

ENROLLED HOUSE  
BILL NO. 1938

By: Toure, Gilbert, Pettigrew  
and Askins of the House

and

Henry of the Senate

An Act relating to The Governmental Tort Claims Act; amending 51 O.S. 1991, Sections 154, as last amended by Section 10, Chapter 351, O.S.L. 2000 and 155, as last amended by Section 174, Chapter 371, O.S.L. 2000 (51 O.S. Supp. 2000, Sections 154 and 155), which relate to extent of liability and exemptions from liability under The Governmental Tort Claims Act; providing for liability under certain circumstances and adding liability limit therefor; making liability both retroactive and prospective; providing for continued validity of prospective application if retroactive application is declared unconstitutional; providing when claim arises; modifying exceptions from liability; and declaring an emergency.

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

SECTION 1. AMENDATORY 51 O.S. 1991, Section 154, as last amended by Section 10, Chapter 351, O.S.L. 2000 (51 O.S. Supp. 2000, Section 154), is amended to read as follows:

Section 154. A. The total liability of the state and its political subdivisions on claims within the scope of ~~this act, Section 151 et seq. of this title~~ The Governmental Tort Claims Act, arising out of an accident or occurrence happening after the effective date of this act, Section 151 et seq. of this title, shall not exceed:

1. Twenty-five Thousand Dollars (\$25,000.00) for any claim or to any claimant who has more than one claim for loss of property arising out of a single act, accident, or occurrence;

2. Except as otherwise provided in this paragraph, One Hundred Twenty-five Thousand Dollars (\$125,000.00) to any claimant for ~~his a~~ claim for any other loss arising out of a single act, accident, or occurrence. The limit of liability for the state or any city or county with a population of three hundred thousand (300,000) or more according to the latest federal Decennial Census shall not exceed One Hundred Seventy-five Thousand Dollars (\$175,000.00). Except however, the limits of said liability for the University Hospitals and State Mental Health Hospitals operated by the Department of Mental Health and Substance Abuse Services for claims arising from medical negligence shall be Two Hundred Thousand Dollars (\$200,000.00). For claims arising from medical negligence by any licensed physician, osteopathic physician or certified nurse-midwife

rendering prenatal, delivery or infant care services from September 1, 1991, through June 30, 1996, pursuant to a contract authorized by subsection (b) of Section 1-106 of Title 63 of the Oklahoma Statutes and in conformity with the requirements of Section ~~3~~ 1-233 of Title 63 of ~~this act~~ the Oklahoma Statutes, the limits of said liability shall be Two Hundred Thousand Dollars (\$200,000.00); or

3. One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single occurrence or accident.

B. Beginning on the effective date of this act, claims shall be allowed for wrongful criminal felony conviction resulting in imprisonment. The total liability of the state and its political subdivisions on any claim within the scope of The Governmental Tort Claims Act arising out of wrongful criminal felony conviction resulting in imprisonment shall not exceed Two Hundred Thousand Dollars (\$200,000.00). The provisions of this subsection shall apply to convictions occurring on or before the effective date of this act as well as convictions occurring after the effective date of this act. If a court of competent jurisdiction finds that retroactive application of this subsection is unconstitutional, the prospective application of this subsection shall remain valid. For purposes of this subsection, a claim shall arise from the date the wrongfully convicted person is exonerated.

C. No award for damages in an action or any claim against the state or a political subdivision shall include punitive or exemplary damages.

~~C.~~ D. When the amount awarded to or settled upon multiple claimants exceeds the limitations of this section, any party may apply to the district court which has jurisdiction of the cause to apportion to each claimant ~~his~~ the claimant's proper share of the total amount as limited herein. The share apportioned to each claimant shall be in the proportion that the ratio of the award or settlement made to him bears to the aggregate awards and settlements for all claims against the state or its political subdivisions arising out of the occurrence. When the amount of the aggregate losses presented by a single claimant exceeds the limits of ~~paragraphs~~ paragraph 1 or 2 of subsection A of this section, each person suffering a loss shall be entitled to ~~his~~ that person's proportionate share.

~~D.~~ E. The total liability of resident physicians and interns while participating in a graduate medical education program of the University of Oklahoma College of Medicine, its affiliated institutions and the Oklahoma College of Osteopathic Medicine and Surgery shall not exceed One Hundred Thousand Dollars (\$100,000.00).

~~E.~~ F. The state or a political subdivision may petition the court that all parties and actions arising out of a single accident or occurrence shall be joined as provided by law, and upon order of the court the proceedings upon good cause shown shall be continued for a reasonable time or until such joinder has been completed. The state or political subdivision shall be allowed to interplead in any action which may impose on it any duty or liability pursuant to this act.

~~F.~~ G. The liability of the state or political subdivision under ~~this act~~ The Governmental Tort Claims Act shall be several from that

of any other person or entity, and the state or political subdivision shall only be liable for that percentage of total damages that corresponds to its percentage of total negligence. Nothing in this section shall be construed as increasing the liability limits imposed on the state or political subdivision under ~~this act~~ The Governmental Tort Claims Act.

SECTION 2. AMENDATORY 51 O.S. 1991, Section 155, as last amended by Section 174, Chapter 371, O.S.L. 2000 (51 O.S. Supp. 2000, 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, other than claims for wrongful criminal felony conviction resulting in imprisonment;
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 implied 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 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;

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;

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 1-9-320.6 of Title 12A of the Oklahoma Statutes; or

32. Any court-ordered community sentence.

SECTION 3. 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.

Passed the House of Representatives the 22nd day of May, 2001.

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Presiding Officer of the House of  
Representatives

Passed the Senate the 24th day of May, 2001.

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Presiding Officer of the Senate