

EHB 2025

1 THE STATE SENATE
2 Thursday, April 4, 2002

3 ENGROSSED

4 House Bill No. 2025

5 As Amended

6 ENGROSSED HOUSE BILL NO. 2025 - By: DAVIS, MILLER (Ray) and NANCE of
7 the House and CAIN of the Senate.

8 [Governmental Tort Claims Act - definitions - effective
9 date]

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

11 SECTION 1. AMENDATORY 51 O.S. 2001, Section 152, is
12 amended to read as follows:

13 Section 152. As used in The Governmental Tort Claims Act:

14 1. "Action" means a proceeding in a court of competent
15 jurisdiction by which one party brings a suit against another;

16 2. "Agency" means any board, commission, committee, department
17 or other instrumentality or entity designated to act in behalf of
18 the state or a political subdivision;

19 3. "Claim" means any written demand presented by a claimant or
20 the claimant's authorized representative in accordance with this act
21 to recover money from the state or political subdivision as
22 compensation for an act or omission of a political subdivision or
23 the state or an employee;

1 4. "Claimant" means the person or the person's authorized
2 representative who files notice of a claim in accordance with The
3 Governmental Tort Claims Act. Only the following persons and no
4 others may be claimants:

5 a. any person holding an interest in real or personal
6 property which suffers a loss, provided that the claim
7 of the person shall be aggregated with claims of all
8 other persons holding an interest in the property and
9 the claims of all other persons which are derivative
10 of the loss, and that multiple claimants shall be
11 considered a single claimant,

12 b. the individual actually involved in the accident or
13 occurrence who suffers a loss, provided that the
14 individual shall aggregate in the claim the losses of
15 all other persons which are derivative of the loss, or

16 c. in the case of death, an administrator, special
17 administrator or a personal representative who shall
18 aggregate in the claim all losses of all persons which
19 are derivative of the death;

20 5. "Employee" means any person who is authorized to act in
21 behalf of a political subdivision or the state whether that person
22 is acting on a permanent or temporary basis, with or without being
23 compensated or on a full-time or part-time basis.

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- 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

1 of the place in this state where duties as employees
2 are performed:

3 (1) physicians acting in an administrative capacity,

4 (2) resident physicians and resident interns

5 participating in a graduate medical education

6 program of the University of Oklahoma Health

7 Sciences Center or the College of Osteopathic

8 Medicine of Oklahoma State University, and

9 (3) faculty members and staff of the University of

10 Oklahoma Health Sciences Center and the College

11 of Osteopathic Medicine of Oklahoma State

12 University, while engaged in teaching duties.

13 Physician faculty members and staff of the

14 University of Oklahoma Health Sciences Center and

15 the College of Osteopathic Medicine of Oklahoma

16 State University not acting in an administrative

17 capacity or engaged in teaching duties are not

18 employees or agents of the state.

19 c. In no event shall the state be held liable for the

20 tortious conduct of any physician, resident physician

21 or intern while practicing medicine or providing

22 medical treatment to patients;

1 6. "Loss" means death or injury to the body or rights of a
2 person or damage to real or personal property or rights therein;

3 7. "Municipality" means any incorporated city or town, and all
4 institutions, agencies or instrumentalities of a municipality;

5 8. "Political subdivision" means:

6 a. a municipality,

7 b. a school district,

8 c. a county,

9 d. a public trust where the sole beneficiary or

10 beneficiaries are a city, town, school district or

11 county. For purposes of The Governmental Tort Claims

12 Act, a public trust shall include a municipal hospital

13 created pursuant to Section 30-101 et seq. of Title 11

14 of the Oklahoma Statutes, a county hospital created

15 pursuant to Section 781 et seq. of Title 19 of the

16 Oklahoma Statutes, or is created pursuant to a joint

17 agreement between such governing authorities, that is

18 operated for the public benefit by a public trust

19 created pursuant to Section 176 et seq. of Title 60 of

20 the Oklahoma Statutes and managed by a governing board

21 appointed or elected by the municipality, county, or

22 both, who exercises control of the hospital, subject

- 1 to the approval of the governing body of the
2 municipality, county, or both,
- 3 e. for the purposes of The Governmental Tort Claims Act
4 only, a housing authority created pursuant to the
5 provisions of the Oklahoma Housing Authority Act,
- 6 f. for the purposes of The Governmental Tort Claims Act
7 only, corporations organized not for profit pursuant
8 to the provisions of the Oklahoma General Corporation
9 Act for the primary purpose of developing and
10 providing rural water supply and sewage disposal
11 facilities to serve rural residents,
- 12 g. for the purposes of The Governmental Tort Claims Act
13 only, districts formed pursuant to the Rural Water,
14 Sewer, Gas and Solid Waste Management Districts Act,
- 15 h. for the purposes of The Governmental Tort Claims Act
16 only, master conservancy districts formed pursuant to
17 the Conservancy Act of Oklahoma,
- 18 i. for the purposes of The Governmental Tort Claims Act
19 only, a fire protection district created pursuant to
20 the provisions of Section 901.1 et seq. of Title 19 of
21 the Oklahoma Statutes,
- 22 j. for the purposes of The Governmental Tort Claims Act
23 only, a benevolent or charitable corporate volunteer

1 or full-time fire department for an unincorporated
2 area created pursuant to the provisions of Section 592
3 et seq. of Title 18 of the Oklahoma Statutes,
4 k. for purposes of The Governmental Tort Claims Act only,
5 an Emergency Services Provider rendering services
6 within the boundaries of a Supplemental Emergency
7 Services District pursuant to an existing contract
8 between the Emergency Services Provider and the
9 Oklahoma State Department of Health. Provided,
10 however, that the acquisition of commercial liability
11 insurance covering the activities of such Emergency
12 Services Provider performed within the State of
13 Oklahoma shall not operate as a waiver of any of the
14 limitations, immunities or defenses provided for
15 political subdivisions pursuant to the terms of The
16 Governmental Tort Claims Act,
17 l. for purposes of The Governmental Tort Claims Act only,
18 a conservation district created pursuant to the
19 provisions of Section 1501-101 of Title 82 of the
20 Oklahoma Statutes,
21 m. for purposes of The Governmental Tort Claims Act,
22 districts formed pursuant to the Oklahoma Irrigation
23 District Act, and

1 n. for purposes of The Governmental Tort Claims Act only,
2 any community action agency established pursuant to
3 Sections 5035 through 5040 of Title 74 of the Oklahoma
4 Statutes ~~when storing, issuing or distributing food~~
5 ~~stamps or coupons and otherwise participating in the~~
6 ~~food stamp program pursuant to a contract entered into~~
7 ~~pursuant to Section 241 of Title 56 of the Oklahoma~~
8 ~~Statutes,~~

9 and all their institutions, instrumentalities or agencies;

10 9. "Scope of employment" means performance by an employee
11 acting in good faith within the duties of the employee's office or
12 employment or of tasks lawfully assigned by a competent authority
13 including the operation or use of an agency vehicle or equipment
14 with actual or implied consent of the supervisor of the employee,
15 but shall not include corruption or fraud;

16 10. "State" means the State of Oklahoma or any office,
17 department, agency, authority, commission, board, institution,
18 hospital, college, university, public trust created pursuant to
19 Title 60 of the Oklahoma Statutes of which the State of Oklahoma is
20 the beneficiary, or other instrumentality thereof; and

21 11. "Tort" means a legal wrong, independent of contract,
22 involving violation of a duty imposed by general law or otherwise,
23 resulting in a loss to any person, association or corporation as the

1 proximate result of an act or omission of a political subdivision or
2 the state or an employee acting within the scope of employment.

3 SECTION 2. This act shall become effective November 1, 2002.

4 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-2-02 - DO PASS,
5 As Amended.