

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

SENATE BILL NO. 707

BY: STIPE

AS INTRODUCED

AN ACT RELATING TO THE GOVERNMENTAL TORT CLAIMS ACT;
AMENDING 51 O.S. 1991, SECTIONS 155, 155.1, 156 AND
161.1, WHICH RELATE TO CLAIMS AGAINST THE STATE OF
OKLAHOMA; CLARIFYING CERTAIN REFERENCE TO PROPERTY;
ADDING EXEMPTION FROM LIABILITY BASED ON THEORY OF
CONTRIBUTION; DELETING CERTAIN REQUIREMENT FOR
EVIDENCE REGARDING THE STATE'S FAILURE TO WARN OF
UNSAFE CONDITION; EXTENDING CERTAIN PROTECTION TO
POLITICAL SUBDIVISIONS OF THE STATE; EXTENDING
DEADLINE BRINGING ROADS AND HIGHWAYS UP TO CERTAIN
STANDARDS; PROVIDING FOR CERTAIN INVESTIGATIONS OF
CLAIMS TO BE CONFIDENTIAL; STATING EXCEPTION;
PROVIDING FOR SUCH INVESTIGATIONS TO BE
DISCOVERABLE; AUTHORIZING THE STATE TO RECOVER
CERTAIN COSTS OR ATTORNEY FEES; AUTHORIZING THE
COURT TO AWARD SANCTIONS AT THEIR DISCRETION;
STATING RATE OF ATTORNEY FEES; PROVIDING EXCEPTION;
AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 51 O.S. 1991, Section 155, is
amended to read as follows:

Section 155. The state or a political subdivision shall not be liable if a loss or claim results from:

1. Legislative functions;
2. Judicial, quasi-judicial, or prosecutorial functions;
3. Execution or enforcement of the lawful orders of any court;
4. Adoption or enforcement of or failure to adopt or enforce a law, whether valid or invalid, including, but not limited to, any statute, charter provision, ordinance, resolution, rule, regulation or written policy;
5. Performance of or the failure to exercise or perform any act or service which is in the discretion of the state or political subdivision or its employees;
6. Civil disobedience, riot, insurrection or rebellion or the failure to provide, or the method of providing, police, law enforcement or fire protection;
7. Any claim based on the theory of attractive nuisance;
8. Snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions, unless the condition is affirmatively caused by the negligent act of the state or a political subdivision;
9. Entry upon any property where that entry is expressly or impliedly authorized by law;
10. Natural conditions of property of the state or political subdivision;
11. Assessment or collection of taxes or special assessments, license or registration fees, or other fees or charges imposed by law;
12. Licensing powers or functions including, but not limited to, the issuance, denial, suspension or revocation of or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authority;

13. Inspection powers or functions, including failure to make an inspection, review or approval, or making an inadequate or negligent inspection, review or approval of any property, whether public or private, real or personal, to determine whether the property complies with or violates any law or contains a hazard to health or safety, or fails to conform to a recognized standard;

14. Any loss to any person covered by any workers' compensation act or any employer's liability act;

15. Absence, condition, location or malfunction of any traffic or road sign, signal or warning device unless the absence, condition, location or malfunction is not corrected by the state or political subdivision responsible within a reasonable time after actual or constructive notice or the removal or destruction of such signs, signals or warning devices by third parties, action of weather elements or as a result of traffic collision except on failure of the state or political subdivision to correct the same within a reasonable time after actual or constructive notice. Nothing herein shall give rise to liability arising from the failure of the state or any political subdivision to initially place any of the above signs, signals or warning devices. The signs, signals and warning devices referred to herein are those used in connection with hazards normally connected with the use of roadways or public ways and do not apply to the duty to warn of special defects such as excavations or roadway obstructions;

16. Any claim which is limited or barred by any other law;

17. Misrepresentation, if unintentional;

18. An act or omission of an independent contractor or consultant or his employees, agents, subcontractors or suppliers or of a person other than an employee of the state or political subdivision at the time the act or omission occurred;

19. Theft by a third person of money in the custody of an employee unless the loss was sustained because of the negligence or wrongful act or omission of the employee;

20. Participation in or practice for any interscholastic or other athletic contest sponsored or conducted by or on the property of the state or a political subdivision;

21. Any court-ordered or Department of Corrections approved work release program; provided, however, this provision shall not apply to claims from individuals not in the custody of the Department of Corrections based on accidents involving motor vehicles owned or operated by the Department of Corrections;

22. The activities of the National Guard, the militia or other military organization administered by the Military Department of the state when on duty pursuant to the lawful orders of competent authority in an effort to quell a riot or in response to a natural disaster or military attack;

23. Provision, equipping, operation or maintenance of any prison, jail or correctional facility, or injuries resulting from the parole or escape of a prisoner by a prisoner to any other prisoner; provided, however, this provision shall not apply to claims from individuals not in the custody of the Department of Corrections based on accidents involving motor vehicles owned or operated by the Department of Corrections;

24. Provision, equipping, operation or maintenance of any juvenile detention facility, or injuries resulting from the escape of a juvenile detainee, or injuries by a juvenile detainee to any other juvenile detainee;

25. Any claim or action based on the theory of manufacturer's products liability or breach of warranty, either expressed or implied;

26. Any claim or action based on the theory of contribution, indemnification or subrogation;

27. Any claim based upon an act or omission of an employee in the placement of children;

28. Acts or omissions done in conformance with then current recognized standards;

29. Maintenance of the state highway system or any portion thereof unless the claimant presents evidence which establishes ~~either that the state failed to warn of the unsafe condition or that~~ the loss would not have occurred but for a negligent affirmative act of the state; or

30. Any confirmation of the existence or nonexistence of any effective financing statement on file in the office of the Secretary of State made in good faith by an employee of the office of the Secretary of State as required by the provisions of Section 9-307.6 of Title 12A of the Oklahoma Statutes.

SECTION 2. AMENDATORY 51 O.S. 1991, Section 155.1, is amended to read as follows:

Section 155.1 Nothing contained in this act shall be construed as allowing an action or recovery against the state, any political subdivision of the state, or any of their officers or employees on a claim or cause of action founded upon any loss occurring from a defect or dangerous condition on any road, street or highway which was in existence, whether known or unknown:

1. On October 1, 1985; or

2. When an existing facility became or becomes a part of the state highway system; or

3. When an existing facility became or becomes the maintenance responsibility of the state, or political subdivision of the state, to the extent of that responsibility;

provided that this section shall be effective until 12:01 a.m., October 1, ~~1995~~ 2005.

To the extent that the state is required by law to maintain a road, street, or highway within the territorial limits of a

political subdivision, the political subdivision shall not be liable for any loss occurring from a defect or dangerous condition in the area required to be maintained by the state.

SECTION 3. AMENDATORY 51 O.S. 1991, Section 156, is amended to read as follows:

Section 156. A. Any person having a claim against the state or a political subdivision within the scope of this act shall present a claim to the state or political subdivision for any appropriate relief including the award of money damages.

B. Claims against the state or a political subdivision are to be presented within ninety (90) days of the date the loss occurs. In the event a claim is presented following ninety (90) days after the loss occurs, but within one (1) year after the loss occurs, any judgment in a lawsuit arising from the act which is the subject of the claim shall be reduced by ten percent (10%). A claim against the state or a political subdivision shall be forever barred unless notice thereof is presented within one (1) year after the loss occurs.

C. A claim against the state shall be in writing and filed with the Office of the Risk Management Administrator of the Purchasing Division of the Office of Public Affairs who shall immediately notify the Attorney General and the agency concerned and conduct a diligent investigation of the validity of the claim within the time specified for approval or denial of claims by Section 157 of this title. Investigations performed by or on behalf of the state to determine the validity of a claim or in preparation of the defense of a claim shall be confidential and shall not be subject to compulsory release unless approved by authorized counsel or the state is a proper party in the action. When the state is a proper party to an action, such investigations may be discoverable in accordance with the provisions of the Oklahoma Discovery Code, Section 3224 et seq. of Title 12 of the Oklahoma Statutes. A claim

may be filed by certified mail with return receipt requested. A claim which is mailed shall be considered filed upon receipt by the Office of the Risk Management Administrator.

D. A claim against a political subdivision shall be in writing and filed with the office of the clerk of the governing body.

E. The written notice of claim to the state or a political subdivision shall state the date, time, place and circumstances of the claim, the identity of the state agency or agencies involved, the amount of compensation or other relief demanded, the name, address and telephone number of the claimant, and the name, address and telephone number of any agent authorized to settle the claim. Failure to state either the date, time, place and circumstances and amount of compensation demanded shall not invalidate the notice unless the claimant declines or refuses to furnish such information after demand by the state or political subdivision. The time for giving written notice of claim pursuant to the provisions of this section does not include the time during which the person injured is unable due to incapacitation from the injury to give such notice, not exceeding ninety (90) days of incapacity.

F. When the claim is one for death by wrongful act or omission, notice may be presented by the personal representative within one (1) year after the alleged injury or loss resulting in such death. If the person for whose death the claim is made has presented notice that would have been sufficient had he lived, an action for wrongful death may be brought without any additional notice.

G. Claims and suits against resident physicians or interns shall be made in accordance with the provisions of Titles 12 and 76 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 51 O.S. 1991, Section 161.1, is amended to read as follows:

Section 161.1 A. When the state has a duty to defend any action pursuant to the provisions of this act, it shall be the duty

of the Attorney General to defend all such actions, unless an agency of the state is authorized by law to employ its own attorneys, in which case said attorneys may defend such actions against the agency or the agency may request that the Attorney General defend such actions. If such a request is made, the Attorney General shall defend any such action.

B. Whenever the recovery of costs or attorney fees is otherwise authorized by law, the state may recover its costs or attorney fees incurred in the defense of any action under this act. Sanctions may be awarded to the state within the discretion of the court. Attorney fees recoverable shall be at a rate of Seventy-five Dollars (\$75.00) per hour unless a different rate is established by evidence presented to the court.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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