STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1085 By: Hilliard

AS INTRODUCED

An Act relating to tort claims against the state and political subdivisions; amending 51 O.S. 1991, Sections 152, as last amended by Section 10, Chapter 329, O.S.L. 1994, 153 and 155, as amended by Section 60, Chapter 290, O.S.L. 1994 (51 O.S. Supp. 1994, Sections 152 and 155), which relate to the Governmental Tort Claims Act; modifying definition; declaring governmental immunity for certain torts; modifying exemptions from liability; amending 57 O.S. 1991, Section 227, as amended by Section 3, Chapter 405, O.S.L. 1992 (57 O.S. Supp. 1994, Section 227), which relates to liability for certain acts committed by or against certain inmates; clarifying immunity and waiver from immunity; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 51 O.S. 1991, Section 152, as last amended by Section 10, Chapter 329, O.S.L. 1994 (51 O.S. Supp. 1994, 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.

c. For purposes of the Governmental Tort Claims Act only, "employee" includes an inmate incarcerated in a Department of Corrections facility who is assigned to a court-ordered or Department of Corrections approved work release program, if the inmate is acting within the scope of duties assigned. However, in no event shall the state or a political subdivision be held liable for the intentional torts of inmates. The provisions of this paragraph shall not mean that an inmate comes within the provisions of the Labor Code or within the provisions of the Workers' Compensation Act;

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 2. AMENDATORY 51 O.S. 1991, Section 153, is amended to read as follows:

Section 153. A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in this act and only where the state or political subdivision, if a private person or entity, would

be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of this act for any act or omission of an employee acting outside the scope of his employment. Further, the state or political subdivision shall not be liable for any intentional tort committed by an inmate assigned to a court-ordered or Department of Corrections approved work release program.

B. The liability of the state or political subdivision under this act shall be exclusive and in place of all other liability of the state, a political subdivision or employee at common law or otherwise.

SECTION 3. AMENDATORY 51 O.S. 1991, Section 155, as amended by Section 60, Chapter 290, O.S.L. 1994 (51 O.S. Supp. 1994, 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, 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. Participation in any activity approved by a local board of education and held within a building or on the grounds of the school district served by that local board of education before or after normal school hours or on weekends;

22. Any intentional tort committed by an inmate while participating in 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~~ or any injury caused by an inmate while performing an act not authorized pursuant to the work release program;

23. 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:

a. in an effort to quell a riot,

b. in response to a natural disaster or military attack, or

c. if participating in a military mentor program ordered by the court;

24. Provision, equipping, operation or maintenance of any prison, jail or correctional facility, or injuries resulting from the parole or escape of a prisoner or injuries 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;

25. 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;

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

27. Any claim or action based on the theory of indemnification or subrogation;

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

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

30. 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

31. 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 4. AMENDATORY 57 O.S. 1991, Section 227, as amended by Section 3, Chapter 405, O.S.L. 1992 (57 O.S. Supp. 1994, Section 227), is amended to read as follows:

Section 227. A. All provisions of this section and Section 228 of this title, except as otherwise noted herein, shall apply to eligible offenders who are:

1. Assigned to a work program for any government entity of this state pursuant to a municipal court order;

2. Assigned to a community service program pursuant to a deferred prosecution agreement pursuant to the provisions of Section 305.2 of Title 22 of the Oklahoma Statutes;

3. Assigned to a public works project pursuant to the provisions of Sections 58, 58.1 or 58.2 of this title;

4. Assigned to community service pursuant to a sentence ordered pursuant to the provisions of subparagraph c of paragraph 1 of subsection A of Section 991a, Section 991c or Section 995.3 of Title 22 of the Oklahoma Statutes;

5. Assigned to a public works project pursuant to the provisions of Section 215 et seq. of this title;

6. Assigned to community service as a condition of parole pursuant to the provisions of Section 10 of Article VI of the Constitution of the State of Oklahoma;

7. Assigned to an eleemosynary institution pursuant to the provisions of Section 212 et seq. of this title;

8. Assigned to any work release or private prison industry programs pursuant to the provisions of this title;

9. Assigned to the Community Service Sentencing Program pursuant to the provisions of Section 991a-4 of Title 22 of the Oklahoma Statutes, or

10. Assigned to a work program of a nonprofit organization with or without compensation.

B. Any eligible offender described in subsection A of this section shall be exempt from the provisions of the Workers' Compensation Act, Section 1 et seq. of Title 85 of the Oklahoma Statutes. Provided, such exemption shall not apply to employment of such person by a private for-profit employer. Provided further, such exemption shall not apply to those inmates employed in private prison industries involving a for-profit employer which deal in interstate commerce or which sell products or services to the federal government.

C. All state and local government agencies, nonprofit organizations, community service agencies, educational programs and other treatment programs are hereby immune from liability for torts committed by or against any eligible offender described in subsection A of this section; provided, the state and local government agencies waive their immunity to the extent provided in Section 228 of this title and to the extent expressly and directly established in the Governmental Tort Claims Act; provided further, those entities having court-mandated jurisdiction over the persons described in paragraphs 3, 5, 7 and 8 of subsection A of this section shall provide basic or necessary medical and dental care to said persons in such instances.

SECTION 5. This act shall become effective July 1, 1995.

SECTION 6. 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.