

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2502

By: Graves

AS INTRODUCED

An Act relating to state officers and employees;  
amending 74 O.S. 1991, Section 20f, as last amended  
by Section 2, Chapter 288, O.S.L. 1992 (74 O.S.  
Supp. 1993, Section 20f), which relates to actions  
against state officials or employees; prohibiting  
use of public funds for personal or private  
attorney by state officials or employees;  
prescribing circumstances under which expenditure  
prohibited; providing exception to restriction;  
authorizing approval of expenditure by Legislature  
and prescribing procedures related thereto; and  
providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 1991, Section 20f, as last  
amended by Section 2, Chapter 288, O.S.L. 1992 (74 O.S. Supp. 1993,  
Section 20f), is amended to read as follows:

Section 20f. A. In the event an action is brought against an  
employee, who for the purposes of this act shall be an elected or  
appointed state officer or employee of any state officer,  
institution, agency, board or commission of any branch of state  
government in any civil action or special proceeding in the courts

of this state, or of the United States, by reason of any act done or omitted in good faith in the course of his employment, it is the duty of the Attorney General or staff attorney of such person's agency where the agency is authorized by law to be represented in court by a member of its own permanent legal staff, when requested in writing by such employee, to appear and defend the action or proceeding in his behalf. Such written request shall be made within fifteen (15) days after service of summons on the employee and a copy of the request shall be transmitted by the employee to the head of his agency and the Attorney General.

B. The Attorney General or a designated legal officer shall not represent a state employee if that employee did not perform a statutorily required duty and such duty is a basis of the civil action or special proceeding.

C. The Attorney General may direct an appropriate legal officer including a staff attorney of an agency authorized by law to be represented in court by a member of its own permanent legal staff to appear and defend such action. The Attorney General may request the assistance of a district attorney in any such action. The Attorney General may intervene in any such action or proceeding and appear on behalf of the State of Oklahoma, or any of its officers or employees, where he deems the state to have an interest in the subject matter of the litigation.

D. The Attorney General shall determine the method of preparation and presentation of such defense. The Attorney General or other legal officer under his direction shall not be held civilly liable for the exercise of such discretion.

E. The employee named in the action may employ private counsel at his own expense to assist in his defense. Except as otherwise provided by this section, no state official or employee shall be permitted to retain personal or private counsel with any public funds under the management or control of such official or employee

or any other public funds if the official or employee is the subject of an investigation or proceeding related to possible violation of any criminal statute or law or if the official or employee is the subject of any form of removal, ouster or similar proceeding. The Legislature may authorize the use of public funds by a state official or employee to defend against investigations or proceedings under such circumstances as the Legislature may prescribe by joint rule; however, no such funds shall be expended for the compensation of privately retained counsel until specifically authorized by the Legislature.

F. Any officer or employee who acts outside of the scope of his official authority shall be liable in damages in the same manner as any private citizen.

G. When an original action seeking either a writ of mandamus or prohibition against a district judge, associate district judge, or special judge of the district court is commenced, the Attorney General shall represent such judicial officer if, and only if, directed to do so, in writing, by the Chief Justice of the Oklahoma Supreme Court, upon the Chief Justice's finding that such representation is necessary to protect either the function or integrity of the judiciary. Such finding by the Chief Justice shall be final and binding.

In the event that the Attorney General is or shall be disqualified from representing such judicial officer, the Attorney General shall immediately notify, in writing, the Chief Justice. The Chief Justice then may appoint counsel to represent the judicial officer. The appointed counsel shall determine the method of preparation and presentation of such defense. The appointed counsel shall not be held civilly liable for the exercise of such discretion. The appointed counsel shall, upon approval by the Chief Justice, be entitled to be compensated for services rendered.

H. A settlement involving injunctive relief which substantially impacts the operation or programs of a state agency or would impose obligations requiring the expenditure of funds in excess of unallocated unencumbered monies in the agency's appropriations or beyond the current fiscal year shall be reviewed prior to its finalization by the President Pro Tempore of the Senate or his designee, the Speaker of the House or his designee, and the Governor or his designee. The purpose of the review is to determine the budgetary, programmatic and operational impact of the proposed settlement. The President Pro Tempore of the Senate, Speaker of the House and Governor shall be given a reasonable time in which to make recommendations regarding the proposed settlement given due consideration to the time requirements of the case. Such recommendations must be considered by the state agency, such agency's counsel of record and the Attorney General in determining whether to finalize the settlement agreement.

SECTION 2. This act shall become effective September 1, 1994.

44-2-8407

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