this section, "noneconomic damages" means all
21 subjective, nonmonetary losses including, but not limited to, pain,
22 suffering, inconvenience, mental anguish, emotional distress, loss
23 of society and companionship, loss of consortium, injury to
24 reputation and humiliation; provided, however, noneconomic damages

1 do not include exemplary damages, as provided for in Section 9.1 of
2 Title 23 of the Oklahoma Statutes.

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

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

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

10 Sections 9 through 17 of this act shall be known and may be
11 cited as the "Education Quality and Protection Act".

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

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

1 Meritless litigation also diverts financial and personnel resources
2 to litigation defense activities and reduces the availability of
3 such resources for education opportunities for students. The
4 Legislature further finds that legislation to deter meritless
5 lawsuits and sanction deliberately false reports against educators
6 is a rational and appropriate method to address this compelling
7 public interest.

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

11 As used in the Education Quality and Protection Act:

12 1. "Educational entity" means the State Board of Education or
13 the board of education of a public school district; and

14 2. "Education employee" means any individual elected or
15 appointed to an educational entity or any individual who is an
16 employee of an educational entity.

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

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

22 1. Taking any action regarding the control, grading,
23 suspension, expulsion, or discipline of students while such students
24

1 are on the property of the educational entity or under the
2 supervision of the educational entity or education employee; and

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

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

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

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

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

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

24

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

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

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

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

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

21 B. Except as otherwise provided in this section, any student
22 between seven (7) and seventeen (17) years of age who acts with
23 specific intent in making a false accusation of criminal activity
24 against an education employee to law enforcement authorities or

1 school district officials, or both, shall upon conviction, at the
2 discretion of the court, be subject to any of the following:

3 1. Suspended out-of-school for a period of time to be
4 determined by the court, subject to the provisions of Section 24-
5 101.3 of Title 70 of the Oklahoma Statutes;

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

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

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

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

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

18 A. In any civil action or proceeding against an educational
19 entity or an education employee in which the educational entity or
20 education employee prevails, the court shall award costs and
21 reasonable attorney fees to the prevailing defendant or defendants.
22 The court in its discretion may determine whether such fees and
23 costs are to be borne by the plaintiff's attorney, the plaintiff, or
24 both.

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

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

6 Unless otherwise provided by law, the existence of any policy of
7 insurance indemnifying an educational entity or an education
8 employee against liability for damages is not a waiver of any
9 defense otherwise available to the educational entity or its
10 employees in the defense of the claim.

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

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

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

20 A volunteer who is providing transportation services as an
21 officer, director, trustee or direct service volunteer of a
22 charitable organization shall not be liable for any act or omission
23 resulting in bodily injury or property damage if the volunteer was
24 acting in good faith and in the scope of duties or functions as a

1 volunteer for the charitable organization, unless the act or
2 omission was intentional, willfully and wantonly negligent or with
3 reckless disregard for the safety of others.

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

6 SECTION 20. REPEALER Section 6, Chapter 390, O.S.L.
7 2003, as amended by Section 21, Chapter 368, O.S.L. 2004 and Section
8 22, Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2006, Sections 1-1708.1F
9 and 1-1708.1F-1), are hereby repealed.

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

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12 51-1-6142 SD 01/16/07

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