ENROLLED SENATE
BILL NO. 669

By: Smith and Henry of the Senate

and

Toure of the House

An Act relating to public officers and employees; amending 51 O.S. 1991, Section 162, as last amended by Section 1, Chapter 336, O.S.L. 1998 (51 O.S. Supp. 1998, Section 162), which relates to the Governmental Tort Claims Act; prohibiting payment of certain judgments by state or political subdivision; modifying language; prohibiting indemnification of certain punitive and exemplary damages; repealing Section 2, Chapter 288, O.S.L. 1998, which relates to application of certain provisions; and providing an effective date.

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

SECTION 1. AMENDATORY 51 O.S. 1991, Section 162, as last amended by Section 1, Chapter 336, O.S.L. 1998 (51 O.S. Supp. 1998, Section 162), is amended to read as follows:

Section 162. A. The state or any political subdivision, subject to procedural requirements imposed by this section, other applicable statute, ordinance, resolution, or written policy, shall:

1. Provide a defense for any employee as defined in Section 152 of this title when liability is sought for any violation of property rights or any rights, privileges, or immunities secured by the Constitution or laws of the United States when alleged to have been committed by the employee while acting within the scope of employment;

2. Pay or cause to be paid any judgment entered in the courts of the United States, the State of Oklahoma or any other state against any employee or political subdivision or settlement agreed to by the political subdivision entered against any employee, and any costs or fees, for a violation of property rights or any rights, privileges or immunities secured by the Constitution or laws of the United States which occurred while the employee was acting within the scope of employment. The maximum aggregate amount of indemnification paid directly from funds of the state or any political subdivision to or on behalf of any employee pursuant to this section shall not exceed the maximum figures authorized by the provisions of Section 154 of this title, regardless of the number of

persons who suffer damage, injury or death as a result of the occurrence, unless, in the case of a political subdivision, the political subdivision establishes higher limits by ordinance, if a municipality, or, as to other political subdivisions, by resolution, published as required by law; and

3. For any cause of action filed against an employee on or after January 1, 1990, post or cause to be posted any supersedeas or other bond ordered by the court.

B. 1. The state or a political subdivision shall not be required to indemnify any employee of the state or a political subdivision under the provisions of this section, unless the employee is judicially determined to be entitled to such indemnification and a final judgment therefor is entered. The exclusive means of recovering indemnification from the state shall be by filing an application for indemnification in the district court of the county where venue is proper as provided for in paragraph 2 of this subsection. The exclusive means of recovering indemnification from a political subdivision shall be by filing an application for indemnification in the trial court where the judgment was entered. If the federal trial court cannot hear the action, such application shall be filed in the district court of the county where the situs of the municipality is located. Actions to determine entitlement to indemnification shall be tried to the court, sitting without a jury.

2. Venue for actions to determine entitlement to indemnification from the state shall be in Oklahoma County, except that a constitutional state agency, board or commission may, upon a resolution being filed with the Secretary of State, designate another situs for venue in lieu of Oklahoma County.

3. All applications for indemnification from the state or a political subdivision shall be filed in the name of the real party or parties in interest, and in no event shall any application be presented nor recovery made under the right of subrogation. Indemnification from the state as provided for in this subsection shall extend only to acts or omissions occurring on or after January 1, 1984. The employee of the state or a political subdivision must file an application for indemnification within thirty (30) days of final judgment, or the right to seek indemnification shall be lost forever.

4. In order to recover indemnification from the state or a political subdivision pursuant to this subsection, the court shall determine by a preponderance of the evidence that:

a. the employee reasonably cooperated in good faith in the defense of the action upon which the judgment or settlement was awarded and for which indemnification is sought;

b. the actions or omissions upon which such a judgment or settlement has been rendered were not the result of fraudulent conduct or corruption by the employee;

c. the employee, in committing the acts or omissions upon which a judgment or settlement has been rendered was acting in good faith and within any applicable written administrative policies known to the employee at the time of the omissions or acts alleged;

d. the employee was acting within the scope of employment at the time that the acts or omissions upon which a judgment or settlement has been rendered were committed by the employee;

e. the acts or omissions of the employee upon which a judgment or settlement has been rendered were not motivated by invidious discriminatory animus directed toward race, sex, or national origin; and

f. when punitive or exemplary damages are included in the total award rendered against the employee of a political subdivision, the indemnification amount sought for fees and costs does not include amounts attributable to the employee's defense against the punitive or exemplary damages in accordance with ~~paragraph~~ subsection D of this section.

5. a. Any indemnification judgment against the state under this section shall be an encumbrance against otherwise available unencumbered monies and unallocated unencumbered monies in the appropriations of the agency on whose behalf the employee to be indemnified was acting at the time of the act or omission upon which the judgment or settlement was awarded and for which indemnification was sought.

b. If sufficient unencumbered monies or unallocated unencumbered monies do not exist in the agency's appropriations to pay the indemnification, the agency shall make application to the Risk Management Division of the Office of Public Affairs for full payment of the indemnification out of the Tort Claims Liability Revolving Fund established pursuant to Section 85.35 of Title 74 of the Oklahoma Statutes. Payment out of this fund shall be authorized if there are sufficient monies greater than the sum total of the then pending fund indemnification judgment requests, and the reserves for future tort claims as certified by the Director of Risk Management.

c. If sufficient monies do not exist in the Tort Claims Liability Revolving Fund, the agency shall request the Legislature to make an appropriation sufficient to pay the indemnification.

d. Any indemnification judgment against a political subdivision shall be paid as provided in Sections 361 through 365.6 of Title 62 of the Oklahoma Statutes and Section 159 of this title.

C. The state or political subdivision shall have the right to recover from an employee the amount expended by the state or political subdivision to provide a defense, or pay a settlement agreed to by the employee and the state or political subdivision, or pay the final judgment, if it is shown that the employee's conduct which gave rise to the action was fraudulent or corrupt or if the employee fails to reasonably cooperate in good faith in defense of the action.

D. ~~1. It is the public policy of this state that the state or a political subdivision may indemnify elected or appointed officers and elected or appointed members of a governing body for actual damages, fees, and costs as provided herein in any case in which the findings set out in subsection B of this section have been determined.~~

~~2.~~ The state or a political subdivision shall not, under any circumstances, be responsible to pay or indemnify any ~~elected or appointed officer or elected or appointed member of a governing body~~ employee for any punitive or exemplary damages rendered against the employee, nor to pay for any defense, judgment, settlement, costs, or fees which are paid or covered by any applicable policy or contract of insurance. Where any civil rights judgment upon which indemnification under subsection B of this section is applied for by an employee of the state includes an award for both actual and punitive or exemplary damages, the total amount of fees and costs for which indemnification may be allowed shall be limited to the percentage of fees and costs in the total award that the percentage of the award of actual damages bears to the total judgment awarded. It is the public policy of the State of Oklahoma that the state or a political subdivision may indemnify its employee for actual damages, fees, and costs as provided herein in any case in which the findings set out in paragraph B of this section have been determined.

~~3. Nothing in this section shall prohibit the state or a political subdivision, in its discretion, from paying any judgment for punitive or exemplary damages rendered against an elected or appointed officer or against an elected or appointed member of a governing body and the state or political subdivision is expressly authorized, in its discretion, to pay any such judgment. The other provisions of the Governmental Tort Claims Act including, but not limited to, the provisions of Section 154 of this title shall not be applicable to such a payment.~~

E. Nothing in this section shall be construed to waive any immunities available to the state under the terms of the Eleventh Amendment to the Constitution of the United States. Any immunity or other bar to a civil lawsuit under state or federal law shall remain in effect. The fact that the state or a political subdivision may relieve an employee from all judgments, settlements, costs, or fees arising from the civil lawsuit shall not, under any circumstances, be communicated to any trier of fact in the case of any trial by jury.

SECTION 2. REPEALER Section 2, Chapter 288, O.S.L. 1998, is hereby repealed.

SECTION 3. This act shall become effective November 1, 1999.

Passed the Senate the 23rd day of February, 1999.

President of the Senate

Passed the House of Representatives the 15th day of April, 1999.

Speaker of the House of Representatives