

ENROLLED SENATE
BILL NO. 1571

By: Henry of the Senate

and

Toure of the House

An Act relating to civil procedure; amending 23 O.S. 2001, Section 9.1, which relates to exemplary damages; updating language; declaring certain damage awards void; amending 51 O.S. 2001, Section 152, which relates to The Governmental Tort Claims Act; modifying definition; amending 63 O.S. 2001, Section 1-1918.2, which relates to Utilization of Unused Prescription Medications Act; limiting liability of certain entities; amending 76 O.S. 2001, Section 18, which relates to limitation of action; removing certain limitation on specific actions; repealing Section 1 of Enrolled House Bill No. 2637 of the 2nd Session of the 48th Oklahoma Legislature, which relates to The Governmental Tort Claims Act; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 23 O.S. 2001, Section 9.1, is amended to read as follows:

Section 9.1 A. In an action for the breach of an obligation not arising from contract, the jury, in addition to actual damages, may, subject to the provisions and limitations in subsections B, C and D of this section, give award punitive damages for the sake of example and by way of punishing the defendant based upon the following factors: ~~the~~

1. The seriousness of the hazard to the public arising from the defendant's misconduct; ~~the~~

2. The profitability of the misconduct to the defendant; ~~the~~

3. The duration of the misconduct and any concealment of it;
~~the~~

4. The degree of the defendant's awareness of the hazard and of its excessiveness; ~~the~~

5. The attitude and conduct of the defendant upon discovery of the misconduct or hazard; ~~in~~

6. In the case of a defendant which is a corporation or other entity, the number and level of employees involved in causing or concealing the misconduct; and ~~the~~

7. The financial condition of the defendant.

B. Category I. Where the jury finds by clear and convincing evidence that ~~the~~:

1. The defendant has been guilty of reckless disregard for the rights of others~~;~~ or ~~an~~

2. An insurer has recklessly disregarded its duty to deal fairly and act in good faith with its insured~~;~~ the jury, in a separate proceeding conducted after the jury has made such finding and awarded actual damages, may award ~~exemplary~~ punitive damages in an amount not to exceed the greater of:

~~1.~~ a. One Hundred Thousand Dollars (\$100,000.00) ~~;~~ or

~~2.~~ b. ~~The~~ the amount of the actual damages awarded.

Any award of punitive damages under this subsection awarded in any manner other than as required in this subsection shall be void and reversible error.

C. Category II. Where the jury finds by clear and convincing evidence that:

1. The defendant has acted intentionally and with malice towards others; or

2. An insurer has intentionally and with malice breached its duty to deal fairly and act in good faith with its insured~~;~~

the jury, in a separate proceeding conducted after the jury has made such finding and awarded actual damages, may award ~~exemplary~~ punitive damages in an amount not to exceed the greatest of:

a. Five Hundred Thousand Dollars (\$500,000.00),

b. twice the amount of actual damages awarded, or

c. the increased financial benefit derived by the defendant or insurer as a direct result of the conduct causing the injury to the plaintiff and other persons or entities.

The trial court shall reduce any award for punitive damages awarded pursuant to the provisions of subparagraph c of this paragraph by the amount it finds the defendant or insurer has previously paid as a result of all punitive damage verdicts entered in any court of ~~the State of Oklahoma~~ this state for the same conduct by the defendant or insurer. Any award of punitive damages under this subsection awarded in any manner other than as required in this subsection shall be void and reversible error.

D. Category III. Where the jury finds by clear and convincing evidence that:

1. The defendant has acted intentionally and with malice towards others; or

2. An insurer has intentionally and with malice breached its duty to deal fairly and act in good faith with its insured; and the court finds, on the record and out of the presence of the jury, that there is evidence beyond a reasonable doubt that the defendant or insurer acted intentionally and with malice and engaged in conduct life-threatening to humans,

the jury, in a separate proceeding conducted after the jury has made such finding and awarded actual damages, may award ~~exemplary~~ punitive damages in any amount the jury deems appropriate, without regard to the limitations set forth in subsections B and C of this section. Any award of punitive damages under this subsection awarded in any manner other than as required in this subsection shall be void and reversible error.

E. In determining the amount, if any, of ~~exemplary~~ punitive damages to be awarded under either subsection B, C or D of this section, the jury shall make the award based upon the factors set forth in subsection A of this section.

F. The provisions of this section are severable, and if any part or provision thereof shall be held void, the decision of the court shall not affect or impair any of the remaining parts or provisions thereof.

G. This section shall apply to all civil actions filed after the effective date of this act.

SECTION 2. AMENDATORY 51 O.S. 2001, 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 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 the person's authorized representative who files notice of a claim in accordance with 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 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 the individual shall aggregate in the claim the losses of all other persons which are derivative of the loss, or
- c. in the case of death, an administrator, special administrator or a personal representative who shall aggregate in 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 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, and

(4) physicians who practice medicine or act in an administrative capacity as an employee of this state.

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.

c. Except as provided in subparagraph (b) of paragraph 5 of this section, 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 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,

- 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, master conservancy districts formed pursuant to the Conservancy Act of Oklahoma,
- i. 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,
- j. 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,
- k. 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,
- l. for purposes of The Governmental Tort Claims Act only, a conservation district created pursuant to the provisions of Section ~~1501-101~~ 3-1-101 of Title ~~82~~ 27A of the Oklahoma Statutes,
- m. for purposes of The Governmental Tort Claims Act, districts formed pursuant to the Oklahoma Irrigation District Act, and
- n. 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 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 3. AMENDATORY 63 O.S. 2001, Section 1-1918.2, is amended to read as follows:

Section 1-1918.2 A. This section shall be known and may be cited as the "Utilization of Unused Prescription Medications Act".

B. The State Board of Health, the Oklahoma Board of Pharmacy and the Oklahoma Health Care Authority shall jointly develop and implement a pilot program consistent with public health and safety through which unused prescription drugs, other than prescription drugs defined as controlled dangerous substances by Section 2-101 of ~~Title 63 of the Oklahoma Statutes~~ this title, may be transferred from nursing facilities to pharmacies operated by city-county health departments or county pharmacies for the purpose of distributing the medication to Oklahoma residents who are medically indigent.

C. The State Board of Health, the Oklahoma Board of Pharmacy, the Oklahoma Health Care Authority, the State Board of Medical Licensure and Supervision, and the State Board of Osteopathic Examiners shall review and evaluate the program no later than eighteen (18) months after its implementation and shall submit a report and any recommendations to the Governor, the Speaker of the Oklahoma House of Representatives, the President Pro Tempore of the State Senate, and the Chairs of the appropriate legislative committees.

D. The State Board of Health, the Oklahoma Board of Pharmacy and the Oklahoma Health Care Authority shall promulgate rules and establish procedures necessary to implement the program established by this section. The rules and procedures shall provide:

1. For a formulary for the medications to be distributed pursuant to the program;

2. For the protection of the privacy of the individual for whom the medication was originally prescribed;

3. For the integrity and safe storage and safe transfer of the medication, which may include but shall not be limited to limiting the drugs made available through the program to those that were originally dispensed by unit dose or an individually sealed dose or which remain in intact packaging;

4. For the tracking of and accountability for the medications; and

5. For other matters necessary for the implementation of the program.

E. In accordance with the rules and procedures of a program established pursuant to this section, the resident of a nursing facility, or the representative or guardian of a resident may donate unused prescription medications, other than prescription drugs defined as controlled dangerous substances by Section 2-101 of ~~Title 63 of the Oklahoma Statutes~~ this title, for dispensation to medically indigent persons.

F. Physicians, pharmacists ~~and, pharmacies,~~ other health care professionals, and nursing facilities shall not be subject to liability for participation in the program established by ~~this act~~ the Utilization of Unused Prescription Medications Act when acting within the scope of practice of their license and in good faith compliance with the rules promulgated pursuant to the Utilization of Unused Prescription Medications Act.

G. For purposes of this section, "medically indigent" means a person who has no health insurance or who otherwise lacks reasonable means to purchase prescribed medications.

SECTION 4. AMENDATORY 76 O.S. 2001, Section 18, is amended to read as follows:

Section 18. An action for damages for injury or death against any physician, health care provider or hospital licensed under the laws of this state, whether based in tort, breach of contract or otherwise, arising out of patient care, shall be brought within two (2) years of the date the plaintiff knew or should have known, through the exercise of reasonable diligence, of the existence of the death, injury or condition complained of; ~~provided any action brought more than three (3) years from the date of the injury shall be limited to actual medical and surgical expenses incurred or to be incurred as a direct result of said injury,~~ provided, however, the minority or incompetency when the cause of action arises will extend said period of limitation.

SECTION 5. REPEALER Section 1 of Enrolled House Bill No. 2637 of the 2nd Session of the 48th Oklahoma Legislature, is hereby repealed.

SECTION 6. This act shall become effective July 1, 2002.

SECTION 7. 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 Senate the 23rd day of May, 2002.

Presiding Officer of the Senate

Passed the House of Representatives the 24th day of May, 2002.

Presiding Officer of the House
of Representatives