

ENROLLED HOUSE
BILL NO. 2581

By: Steidley and York of the
House

and

Weedn of the Senate

An Act relating to state government; amending 47 O.S. 1991, Section 1143.1, which relates to the Oklahoma Motor License Agent Indemnity Fund, 51 O.S. 1991, Section 152, as last amended by Section 4, Chapter 177, O.S.L. 1993 (51 O.S. Supp. 1993, Section 152), which relates to the Governmental Tort Claims Act, 74 O.S. 1991, Section 61.4, 85.2, as amended by Section 6, Chapter 250, O.S.L. 1992, 85.34, as amended by Section 3, Chapter 177, O.S.L. 1993, 85.34A, as amended by Section 4, Chapter 44, O.S.L. 1992, 85.34F, 85.35, 85.37, as amended by Section 1, Chapter 133, O.S.L. 1993, and 85.38 (74 O.S. Supp. 1993, Sections 85.2, 85.34, 85.34A and 85.37), which relate to the Department of Central Services and the Oklahoma Central Purchasing Act; authorizing employment of certain attorneys for entities covered by Comprehensive Professional Risk Management Program which are not state agencies; adding definitions; modifying requirements of certain self-insurance programs; requiring assistance to certain public trusts in obtaining certain insurance; expanding duties of Risk Management Administrator; making certain position unclassified; allowing motor license agents to participate in program for certain purposes and specifying procedures and conditions therefor; authorizing Risk Management Administrator to obtain or provide insurance coverage for certain buildings; requiring certain liability insurance coverage to include certain legal services; expanding authority to provide or obtain certain insurance coverage; modifying amount of certain payments; providing exception; authorizing Risk Management Administrator to establish certain system and providing procedures and conditions related thereto; modifying and changing name of the Property and Casualty Revolving Fund to the Risk Management Revolving Fund; providing for deposit of certain interest earned; creating certain accounts; providing for deposits and expenditures; authorizing certain fees; modifying time for payment; excepting Risk Management Revolving Fund from requirement for apportionment of certain interest; modifying and clarifying assessments and determination of payments for Oklahoma Motor License Agent Indemnity Fund; expanding definition; repealing 74 O.S. 1991, Section 85.36, which relates to the Motor Vehicle Liability Revolving

Fund; providing effective dates; and declaring an emergency.

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

SECTION 1. AMENDATORY 74 O.S. 1991, Section 61.4, is amended to read as follows:

Section 61.4 The Director of ~~Public Affairs~~ Central Services shall employ an attorney to serve as legal counsel for the ~~Office of Public Affairs~~ Department of Central Services. The attorney shall be authorized to appear for and represent the ~~Office of Public Affairs~~ Department of Central Services in all litigation that may arise from the discharge of its duties, except as otherwise provided in this section, and shall advise it upon all legal matters pertaining to the ~~Office of Public Affairs~~ Department of Central Services. The salary for the attorney shall be fixed by the Director. Any litigation concerning the Comprehensive Professional Risk Management Program of the ~~Office of Public Affairs~~ Department of Central Services shall be handled by the Attorney General of the State of Oklahoma; provided, the Director of Central Services may employ private attorneys to handle any litigation which involves entities covered by the Comprehensive Professional Risk Management Program which are not state agencies. The attorney and, in addition, the Attorney General, are further authorized to appear for and represent officers and employees of the ~~Office of Public Affairs~~ Department of Central Services in any civil suits brought against such officers and employees in their individual capacities upon alleged causes of action which arose from acts or omissions of such officers and employees within the scope of their official duties.

SECTION 2. AMENDATORY 74 O.S. 1991, Section 85.2, as amended by Section 6, Chapter 250, O.S.L. 1992 (74 O.S. Supp. 1993, Section 85.2), is amended to read as follows:

Section 85.2 As used in the Oklahoma Central Purchasing Act ~~the following terms, in addition to their usual definitions, shall have the meanings ascribed to them in this section,~~ unless the context otherwise requires:

1. "State agency" or "agency" includes any office, officer, bureau, board, counsel, court, commission, institution, unit, division, body or house of the executive or judicial branches of the state government, whether elected or appointed, excluding only ~~municipalities, counties and other governmental~~ political subdivisions of the state;

2. "Business entity" includes individuals, partnerships, business trusts, cooperatives, associates, corporations or any other firm, group or concern which functions as a separate entity for business purposes;

3. "Acquisition" includes all types of purchases and rentals, whether bought or leased by contract or otherwise, and includes every means by which a state agency obtains for its use any materials, supplies, service or equipment covered by this act, except those specifically excluded in this act;

4. "Materials" or "supplies" includes all property except real property acquired by a state agency for its use or consumption, except equipment;

5. "Equipment" means all personal property acquired by a state agency for its use which is in the nature of a tool, device or machine and shall be deemed to include all personal property used or

consumed by a state agency and not included within the category of materials and supplies;

6. "Local governmental entity" means any unit of local government including, but not limited to, any school district, county, or municipality of this state;

~~6.~~ 7. "Item" or "product" means some quantity or kind of such supplies, materials and equipment;

~~7.~~ 8. "Services" or "contractual services" includes any type of personal or professional service, employment or undertaking, including such services as utilities, pest control, maintenance and repairs, except the employment of regular officers and employees by a state agency or such extra seasonal help as is authorized by law and is regularly used;

~~8.~~ 9. "Purchasing director" includes any employee or agent of the State Purchasing Director, acting within the scope of his authority;

~~9.~~ 10. "Sole source contract" means a contract specified by the provisions of Section 89 of this title;

~~10.~~ 11. "Professional services" means services which are predominantly mental or intellectual in character, rather than physical or manual and which do not involve the supplying of products. Professional services include those services requiring special, usually advanced education and skill;

~~11.~~ 12. "Nonprofessional services" means services which are predominantly physical or manual in character and may involve the supplying of products;

~~12.~~ 13. "Political subdivision" means local governmental entities and such other entities specified as political subdivisions pursuant to the Governmental Tort Claims Act;

14. "Open market contract" means a contract for the one-time acquisition of a particular item over Two Thousand Five Hundred Dollars (\$2,500.00); and

~~13.~~ 15. "Statewide contract" means a contract for the purchase of items used or needed on a continual or regular basis by state agencies.

SECTION 3. AMENDATORY 74 O.S. 1991, Section 85.34, as amended by Section 3, Chapter 177, O.S.L. 1993 (74 O.S. Supp. 1993, Section 85.34), is amended to read as follows:

Section 85.34 A. The Department of Central Services is hereby directed to establish for all state agencies, whether or not subject to the Central Purchasing Act, and for such other entities as provided by law a comprehensive professional risk management program which shall:

1. Identify and evaluate all risks for state agencies and such other entities as provided by law;

2. Eliminate, reduce, or minimize all risks through a continuous effective loss-prevention and loss-control program;

3. Transfer risks if it is economically advantageous to the state to do so, by acquiring commercial insurance, or by contractual pass-off of liability, or by other means;

4. Consolidate and administer all plans and programs pertaining to risk management including self-insurance programs, except Workers' Compensation Insurance and State Employees Group Insurance;

5. Determine feasibility of self-insurance programs;

6. Establish, if feasible, such self-insurance programs. Each self-insurance program so established shall be fully self-supporting and not dependent upon payments for insurance coverage under other programs to remain financially and actuarially sound;

7. Require payment by agencies for insurance provided by the risk management program;

8. When requested by a state retirement system, the State Insurance Fund or the State and Education Employees Group Insurance Board, assist the state retirement system, the Fund or the Board in obtaining indemnity insurance authorized by law or when requested by the Oklahoma State Regents for Higher Education, assist trust funds for which the State Regents serve as trustees in obtaining indemnity insurance authorized by law; ~~and~~

9. Assist any state agency, ~~board, commission, or department,~~ and any officers, employees, and members thereof, charged with any type of licensing authority in obtaining indemnity insurance for liability for judgments based on the licensing authority rendered by any court pursuant to federal law; and

10. When requested by a public trust established pursuant to Title 60 of the Oklahoma Statutes of which the State of Oklahoma is the beneficiary, obtain or provide or assist such public trust in obtaining indemnity insurance authorized by law or trust indenture covering any board member, trustee, official, officer, employee or volunteer for any errors and omissions or liability risks arising from the performance of their official duties pursuant to law or trust indenture.

B. The Director of the Department of Central Services is authorized to hire or contract for the services of a Risk Management Administrator who shall supervise ~~the purchase of property and casualty insurance for all state-owned real and personal property~~ all aspects of the Comprehensive Professional Risk Management Program established pursuant to this section. If appointed by the Director as a state employee, the Risk Management Administrator shall be in the unclassified service.

C. The Risk Management Administrator shall also be responsible for the continuing evaluation of the insurance coverage needed by the state and the insurance coverage in force. All state agencies shall submit to the Risk Management Administrator any information which the Risk Management Administrator deems necessary to perform this duty.

D. The school districts of this state are authorized to request the Risk Management Administrator to supervise the purchase of insurance coverage for the school districts.

E. Prior to purchase of property and casualty insurance by any state agency, details of the proposed purchase shall be submitted to the Risk Management Administrator for approval or disapproval.

F. Any state agency, board, commission, or department, and any officers, employees, and members thereof, charged with any type of licensing authority may obtain indemnity insurance for liability for judgments based on any action taken pursuant to the licensing authority rendered by any court pursuant to federal law. Prior to purchase of said insurance, details of the proposed purchase shall be submitted to the Risk Management Administrator for approval or disapproval.

G. The Director of the Department of Central Services shall promulgate rules necessary to effect the provisions of this risk management program.

H. 1. Any community action agency established pursuant to Sections 5035 through 5040 of this title or motor license agent when distributing food stamps and otherwise participating in the food stamp program pursuant to a contract entered into pursuant to Section 241 of Title 56 of the Oklahoma Statutes shall be eligible to participate in the comprehensive professional risk management program established pursuant to this section.

2. The Risk Management Administrator shall obtain or provide for insurance coverage for a community action agency or motor

license agent or bonding for agency employees of a community action agency or motor license agent for risks incurred as a result of distribution of food stamps or coupons including but not limited to losses of food stamps by theft or embezzlement. Any liability insurance coverage obtained or provided shall include expenses for legal services obtained or provided by the Risk Management Administrator.

3. The Risk Management Administrator shall determine criteria for participation in the risk management program by such community action agencies or motor license agents. In addition, the Risk Management Administrator may require each community action agency or motor license agent to provide adequate qualified personnel, and suitable facilities for storing and issuing food stamps or coupons, and comply with such other standards that are necessary for the protection of the food stamps or coupons when in the care, custody and control of the community action agencies or motor license agents.

4. To receive coverage pursuant to this section, a community action agency or motor license agent shall be required to make payments for any insurance coverage and shall otherwise comply with the provisions of this section and rules promulgated by the Department pursuant to the provisions of this section.

5. Requests for the insurance coverage provided pursuant to the provisions of this section shall be submitted in writing to the Risk Management Administrator by the community action agencies or motor license agents.

I. The Risk Management Administrator may provide or obtain for any state agency, any public trust with the state as a beneficiary and any director, officer, employee and member thereof, indemnity insurance for liability for loss, including judgments, awards, settlements, costs and legal expenses, resulting from violations of rights or privileges secured by the Constitution or laws of the United States which occur while a director, officer, employee or member is acting within the scope of his service to the State of Oklahoma. Such indemnity insurance shall be for coverage in excess of the limits on liability established by the Governmental Tort Claims Act but shall not limit or waive any immunities now or hereafter available to the State of Oklahoma or any state agency, any public trust with the state as a beneficiary, or any director, officer, employee or member thereof, including, but not limited to, any immunities under the Eleventh Amendment to the Constitution of the United States, state sovereign immunity, and any absolute or qualified immunity held by any director, officer, employee or member.

SECTION 4. AMENDATORY 74 O.S. 1991, Section 85.34A, as amended by Section 4, Chapter 44, O.S.L. 1992 (74 O.S. Supp. 1993, Section 85.34A), is amended to read as follows:

Section 85.34A A. The Risk Management Administrator, pursuant to the provisions of this section and Section 85.34 of this title, may obtain or provide insurance coverage for any vehicle, vessel, or aircraft ~~or building~~ used for or in fire fighting or services provided by the districts, departments and services specified in subsection ~~C~~ D of this section and may obtain or provide indemnity coverage for any board member, official, employee or volunteer of any entity specified in subsection ~~C~~ D of this section for any errors and omissions or liability risks arising from the performance of their official duties pursuant to law.

B. The Risk Management Administrator, pursuant to the provisions of this section and Section 85.34 of this title, may obtain or provide insurance coverage for any building used for or in

fire fighting or services specified in subsection D of this section. If a fire department, district or service specified in subsection D of this section is housed in a building with any department or unit of local governmental entities, the Risk Management Administrator may also obtain or provide building or structure insurance coverage for such department or unit in such building.

~~B.~~ C. The Risk Management Administrator is authorized to determine eligibility criteria for participation in the Risk Management Program by such districts, departments and services or for such member, officer, employee or volunteer. In addition, the Risk Management Administrator is authorized to establish equipment and safety standards for the vehicles, vessels, aircraft or buildings to be covered by the Risk Management Program.

~~C.~~ D. The Risk Management Administrator may obtain or provide the insurance coverage authorized by subsection A of this section for:

1. Fire protection districts organized and operated pursuant to the provisions of Sections 901.1 through 901.29 of Title 19 of the Oklahoma Statutes;
2. Volunteer or full-time fire departments established pursuant to Section 592 of Title 18 of the Oklahoma Statutes;
3. Municipal fire departments organized and operated pursuant to the provisions of Sections 29-101 through 29-108, and Sections 29-201 through 29-205 of Title 11 of the Oklahoma Statutes;
4. Fire protection services established pursuant to the provisions of Section 351 of Title 19 of the Oklahoma Statutes; and
5. Rural fire coordinators employed by substate planning districts acting pursuant to rural fire defense programs.

~~D.~~ E. The governing authorities of such fire departments, fire protection districts and fire protection services shall be required to make payments for such insurance coverage as provided by Section 85.37 of ~~Title 74 of the Oklahoma Statutes~~ this title.

~~E.~~ F. Requests for the insurance or indemnity coverage provided pursuant to the provisions of this section shall be submitted in writing to the Risk Management Administrator by the fire departments, fire protection districts or fire protection services specified in subsection C of this section. Those fire departments, fire protection districts or fire protection services meeting eligibility criteria shall be approved for participation in the Risk Management Program by the Risk Management Administrator if the member, officer, employee or volunteer, and the vehicles, vessels, aircraft and buildings used by districts, services or departments meet the equipment and safety standards and eligibility requirements established by the Risk Management Administrator.

~~F.~~ G. Any insurance or indemnity coverage shall be obtained or provided solely from funds available in the shared risk pool authorized by Section ~~85.34b~~ 85.34B of this title. Any coverage limits shall be based on the liquidity of the shared risk pool resulting from the annual payments made pursuant to Section 85.37 of this title and any interest accrued thereon, after deduction of such sums as may be necessary to pay all overhead and administrative expenses associated with administering the pool.

~~G.~~ H. Any limited indemnity coverage provided for errors and omissions pursuant to the provisions of this subsection shall only cover errors or omissions made by a board member, official, employee or volunteer of any entity specified in subsection C of this section occurring after the effective date of this act.

~~H.~~ I. The State of Oklahoma is not liable, directly or indirectly, for the errors and omissions of any board member, official, employee or volunteer of any entity specified in

subsection C of this section in the performance of his official duties pursuant to law. The State of Oklahoma is not liable, directly or indirectly, for the negligence of any entity specified in subsection C of this section.

~~I.~~ J. In providing risk management services for any entity specified by subsection C of this section or any such board member, official, employee or volunteer of such entity, it is the intention of the Legislature to provide coverage solely to the extent of assets in the shared risk pool created by Section ~~85.34B~~ 85.34B of this title.

K. Any liability insurance coverage obtained or provided shall include expenses for legal services obtained or provided by the Risk Management Administrator.

SECTION 5. AMENDATORY 74 O.S. 1991, Section 85.34F, is amended to read as follows:

Section 85.34F A. Upon written certification by the Director of the ~~Office of Public Affairs~~ Department of Central Services that errors and omissions liability insurance for motor license agents and their employees is not reasonably available in the private market at competitive rates, after taking into account the administrative costs associated with such insurance, the Risk Management Administrator pursuant to Section 85.34 of ~~Title 74 of the Oklahoma Statutes~~ this title may obtain or provide limited indemnity coverage for motor license agents and the employees who are employed by such agents for any errors and omissions liability risks arising from the performance of their official duties pursuant to law. Any such certification by the Director of the ~~Office of Public Affairs~~ Department of Central Services shall be effective for a period of two (2) years. Any such limited indemnity coverage shall be obtained or provided solely from funds available in the shared risk pool authorized by this section and subject to the limitations set out herein. The Risk Management Administrator shall establish liability limits for such errors and omissions coverage on an annual basis. Any such limits shall be based on the liquidity of the shared risk pool resulting from the annual payments made pursuant to subsection C of this section and any interest accrued thereon, after deduction of such sums as may be necessary to pay all overhead and administrative expenses associated with administering the pool.

B. The Risk Management Administrator is authorized to determine eligibility criteria for participation in the Risk Management Program for such motor license agents and employees of such agent. Any limited indemnity coverage provided for errors and omissions pursuant to the provisions of this subsection shall only cover errors or omissions made by a motor license agent or any employee of such agent occurring after the effective date of this act.

C. ~~All~~ Except as otherwise provided in subsection G of this section, motor license agents shall be required to make annual payments of ~~Twenty Dollars (\$20.00)~~ Forty Dollars (\$40.00) per motor license agent and ~~Twenty Dollars (\$20.00)~~ Forty Dollars (\$40.00) per employee of the motor license agent for such limited indemnity coverage. The Risk Management Administrator is authorized to assess an additional payment per year, not to exceed ~~Twenty Dollars (\$20.00)~~ Forty Dollars (\$40.00) per motor license agent and per employee of such agent, if the shared risk pool resulting from the payment of the fees made pursuant to this subsection is not adequate to cover any liability incurred.

D. Requests for the limited indemnity coverage provided pursuant to the provisions of this section shall be submitted in

writing to the Risk Management Administrator by the motor license agents.

E. All fees collected in accordance with the provisions of this section shall be deposited in the Risk Management Participation Revolving Fund.

F. In providing risk management services for any motor license agent or employee of such agent, it is the intention of the Legislature to provide limited indemnification of motor license agents or employees of such agents for errors and omissions, solely to the extent of assets in the shared risk pool created by this section. The State of Oklahoma is not liable, directly or indirectly, for the errors and omissions of any motor license agent or any employee of such agent in the performance of his official duties pursuant to law. The Risk Management Administrator shall determine the extent of indemnification for losses incurred by any such motor license agent or employee of such agent based upon the liquidity of the shared risk pool.

G. The Risk Management Administrator is authorized to establish a system under which the extent of indemnity coverage may be extended or reduced based upon an increase or decrease in the amount of the payment required in subsection C of this section. Said system shall only be established when the liquidity of the shared risk pool is such that the system is feasible in the judgment of the Administrator. Upon establishment of such a system, a motor license agent may elect to increase or decrease the amount of the payment required in subsection C of this section and correspondingly extend or reduce coverage for losses incurred by the motor license agent or employee of such agent.

SECTION 6. AMENDATORY 74 O.S. 1991, Section 85.35, is amended to read as follows:

Section 85.35 A. There is hereby created in the State Treasury a revolving fund for the ~~Office of Public Affairs~~ Department of Central Services, to be designated the "Property and Casualty Risk Management Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of any monies transferred thereto by act of the Legislature and any monies which may be deposited thereto by the ~~Office of Public Affairs~~ Department of Central Services as provided for by law. Effective July 1, 1995, all interest earned by the State Treasurer on monies deposited in the Risk Management Revolving Fund shall be deposited to the Risk Management Revolving Fund.

B. 1. Within the Risk Management Revolving Fund, there is hereby created the Property and Casualty Account, the Motor Vehicle Liability Account and the General Tort Liability Account. The Director is authorized to establish such additional accounts within the Risk Management Revolving Fund deemed necessary. The monies in each account shall be maintained actuarially separate to ensure that premiums or fees paid for specific insurance coverage are adequate to pay the expenses and claims for that coverage.

2. Any monies existing in the Motor Vehicle Liability Revolving Fund established by Section 85.36 of this title shall be transferred to the Risk Management Revolving Fund for deposit in the Motor Vehicle Liability Account.

C. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the ~~Office of Public Affairs~~ Department of Central Services for the purposes of the Comprehensive Professional Risk Management Program provided for in Section 85.34 of ~~Title 74 of the Oklahoma Statutes~~ this title, including but not limited to the salaries and administrative expenses of the Risk Management Administrator and support staff.

Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 7. AMENDATORY 74 O.S. 1991, Section 85.37, as amended by Section 1, Chapter 133, O.S.L. 1993 (74 O.S. Supp. 1993, Section 85.37), is amended to read as follows:

Section 85.37 A. The Department of Central Services may levy and collect a reasonable fee from state agencies and ~~political subdivisions of the state~~ other entities covered by the Comprehensive Professional Risk Management Program for the purpose of providing insurance coverage through a self-insurance program, or purchased insurance or a combination thereof.

B. All fees or premiums shall be promptly paid when due and fees or premiums collected in accordance with the provisions of this section shall be deposited in the appropriate risk management fund.

C. If state agencies fail to pay the insurance fees within ~~ninety (90)~~ forty-five (45) days of due date, the Department of Central Services shall consider the invoice delinquent. The Department may present a claim to the Office of State Finance for payment of the delinquent invoice from funds available to the delinquent agency. The Office of State Finance is authorized to transfer funds to the Department of Central Services to pay the invoice from monies available to the delinquent agency for the general operations of the agency which are not specifically prohibited for such use by federal or state law. If funds of the delinquent agency are not available to pay the invoice in full, the Department of Central Services shall submit claims as necessary to pay the invoice as soon as funds are available from the funds of the delinquent agency.

SECTION 8. AMENDATORY 74 O.S. 1991, Section 85.38, is amended to read as follows:

Section 85.38 The Special Agency Account Board shall create in the official depository of the State Treasury an agency special account for the ~~Office of Public Affairs~~ Department of Central Services to be designated as the "Quick Settlement Account". The purpose of the account shall be the payment of liability claims against the state after a determination by the Risk Management Administration that such payments are in the best interest of the state, are in accordance with the laws and regulations governing the Comprehensive Professional Risk Management Program, and are in an amount not exceeding Ten Thousand Dollars (\$10,000.00). No monies shall be expended from the Quick Settlement Account except as provided for in this section.

The ~~Office of Public Affairs~~ Department of Central Services shall transfer funds as necessary from the ~~Tort Claims Liability Risk Management Revolving Fund and from the Motor Vehicle Liability Revolving Fund~~ to the Quick Settlement Account, provided that the maximum sum held in the Quick Settlement Account shall not exceed Ten Thousand Dollars (\$10,000.00), excluding funds in transit. Expenditures from the Quick Settlement Account shall be exempt from the provisions of the Oklahoma Central Purchasing Act.

SECTION 9. AMENDATORY 62 O.S. 1991, Section 203, as amended by Section 32, Chapter 327, O.S.L. 1992 (62 O.S. Supp. 1993, Section 203), is amended to read as follows:

Section 203. A. Except as otherwise provided by subsection B of this section, all monies that may come into the State Treasury, pursuant to the provisions of Section 201 et seq. of this title, together with all amounts that may be received by the State Treasurer as investment income or as interest on average daily bank balances, including investment income or interest on deposits from

funds deposited to the credit of the Constitutional Reserve Fund created pursuant to Section 23 of Article 10 of the Oklahoma Constitution, shall be apportioned and credited to the General Revenue Fund for the current year.

B. The provisions of subsection A of this section shall not apply to:

1. Interest received on deposits from funds under the control of the Commissioners of the Land Office;

2. Funds in the Department of Human Services Federal Disallowance Fund; ~~and~~

3. Interest received on deposits from funds under the control of the Santa Claus Commission; and

4. The Risk Management Revolving Fund.

SECTION 10. AMENDATORY 51 O.S. 1991, Section 152, as last amended by Section 4, Chapter 177, O.S.L. 1993 (51 O.S. Supp. 1993, Section 152), is amended to read as follows:

Section 152. As used in the Governmental Tort Claims Act:

1. "Action" means a proceeding in a court of competent jurisdiction by which one party brings a suit against another;

2. "Agency" means any board, commission, committee, department or other instrumentality or entity designated to act in behalf of the state or a political subdivision;

3. "Claim" means any written demand presented by a claimant or his authorized representative in accordance with this act to recover money from the state or political subdivision as compensation for an act or omission of a political subdivision or the state or an employee;

4. "Claimant" means the person or his authorized representative who files notice of a claim in accordance with this act. Only the following persons and no others may be claimants:

a. any person holding an interest in real or personal property which suffers a loss, provided that the claim of said person shall be aggregated with claims of all other persons holding an interest in the property and the claims of all other persons which are derivative of the loss, and that multiple claimants shall be considered a single claimant,

b. the individual actually involved in the accident or occurrence who suffers a loss, provided that he shall aggregate in his claim the losses of all other persons which are derivative of his loss, or

c. in the case of death, an administrator, special administrator or a personal representative who shall aggregate in his claim all losses of all persons which are derivative of the death;

5. "Employee" means any person who is authorized to act in behalf of a political subdivision or the state whether that person is acting on a permanent or temporary basis, with or without being compensated or on a full-time or part-time basis;

a. Employee also includes:

(1) all elected or appointed officers, members of governing bodies and other persons designated to act for an agency or political subdivision, but the term does not mean a person or other legal entity while acting in the capacity of an independent contractor or an employee of an independent contractor, and

(2) from September 1, 1991, through June 30, 1996, licensed physicians, licensed osteopathic physicians and certified nurse-midwives providing

prenatal, delivery or infant care services to State Department of Health clients pursuant to a contract entered into with the State Department of Health in accordance with paragraph (3) of subsection (b) of Section 1-106 of Title 63 of the Oklahoma Statutes but only insofar as services authorized by and in conformity with the terms of the contract and the requirements of Section 1-233 of Title 63 of the Oklahoma Statutes.

- b. For the purpose of this act, the following are employees of this state, regardless of the place in this state where duties as employees are performed:
- (1) physicians acting in an administrative capacity,
 - (2) resident physicians and resident interns participating in a graduate medical education program of the University of Oklahoma Health Sciences Center or the College of Osteopathic Medicine of Oklahoma State University, and
 - (3) faculty members and staff of the University of Oklahoma Health Sciences Center and the College of Osteopathic Medicine of Oklahoma State University, while engaged in teaching duties.

Physician faculty members and staff of the University of Oklahoma Health Sciences Center and the College of Osteopathic Medicine of Oklahoma State University not acting in an administrative capacity or engaged in teaching duties are not employees or agents of the state. However, in no event shall the state be held liable for the tortious conduct of any physician, resident physician or intern while practicing medicine or providing medical treatment to patients;

6. "Loss" means death or injury to the body or rights of a person or damage to real or personal property or rights therein;

7. "Municipality" means any incorporated city or town, and all institutions, agencies or instrumentalities of a municipality;

8. "Political subdivision" means:

- a. a municipality,
- b. a school district,
- c. a county,
- d. a public trust where the sole beneficiary or beneficiaries are a city, town, school district or county. For purposes of the Governmental Tort Claims Act, a public trust shall include a municipal hospital created pursuant to Section 30-101 et seq. of Title 11 of the Oklahoma Statutes, a county hospital created pursuant to Section 781 et seq. of Title 19 of the Oklahoma Statutes, or is created pursuant to a joint agreement between such governing authorities, that is operated for the public benefit by a public trust created pursuant to Section 176 et seq. of Title 60 of the Oklahoma Statutes and managed by a governing board appointed or elected by the municipality, county, or both, who exercises control of the hospital, subject to the approval of the governing body of the municipality, county, or both, provided, this subparagraph shall not apply to hospitals or trusts which purchase advertising or which belong to organizations which purchase advertising, in which public funds have been used, in any media the purpose of which is to influence legislation on the civil

- justice system or to advocate support for or opposition to a candidate for public office,
- e. for the purposes of the Governmental Tort Claims Act only, a housing authority created pursuant to the provisions of the Oklahoma Housing Authority Act,
 - f. for the purposes of the Governmental Tort Claims Act only, corporations organized not for profit pursuant to the provisions of the Oklahoma General Corporation Act for the primary purpose of developing and providing rural water supply and sewage disposal facilities to serve rural residents,
 - g. for the purposes of the Governmental Tort Claims Act only, districts formed pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act,
 - h. for the purposes of the Governmental Tort Claims Act only, a fire protection district created pursuant to the provisions of Section 901.1 et seq. of Title 19 of the Oklahoma Statutes,
 - i. for the purposes of the Governmental Tort Claims Act only, a benevolent or charitable corporate volunteer or full-time fire department for an unincorporated area created pursuant to the provisions of Section 592 et seq. of Title 18 of the Oklahoma Statutes,
 - j. for purposes of the Governmental Tort Claims Act only, an Emergency Services Provider rendering services within the boundaries of a Supplemental Emergency Services District pursuant to an existing contract between the Emergency Services Provider and the Oklahoma State Department of Health. Provided, however, that the acquisition of commercial liability insurance covering the activities of such Emergency Services Provider performed within the State of Oklahoma shall not operate as a waiver of any of the limitations, immunities or defenses provided for political subdivisions pursuant to the terms of the Governmental Tort Claims Act,
 - k. for purposes of the Governmental Tort Claims Act only, a conservation district created pursuant to the provisions of Section 1501-101 of Title 82 of the Oklahoma Statutes,
 - l. for purposes of the Governmental Tort Claims Act, districts formed pursuant to the Oklahoma Irrigation District Act, and
 - m. for purposes of the Governmental Tort Claims Act only, any community action agency established pursuant to Sections 5035 through 5040 of Title 74 of the Oklahoma Statutes when storing, issuing or distributing food stamps or coupons and otherwise participating in the food stamp program pursuant to a contract entered into pursuant to Section 241 of Title 56 of the Oklahoma Statutes,

and all their institutions, instrumentalities or agencies;

9. "Scope of employment" means performance by an employee acting in good faith within the duties of his office or employment or of tasks lawfully assigned by a competent authority including the operation or use of an agency vehicle or equipment with actual or implied consent of the supervisor of the employee, but shall not include corruption or fraud;

10. "State" means the State of Oklahoma or any office, department, agency, authority, commission, board, institution,

hospital, college, university, public trust created pursuant to Title 60 of the Oklahoma Statutes of which the State of Oklahoma is the beneficiary, or other instrumentality thereof; and

11. "Tort" means a legal wrong, independent of contract, involving violation of a duty imposed by general law or otherwise, resulting in a loss to any person, association or corporation as the proximate result of an act or omission of a political subdivision or the state or an employee acting within the scope of employment.

SECTION 11. AMENDATORY 47 O.S. 1991, Section 1143.1, is amended to read as follows:

Section 1143.1 A. There is hereby created the Oklahoma Motor License Agent Indemnity Fund. The fund shall be established to ensure that the Oklahoma Tax Commission recovers tax revenue not remitted to the Commission because of negligence, malfeasance or fraud by a motor license agent. ~~The Office of Public Affairs~~ Department of Central Services shall administer the fund. Upon final determination by the Oklahoma Tax Commission of a tax revenue shortage or liability of a motor license agent whose agency has been closed, a claim in the amount of such liability may be made by the Commission against the fund. The claim shall be paid out of the fund by the ~~Office of Public Affairs~~ Department of Central Services. At least sixty (60) days' written notice shall be given to the delinquent motor license agent before any such claim is paid. ~~The Office of Public Affairs~~ Department of Central Services shall have the power to seek restitution to the fund from any motor license agent whose liability was paid out of the fund. The monies in the fund shall be invested by the State Treasurer and the interest shall be deposited in the fund.

B. Each fiscal year, ~~the Office of Public Affairs~~ Department of Central Services shall collect and deposit into the fund an annual assessment from all motor license agencies that have been operating for a period of not less than one (1) year. Such assessments shall be payable by each motor license agency on a quarterly basis. The amount on which the assessment shall be based shall be determined annually for each motor license agency by the Oklahoma Tax Commission by dividing the volume of tax monies collected each fiscal year by the agency by the number of reporting periods required by the Commission. The assessments shall be in the following amounts:

1. Each motor license agency which has been in operation for more than three (3) years and subject to the assessment pursuant to this subsection shall pay such assessment as follows: ~~1. When~~
a. when the fund contains less than Five Hundred Thousand Dollars (\$500,000.00) on June 30 of any year, the assessment shall be one percent (1%) of the amount determined for the motor license agency by the Oklahoma Tax Commission; ~~2. When, and~~
b. when the fund contains Five Hundred Thousand Dollars (\$500,000.00) or more, ~~but less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) on June 30 of any year, the assessment shall be one-half of one percent (1/2 of 1%) of the amount determined for the motor license agency by the Oklahoma Tax Commission;~~ ~~3. When the fund contains Seven Hundred Fifty Thousand Dollars (\$750,000.00) or more, on June 30 of any year, the assessment shall be one-fourth of one percent (1/4 of 1%) of the amount determined for the motor license agency by the Oklahoma Tax Commission; and~~ ~~4. When the fund contains One Million Dollars (\$1,000,000.00) or more, on June 30 of any year, the Oklahoma Tax~~

Commission ~~may further~~ shall reduce ~~the amount~~ or suspend the assessment for such agencies if the Commission determines that the fund is fiscally sound and meets the needs for which the fund is established.

Provided however, if the fund contains less than Five Hundred Thousand Dollars (\$500,000.00) at any time during the fiscal year for which the Tax Commission has reduced or suspended the assessment hereunder, the Tax Commission shall immediately issue an assessment pursuant to subparagraph a of this paragraph in an amount equal to the amount which would have been paid during the remaining quarters of the fiscal year; and

2. Each motor license agency which has been in operation for less than three (3) years but more than one (1) year shall pay the assessment in an amount equal to one percent (1%) of the amount determined for the motor license agency by the Oklahoma Tax Commission until the agency reaches the end of its third year of operation. At such time, such agency shall be subject to the assessment specified in subparagraph a of paragraph 1 of this subsection.

Assessments C. Any assessments required by subsection B of this section, shall be paid in quarterly amounts and due on September 30, December 30, March 30 and June 30 of each year. Such payments shall be deemed delinquent after October 15, January 15, April 15 and July 15 of each year. Motor license agents who are delinquent in remitting any ~~such~~ quarterly payment for their operating agencies in excess of fifteen (15) days after the date of the delinquency shall be subject to dismissal.

D. No annual assessment shall exceed One Thousand Two Hundred Dollars (\$1,200.00).

~~C. Motor license agencies which have been in operation for less than three (3) years but more than one (1) year shall pay the annual assessment in an amount equal to one percent (1%) of the amount determined for such motor license agencies by the Oklahoma Tax Commission, on a quarterly basis, as specified in subsection B of this section until they reach the end of their third year of operation.~~

SECTION 12. REPEALER 74 O.S. 1991, Section 85.36, is hereby repealed.

SECTION 13. Section 9 of this act shall become effective July 1, 1995.

SECTION 14. Sections 1 through 8 and 10 through 12 of this act shall become effective July 1, 1994.

SECTION 15. 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.

Passed the House of Representatives the 26th day of May, 1994.

Speaker of the House of
Representatives

Passed the Senate the 26th day of May, 1994.

President of the Senate