

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 930

By: Paddock and Coffee of the
Senate

6 and

7 Cox of the House

8
9 COMMITTEE SUBSTITUTE

10 (officers - Governmental Tort Claims Act -

11 codification -

12 effective date)

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14
15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 51 O.S. 2001, Section 152, as last
17 amended by Section 19, Chapter 368, O.S.L. 2004 (51 O.S. Supp. 2006,
18 Section 152), is amended to read as follows:

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

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

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

1 3. "Charitable health care provider" means a person who is
2 licensed, certified, or otherwise authorized by the laws of this
3 state to administer health care in the ordinary course of business
4 or the practice of a profession and who provides uncompensated care
5 to a medically indigent person, as defined in paragraph 8 of this
6 section;

7 4. "Claim" means any written demand presented by a claimant or
8 the claimant's authorized representative in accordance with this act
9 to recover money from the state or political subdivision as
10 compensation for an act or omission of a political subdivision or
11 the state or an employee;

12 ~~4.~~ 5. "Claimant" means the person or the person's authorized
13 representative who files notice of a claim in accordance with The
14 Governmental Tort Claims Act. Only the following persons and no
15 others may be claimants:

- 16 a. any person holding an interest in real or personal
17 property which suffers a loss, provided that the claim
18 of the person shall be aggregated with claims of all
19 other persons holding an interest in the property and
20 the claims of all other persons which are derivative
21 of the loss, and that multiple claimants shall be
22 considered a single claimant,
- 23 b. the individual actually involved in the accident or
24 occurrence who suffers a loss, provided that the

1 individual shall aggregate in the claim the losses of
2 all other persons which are derivative of the loss, or
3 c. in the case of death, an administrator, special
4 administrator or a personal representative who shall
5 aggregate in the claim all losses of all persons which
6 are derivative of the death;

7 ~~5.~~ 6. "Employee" means any person who is authorized to act in
8 behalf of a political subdivision or the state whether that person
9 is acting on a permanent or temporary basis, with or without being
10 compensated or on a full-time or part-time basis.

11 a. Employee also includes:

12 (1) all elected or appointed officers, members of
13 governing bodies and other persons designated to
14 act for an agency or political subdivision, but
15 the term does not mean a person or other legal
16 entity while acting in the capacity of an
17 independent contractor or an employee of an
18 independent contractor,

19 (2) from September 1, 1991, through June 30, 1996,
20 licensed physicians, licensed osteopathic
21 physicians and certified nurse-midwives providing
22 prenatal, delivery or infant care services to
23 State Department of Health clients pursuant to a
24 contract entered into with the State Department

1 of Health in accordance with paragraph 3 of
2 subsection B of Section 1-106 of Title 63 of the
3 Oklahoma Statutes but only insofar as services
4 authorized by and in conformity with the terms of
5 the contract and the requirements of Section 1-
6 233 of Title 63 of the Oklahoma Statutes, and
7 (3) any volunteer, full-time or part-time firefighter
8 when performing duties for a fire department
9 provided for in subparagraph j of paragraph 8 of
10 this section.

11 b. For the purpose of The Governmental Tort Claims Act,
12 the following are employees of this state, regardless
13 of the place in this state where duties as employees
14 are performed:

- 15 (1) physicians acting in an administrative capacity,
16 (2) resident physicians and resident interns
17 participating in a graduate medical education
18 program of the University of Oklahoma Health
19 Sciences Center ~~or~~, the College of Osteopathic
20 Medicine of Oklahoma State University, or the
21 Department of Mental Health and Substance Abuse
22 Services,
23 (3) faculty members and staff of the University of
24 Oklahoma Health Sciences Center and the College

- 1 of Osteopathic Medicine of Oklahoma State
2 University, while engaged in teaching duties,
3 (4) physicians who practice medicine or act in an
4 administrative capacity as an employee of an
5 agency of the State of Oklahoma, ~~and~~
6 (5) physicians who provide medical care to inmates
7 pursuant to a contract with the Department of
8 Corrections,
9 (6) licensed medical professionals who provide
10 medical care to inmates or detainees in custody
11 or control of law enforcement agencies, and
12 (7) licensed mental health professionals as defined
13 in Sections 1-103 and 5-502 of Title 43A of the
14 Oklahoma Statutes, who are conducting initial
15 examinations of individuals for the purpose of
16 determining whether an individual meets the
17 criteria for emergency detention as part of a
18 contract with the Department of Mental Health and
19 Substance Abuse Services.

20 Physician faculty members and staff of the University
21 of Oklahoma Health Sciences Center and the College of
22 Osteopathic Medicine of Oklahoma State University not
23 acting in an administrative capacity or engaged in
24

1 teaching duties are not employees or agents of the
2 state.

3 c. Except as provided in subparagraph ~~(b)~~ b of this
4 paragraph ~~5 of this section~~, in no event shall the
5 state be held liable for the tortious conduct of any
6 physician, resident physician or intern while
7 practicing medicine or providing medical treatment to
8 patients;

9 ~~6.~~ 7. "Loss" means death or injury to the body or rights of a
10 person or damage to real or personal property or rights therein;

11 ~~7.~~ 8. "Medically indigent" means a person requiring medically
12 necessary hospital or other health care services for the person or
13 the dependents of the person who has no public or private third-
14 party coverage, and whose personal resources are insufficient to
15 provide for needed health care;

16 9. "Municipality" means any incorporated city or town, and all
17 institutions, agencies or instrumentalities of a municipality;

18 ~~8.~~ 10. "Political subdivision" means:

- 19 a. a municipality,
20 b. a school district,
21 c. a county,
22 d. a public trust where the sole beneficiary or
23 beneficiaries are a city, town, school district or
24 county. For purposes of The Governmental Tort Claims

1 Act, a public trust shall include a municipal hospital
2 created pursuant to Section 30-101 et seq. of Title 11
3 of the Oklahoma Statutes, a county hospital created
4 pursuant to Section 781 et seq. of Title 19 of the
5 Oklahoma Statutes, or is created pursuant to a joint
6 agreement between such governing authorities, that is
7 operated for the public benefit by a public trust
8 created pursuant to Section 176 et seq. of Title 60 of
9 the Oklahoma Statutes and managed by a governing board
10 appointed or elected by the municipality, county, or
11 both, who exercises control of the hospital, subject
12 to the approval of the governing body of the
13 municipality, county, or both,

14 e. for the purposes of The Governmental Tort Claims Act
15 only, a housing authority created pursuant to the
16 provisions of the Oklahoma Housing Authority Act,

17 f. for the purposes of The Governmental Tort Claims Act
18 only, corporations organized not for profit pursuant
19 to the provisions of the Oklahoma General Corporation
20 Act for the primary purpose of developing and
21 providing rural water supply and sewage disposal
22 facilities to serve rural residents,
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- 1 g. for the purposes of The Governmental Tort Claims Act
2 only, districts formed pursuant to the Rural Water,
3 Sewer, Gas and Solid Waste Management Districts Act,
4 h. for the purposes of The Governmental Tort Claims Act
5 only, master conservancy districts formed pursuant to
6 the Conservancy Act of Oklahoma,
7 i. for the purposes of The Governmental Tort Claims Act
8 only, a fire protection district created pursuant to
9 the provisions of Section 901.1 et seq. of Title 19 of
10 the Oklahoma Statutes,
11 j. for the purposes of The Governmental Tort Claims Act
12 only, a benevolent or charitable corporate volunteer
13 or full-time fire department for an unincorporated
14 area created pursuant to the provisions of Section 592
15 et seq. of Title 18 of the Oklahoma Statutes,
16 k. for purposes of The Governmental Tort Claims Act only,
17 an Emergency Services Provider rendering services
18 within the boundaries of a Supplemental Emergency
19 Services District pursuant to an existing contract
20 between the Emergency Services Provider and the
21 Oklahoma State Department of Health. Provided,
22 however, that the acquisition of commercial liability
23 insurance covering the activities of such Emergency
24 Services Provider performed within the State of

1 Oklahoma shall not operate as a waiver of any of the
2 limitations, immunities or defenses provided for
3 political subdivisions pursuant to the terms of The
4 Governmental Tort Claims Act,

5 l. for purposes of The Governmental Tort Claims Act only,
6 a conservation district created pursuant to the
7 provisions of the Conservation District Act,

8 m. for purposes of The Governmental Tort Claims Act,
9 districts formed pursuant to the Oklahoma Irrigation
10 District Act,

11 n. for purposes of The Governmental Tort Claims Act only,
12 any community action agency established pursuant to
13 Sections 5035 through 5040 of Title 74 of the Oklahoma
14 Statutes, ~~and~~

15 o. for purposes of The Governmental Tort Claims Act only,
16 any organization that is designated as a youth
17 services agency, pursuant to Section 7302-3.6a of
18 Title 10 of the Oklahoma Statutes,

19 p. for purposes of The Governmental Tort Claims Act only,
20 any judge presiding over a drug court, as defined by
21 Section 471.1 of Title 22 of the Oklahoma Statutes,
22 and

1 q. for purposes of The Governmental Tort Claims Act only,
2 any child-placing agency licensed by this state to
3 place children in foster family homes,

4 and all their institutions, instrumentalities or agencies;

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

11 10. "State" means the State of Oklahoma or any office,
12 department, agency, authority, commission, board, institution,
13 hospital, college, university, public trust created pursuant to
14 Title 60 of the Oklahoma Statutes of which the State of Oklahoma is
15 the beneficiary, or other instrumentality thereof; and

16 11. "Tort" means a legal wrong, independent of contract,
17 involving violation of a duty imposed by general law or otherwise,
18 resulting in a loss to any person, association or corporation as the
19 proximate result of an act or omission of a political subdivision or
20 the state or an employee acting within the scope of employment.

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 152.2 of Title 51, unless there
23 is created a duplication in numbering, reads as follows:

1 A. The State Department of Health, or a city-county health
2 department, may enter into agreements with charitable health care
3 providers in which the provider stipulates to the State Department
4 of Health, or a city-county health department, that when the
5 provider renders professional services to a medically indigent
6 person, such services will be provided gratuitously. The State
7 Department of Health shall adopt rules which specify the conditions
8 for termination of any such agreement, and the rules shall be made a
9 part of the agreement. A city-county health department shall
10 utilize the same rules as adopted by the State Department of Health
11 for administration of the provisions of this section. A charitable
12 health care provider, for purposes of any claim for damages arising
13 as a result of rendering professional services to a medically
14 indigent person which professional services were rendered
15 gratuitously at a time when an agreement entered into by the
16 charitable health care provider with the State Department of Health,
17 or a city-county health department, pursuant to this section was in
18 effect, shall be considered an employee of the state under The
19 Governmental Tort Claims Act.

20 B. The State Department of Health shall adopt rules on
21 eligibility criteria for determining whether a person qualifies as a
22 medically indigent person. A city-county health department shall
23 utilize the same rules as adopted by the State Department of Health
24 for administration of the provisions of this section.

1 C. Any claim arising from the rendering of or failure to render
2 professional services by a charitable health care provider brought
3 pursuant to The Governmental Tort Claims Act shall not be considered
4 by an insurance company in determining the rate charged for any
5 professional liability insurance policy for health care providers
6 nor whether to cancel any such policy.

7 SECTION 3. This act shall become effective November 1, 2007.

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