STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 130 By: Cain

COMMITTEE SUBSTITUTE

An Act relating to The Governmental Tort Claims Act; amending 51 O.S. 1991, Sections 152, as last amended by Section 2, Chapter 59, O.S.L. 2000 and 156, as amended by Section 4, Chapter 285, O.S.L. 1992 (51 O.S. Supp. 2000, Sections 152 and 156), which relate to definitions and presentment of claims pursuant to The Governmental Tort Claims Act; conforming language; making language gender neutral; clarifying language; modifying definition to clarify situations in which certain faculty members and staff are not employees or agents of the state; limiting scope of definition; modifying time for presentment of claim in wrongful death cases; providing clarification of the immunity of the state; and providing an effective date.

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 2, Chapter 59, O.S.L. 2000 (51 O.S. Supp. 2000, Section 152), is amended to read as follows:

Section 152. As used in ~~the~~ 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~~ the claimant's 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~~ the person's authorized representative who files notice of a claim in accordance with ~~the~~ The Governmental Tort Claims 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~~ the 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~~ the individual shall aggregate in ~~his~~ the claim the losses of all other persons which are derivative of ~~his~~ the loss, or

c. in the case of death, an administrator, special administrator or a personal representative who shall aggregate in ~~his~~ the 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 Governmental Tort Claims 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~~

c. 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~~ 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~~ 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~~ 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~~ 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~~ The Governmental Tort Claims Act only, master conservancy districts formed pursuant to the Conservancy Act of Oklahoma,

i. for the purposes of ~~the~~ 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,

j. for the purposes of ~~the~~ 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,

k. for purposes of ~~the~~ 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~~ The Governmental Tort Claims Act,

l. for purposes of ~~the~~ 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,

m. for purposes of ~~the~~ The Governmental Tort Claims Act, districts formed pursuant to the Oklahoma Irrigation District Act, and

n. for purposes of ~~the~~ 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~~ the employee's 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 156, as amended by Section 4, Chapter 285, O.S.L. 1992 (51 O.S. Supp. 2000, Section 156), is amended to read as follows:

Section 156. A. Any person having a claim against the state or a political subdivision within the scope of Section 151 et seq. of this title shall present a claim to the state or political subdivision for any appropriate relief including the award of money damages.

B. Claims against the state or a political subdivision are to be presented within one (1) year of the date the loss occurs. A claim against the state or a political subdivision shall be forever barred unless notice thereof is presented within one (1) year after the loss occurs.

C. A claim against the state shall be in writing and filed with the Office of the Risk Management Administrator of the Purchasing Division of the Office of Public Affairs who shall immediately notify the Attorney General and the agency concerned and conduct a diligent investigation of the validity of the claim within the time specified for approval or denial of claims by Section 157 of this title. A claim may be filed by certified mail with return receipt requested. A claim which is mailed shall be considered filed upon receipt by the Office of the Risk Management Administrator.

D. A claim against a political subdivision shall be in writing and filed with the office of the clerk of the governing body.

E. The written notice of claim to the state or a political subdivision shall state the date, time, place and circumstances of the claim, the identity of the state agency or agencies involved, the amount of compensation or other relief demanded, the name, address and telephone number of the claimant, and the name, address and telephone number of any agent authorized to settle the claim. Failure to state either the date, time, place and circumstances and amount of compensation demanded shall not invalidate the notice unless the claimant declines or refuses to furnish such information after demand by the state or political subdivision. The time for giving written notice of claim pursuant to the provisions of this section does not include the time during which the person injured is unable due to incapacitation from the injury to give such notice, not exceeding ninety (90) days of incapacity.

F. When the claim is one for death by wrongful act or omission, notice may be presented by the personal representative within one (1) year after the ~~alleged injury or loss resulting in such~~ death occurs. If the person for whose death the claim is made has presented notice that would have been sufficient had he lived, an action for wrongful death may be brought without any additional notice.

G. Claims and suits against resident physicians or interns shall be made in accordance with the provisions of Titles 12 and 76 of the Oklahoma Statutes.

SECTION 3. This act shall become effective November 1, 2001.

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