

1 2. Pay or cause to be paid any judgment entered in the courts
2 of the United States, the State of Oklahoma or any other state
3 against any employee or political subdivision or settlement agreed
4 to by the political subdivision entered against any employee, and
5 any costs or fees, for a violation of property rights or any rights,
6 privileges or immunities secured by the Constitution or laws of the
7 United States which occurred while the employee was acting within
8 the scope of employment. The maximum aggregate amount of
9 indemnification paid directly from funds of the state or any
10 political subdivision to or on behalf of any employee pursuant to
11 this section shall not exceed the maximum figures authorized by the
12 provisions of Section 154 of this title, regardless of the number of
13 persons who suffer damage, injury or death as a result of the
14 occurrence, unless, in the case of a political subdivision, the
15 political subdivision establishes higher limits by ordinance, if a
16 municipality, or, as to other political subdivisions, by resolution,
17 published as required by law; and

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

21 B. 1. The state or a political subdivision shall not be
22 required to indemnify any employee of the state or a political
23 subdivision under the provisions of this section, unless the

1 employee is judicially determined to be entitled to such
2 indemnification and a final judgment therefor is entered. The
3 exclusive means of recovering indemnification from the state shall
4 be by filing an application for indemnification in the district
5 court of the county where venue is proper as provided for in
6 paragraph 2 of this subsection. The exclusive means of recovering
7 indemnification from a political subdivision shall be by filing an
8 application for indemnification in the trial court where the
9 judgment was entered. If the federal trial court cannot hear the
10 action, such application shall be filed in the district court of the
11 county where the situs of the municipality is located. Actions to
12 determine entitlement to indemnification shall be tried to the
13 court, sitting without a jury.

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

19 3. All applications for indemnification from the state or a
20 political subdivision shall be filed in the name of the real party
21 or parties in interest, and in no event shall any application be
22 presented nor recovery made under the right of subrogation.

23 Indemnification from the state as provided for in this subsection

1 shall extend only to acts or omissions occurring on or after January
2 1, 1984. The employee of the state or a political subdivision must
3 file an application for indemnification within thirty (30) days of
4 final judgment, or the right to seek indemnification shall be lost
5 forever.

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

- 9 a. the employee reasonably cooperated in good faith in
10 the defense of the action upon which the judgment or
11 settlement was awarded and for which indemnification
12 is sought;
- 13 b. the actions or omissions upon which such a judgment or
14 settlement has been rendered were not the result of
15 fraudulent conduct or corruption by the employee;
- 16 c. the employee, in committing the acts or omissions upon
17 which a judgment or settlement has been rendered was
18 acting in good faith and within any applicable written
19 administrative policies known to the employee at the
20 time of the omissions or acts alleged;
- 21 d. the employee was acting within the scope of employment
22 at the time that the acts or omissions upon which a

1 judgment or settlement has been rendered were
2 committed by the employee;

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

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

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

22 b. If sufficient unencumbered monies or unallocated
23 unencumbered monies do not exist in the agency's

1 appropriations to pay the indemnification, the agency
2 shall make application to the Risk Management Division
3 of the Office of Public Affairs for full payment of
4 the indemnification out of the Tort Claims Liability
5 Revolving Fund established pursuant to Section 85.35
6 of Title 74 of the Oklahoma Statutes. Payment out of
7 this fund shall be authorized if there are sufficient
8 monies greater than the sum total of the then pending
9 fund indemnification judgment requests, and the
10 reserves for future tort claims as certified by the
11 Director of Risk Management.

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

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

20 C. The state or political subdivision shall have the right to
21 recover from an employee the amount expended by the state or
22 political subdivision to provide a defense, or pay a settlement
23 agreed to by the employee and the state or political subdivision, or

1 pay the final judgment, if it is shown that the employee's conduct
2 which gave rise to the action was fraudulent or corrupt or if the
3 employee fails to reasonably cooperate in good faith in defense of
4 the action.

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

11 ~~2.~~ The state or a political subdivision shall not, under any
12 circumstances, be responsible to pay or indemnify any elected or
13 appointed officer or elected or appointed member of a governing body
14 employee for any punitive or exemplary damages rendered against the
15 employee, nor to pay for any defense, judgment, settlement, costs,
16 or fees which are paid or covered by any applicable policy or
17 contract of insurance. Where any civil rights judgment upon which
18 indemnification under subsection B of this section is applied for by
19 an employee of the state includes an award for both actual and
20 punitive or exemplary damages, the total amount of fees and costs
21 for which indemnification may be allowed shall be limited to the
22 percentage of fees and costs in the total award that the percentage
23 of the award of actual damages bears to the total judgment awarded.

1 It is the public policy of the State of Oklahoma that the state or a
2 political subdivision may indemnify its employee for actual damages,
3 fees, and costs as provided herein in any case in which the findings
4 set out in paragraph B of this section have been determined.

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

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

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

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

4 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-9-99 - DO PASS,
5 As Coauthored.