

THE HOUSE OF REPRESENTATIVES
Monday, February 16, 2009

Committee Substitute for
House Bill No. 1678

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1678 - By: OWNBEY of the House and PADDACK of the Senate.

An Act relating to torts; amending Section 34, Chapter 368, O.S.L. 2004 (76 O.S. Supp. 2008, Section 32), which relates to the Volunteer Medical Professional Services Immunity Act; modifying definition; expanding scope of certain circumstances in which certain persons are immune from liability; specifying application; defining term; providing for certain immunity from liability for certain entities; specifying application; providing certain limitations; providing for codification; and providing an effective date.

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

1 SECTION 1. AMENDATORY Section 34, Chapter 368, O.S.L. 2004 (76 O.S.
2 Supp. 2008, Section 32), is amended to read as follows:

3 Section 32. A. This section shall be known and may be cited as the “Volunteer
4 Medical Professional Services Immunity Act”.

5 B. Any volunteer medical professional shall be immune from liability in a civil
6 action on the basis of any act or omission of the volunteer medical professional resulting
7 in damage or injury if:

8 1. The volunteer medical professional services were provided at a free clinic where
9 neither the professional nor the clinic receives any kind of compensation for any
10 treatment provided at the clinic;

1 2. The volunteer medical professional was acting in good faith and, if licensed, the
2 services provided were within the scope of the license of the volunteer medical
3 professional;

4 3. The volunteer medical professional commits the act or omission in the course of
5 providing professional services;

6 4. The damage or injury was not caused by gross negligence or willful and wanton
7 misconduct by the volunteer medical professional; and

8 5. Before the volunteer medical professional provides professional medical services,
9 the volunteer medical professional and the person receiving the services or, if that person
10 is a minor or otherwise legally incapacitated, the person's parent, conservator, legal
11 guardian, or other person with legal responsibility for the care of the person signs a
12 written statement that acknowledges:

- 13 a. that the volunteer medical professional providing professional medical
14 services has no expectation of and will receive no compensation of any
15 kind for providing the professional medical services, and
16 b. an understanding of the limitations on the recovery of damages from
17 the volunteer medical professional in exchange for receiving free
18 professional medical services.

19 C. In the event the volunteer medical professional refers the patient covered by this
20 section to another volunteer medical professional for additional treatment, the referred
21 volunteer medical professional shall be subject to the provisions of this section if:

- 1 1. The referred volunteer medical professional provides services without receiving
2 any compensation for the treatment;
- 3 2. The referred volunteer medical professional was acting in good faith and, if
4 licensed, the services provided were within the scope of the license of the referred
5 volunteer medical professional;
- 6 3. The referred volunteer medical professional commits the act or omission in the
7 course of providing professional services;
- 8 4. The damage or injury was not caused by gross negligence or willful and wanton
9 misconduct by the referred volunteer medical professional; and
- 10 5. Before the referred volunteer medical professional provides professional services,
11 the referred volunteer medical professional and the person receiving the services or, if
12 that person is a minor or otherwise legally incapacitated, the person's parent,
13 conservator, legal guardian, or other person with legal responsibility for the care of the
14 person signs a written statement that acknowledges:
- 15 a. that the referred volunteer medical professional providing professional
16 medical services has no expectation of and will receive no
17 compensation of any kind for providing the professional medical
18 services, and
- 19 b. an understanding of the limitations on the recovery of damages from
20 the volunteer medical professional in exchange for receiving free
21 professional medical services.

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

5 E. The immunity from civil liability provided by this section shall extend only to
6 the actions taken by a person rendering the service, care, assistance, advice or other
7 benefit as a volunteer medical professional, and does not confer any immunity to any
8 person for actions taken by the volunteer medical professional prior to or after the
9 rendering of the service, care, assistance, advice or other benefit as a volunteer medical
10 professional.

11 F. For the purpose of this section, the term “volunteer medical professional” and
12 “referred volunteer medical professional” means a person who voluntarily provides
13 professional medical services without compensation or expectation of compensation of
14 any kind. A volunteer medical professional or a referred volunteer medical professional
15 shall include ~~the following licensed professionals:~~

- 16 1. Advanced nurse practitioner;
- 17 2. Certified nurses aide;
- 18 3. Chiropractor;
- 19 4. Dental assistant;
- 20 5. Dental hygienist;
- 21 6. Dental technician;
- 22 7. Dentist;

- 1 8. Dietitian/Nutritionist;
- 2 9. Emergency medical technician;
- 3 10. Licensed alcohol and drug counselor;
- 4 11. Licensed behavioral practitioner;
- 5 12. Licensed clinical social worker;
- 6 13. Licensed practical nurse;
- 7 14. Licensed professional counselor;
- 8 15. Marital/Family therapist;
- 9 16. Medical assistant;
- 10 17. Medical laboratory technologist;
- 11 18. Medical technician;
- 12 19. Nuclear medicine technologist;
- 13 20. Occupational therapist;
- 14 21. Optometrist;
- 15 22. Orthopedic technologist;
- 16 23. Paramedic;
- 17 24. Pharmacist;
- 18 25. Pharmacy technician;
- 19 26. Physical therapist;
- 20 27. Physician (MD/DO);
- 21 ~~28.~~ 28. Physician's assistant;
- 22 ~~29.~~ 29. Podiatrist;

- 1 30. Psychologist;
2 31. Radiology technician/technologist;
3 32. Registered nurse;
4 ~~4. Advanced nurse practitioner or vocational nurse;~~
5 ~~5. Pharmacist;~~
6 ~~6. Podiatrist;~~
7 ~~7. Dentist or dental hygienist; or~~
8 ~~8. Optometrist~~
9 33. Respiratory therapist;
10 34. Sonographer;
11 35. Speech/Language pathologist;
12 36. Veterinarian; and
13 37. Veterinary technician.

14 A volunteer medical professional shall be engaged in the active practice of a medical
15 professional or retired from a medical profession, if still eligible to provide medical
16 professional services within this state.

17 G. Any person participating in a ~~the~~ Oklahoma Medical Reserve Corps and
18 assisting with emergency management, emergency operations, or hazard mitigation in
19 response to any emergency, man-made disaster, or natural disaster, or participating in
20 public health initiatives, disaster drills, or other activities designed to strengthen
21 emergency response that are endorsed by a city-county health department, county health

1 department or the state health department in the State of Oklahoma, shall not be liable
2 for civil damages on the basis of any act or omission, if:

3 1. The person was acting in good faith and within the scope of the official duties
4 and functions of the Oklahoma Medical Reserve Corps; and

5 2. The acts or omissions were not caused from gross, willful, or wanton acts of
6 negligence.

7 H. This section shall apply to all civil actions filed on or after:

8 1. November 1, 2004, for a physician, physician's assistant, registered nurse,
9 advanced nurse practitioner, pharmacist, podiatrist, dentist, dental hygienist, and
10 optometrist; and

11 2. November 1, 2009, for all other persons listed in subsection F of this section.

12 SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma
13 Statutes as Section 33 of Title 76, unless there is created a duplication in numbering,
14 reads as follows:

15 A. For the purposes of this section, "person" means an individual, association, for-
16 profit or nonprofit artificial entity created under state law, religious organization, or
17 charitable organization.

18 B. Any person, or any agent of that person, who:

19 1. Voluntarily and without the expectation or receipt of compensation provides
20 services and goods at any place in this state subject to the order or control of, or pursuant
21 to a request of, the state government or any political subdivision thereof:

22 a. in preparation for, anticipation of, or during a time of emergency, and

- 1 b. in a place of emergency, as declared by the Governor; and
- 2 2. For the benefit of any person or to prevent, minimize, or repair injury or damage
- 3 to the property of a person resulting from:
- 4 a. biological, chemical, or nuclear agents,
- 5 b. terrorism,
- 6 c. pandemic or epidemic of infectious disease,
- 7 d. catastrophic acts of nature, including but not limited to fire, flood,
- 8 earthquake, wind, storm, or wave action, or
- 9 e. any other emergency situation as declared by the Governor by
- 10 executive order under Oklahoma law,

11 shall not be liable to any person receiving assistance as a result of any act or omission in

12 rendering the service if the person was acting in good faith and the damage or injury was

13 not caused by the will or wanton negligence or misconduct of the person.

14 C. The immunity from liability provided in subsection B of this section shall:

15 1. Not apply to any person, or any employee or agent thereof, whose act or omission

16 caused in whole or in part the actual or imminent disaster or emergency, or whose act or

17 omission necessitated emergency management measures; and

18 2. Only apply to a person for such person's act or omission that directly relates to

19 preparation for, anticipation of, or responding to an emergency. For purposes of this

20 paragraph, "directly relates to" means providing goods or services pursuant to a request

21 of an official or employee of state government, or any political subdivision thereof, who is

22 authorized to make such a request.

1 D. This section shall apply to all civil actions filed on or after November 1, 2009.

2 E. Nothing contained in this section shall amend, repeal, alter, or affect any other
3 immunity or limitation of liability provided for under Oklahoma law.

4 SECTION 3. This act shall become effective November 1, 2009.

5 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-12-09 - DO PASS,
6 As Amended and Coauthored.