

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL 1930

By: Steele of the House

and

6 Laster and Crain of the
7 Senate

8
9 COMMITTEE SUBSTITUTE

10 [officers - Governmental Tort Claims Act -
11 definitions - effective date]

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

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

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

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

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

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

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

10 a. any person holding an interest in real or personal
11 property which suffers a loss, provided that the claim
12 of the person shall be aggregated with claims of all
13 other persons holding an interest in the property and
14 the claims of all other persons which are derivative
15 of the loss, and that multiple claimants shall be
16 considered a single claimant,

17 b. the individual actually involved in the accident or
18 occurrence who suffers a loss, provided that the
19 individual shall aggregate in the claim the losses of
20 all other persons which are derivative of the loss, or

21 c. in the case of death, an administrator, special
22 administrator or a personal representative who shall
23 aggregate in the claim all losses of all persons which
24 are derivative of the death;

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

5 a. Employee also includes:

6 (1) all elected or appointed officers, members of
7 governing bodies and other persons designated to
8 act for an agency or political subdivision, but
9 the term does not mean a person or other legal
10 entity while acting in the capacity of an
11 independent contractor or an employee of an
12 independent contractor,

13 (2) from September 1, 1991, through June 30, 1996,
14 licensed physicians, licensed osteopathic
15 physicians and certified nurse-midwives providing
16 prenatal, delivery or infant care services to
17 State Department of Health clients pursuant to a
18 contract entered into with the State Department
19 of Health in accordance with paragraph 3 of
20 subsection B of Section 1-106 of Title 63 of the
21 Oklahoma Statutes but only insofar as services
22 authorized by and in conformity with the terms of
23 the contract and the requirements of Section 1-
24 233 of Title 63 of the Oklahoma Statutes, and

1 (3) any volunteer, full-time or part-time firefighter
2 when performing duties for a fire department
3 provided for in subparagraph j of paragraph 8 of
4 this section, and

5 (4) any judge presiding over a drug court, as defined
6 by Section 471.1 of Title 22 of the Oklahoma
7 Statutes.

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

12 (1) physicians acting in an administrative capacity,

13 (2) resident physicians and resident interns
14 participating in a graduate medical education
15 program of the University of Oklahoma Health
16 Sciences Center or the College of Osteopathic
17 Medicine of Oklahoma State University,

18 (3) faculty members and staff of the University of
19 Oklahoma Health Sciences Center and the College
20 of Osteopathic Medicine of Oklahoma State
21 University, while engaged in teaching duties,

22 (4) physicians who practice medicine or act in an
23 administrative capacity as an employee of an
24 agency of the State of Oklahoma, and

1 (5) physicians who provide medical care to inmates
2 pursuant to a contract with the Department of
3 Corrections, and

4 (6) any person who is licensed to practice medicine
5 pursuant to Section 725.2 of Title 59 of the
6 Oklahoma Statutes, is in compliance with all
7 terms of an Oklahoma Health Care Authority
8 Administrative Professional Services Contract,
9 and is acting within the scope of employment with
10 respect to services that entitle the person to
11 limited liability as specified by the terms of
12 such contract.

13 Physician faculty members and staff of the University
14 of Oklahoma Health Sciences Center and the College of
15 Osteopathic Medicine of Oklahoma State University not
16 acting in an administrative capacity or engaged in
17 teaching duties are not employees or agents of the
18 state.

19 c. Except as provided in subparagraph (b) of paragraph 5
20 of this section, in no event shall the state be held
21 liable for the tortious conduct of any physician,
22 resident physician or intern while practicing medicine
23 or providing 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

23 to the approval of the governing body of the

24 municipality, county, or both,

- 1 e. for the purposes of The Governmental Tort Claims Act
2 only, a housing authority created pursuant to the
3 provisions of the Oklahoma Housing Authority Act,
- 4 f. for the purposes of The Governmental Tort Claims Act
5 only, corporations organized not for profit pursuant
6 to the provisions of the Oklahoma General Corporation
7 Act for the primary purpose of developing and
8 providing rural water supply and sewage disposal
9 facilities to serve rural residents,
- 10 g. for the purposes of The Governmental Tort Claims Act
11 only, districts formed pursuant to the Rural Water,
12 Sewer, Gas and Solid Waste Management Districts Act,
- 13 h. for the purposes of The Governmental Tort Claims Act
14 only, master conservancy districts formed pursuant to
15 the Conservancy Act of Oklahoma,
- 16 i. for the purposes of The Governmental Tort Claims Act
17 only, a fire protection district created pursuant to
18 the provisions of Section 901.1 et seq. of Title 19 of
19 the Oklahoma Statutes,
- 20 j. for the purposes of The Governmental Tort Claims Act
21 only, a benevolent or charitable corporate volunteer
22 or full-time fire department for an unincorporated
23 area created pursuant to the provisions of Section 592
24 et seq. of Title 18 of the Oklahoma Statutes,

- 1 k. for purposes of The Governmental Tort Claims Act only,
2 an Emergency Services Provider rendering services
3 within the boundaries of a Supplemental Emergency
4 Services District pursuant to an existing contract
5 between the Emergency Services Provider and the
6 Oklahoma State Department of Health. Provided,
7 however, that the acquisition of commercial liability
8 insurance covering the activities of such Emergency
9 Services Provider performed within the State of
10 Oklahoma shall not operate as a waiver of any of the
11 limitations, immunities or defenses provided for
12 political subdivisions pursuant to the terms of The
13 Governmental Tort Claims Act,
- 14 l. for purposes of The Governmental Tort Claims Act only,
15 a conservation district created pursuant to the
16 provisions of the Conservation District Act,
- 17 m. for purposes of The Governmental Tort Claims Act,
18 districts formed pursuant to the Oklahoma Irrigation
19 District Act,
- 20 n. for purposes of The Governmental Tort Claims Act only,
21 any community action agency established pursuant to
22 Sections 5035 through 5040 of Title 74 of the Oklahoma
23 Statutes, and
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1 o. for purposes of The Governmental Tort Claims Act only,
2 any organization that is designated as a youth
3 services agency, pursuant to Section 7302-3.6a of
4 Title 10 of the Oklahoma Statutes,

5 p. for purposes of The Governmental Tort Claims Act only,
6 any child-placing agency licensed by this state to
7 place children in foster families in the course of
8 performing duties pursuant to a contract with the
9 Oklahoma Health Care Authority or the Department of
10 Human Services, and

11 q. for purposes of The Governmental Tort Claims Act only,
12 any entity that provides services under the Home- and
13 Community-Based Waiver Services Program pursuant to a
14 contract with the Developmental Disabilities Services
15 Division of the Department of Human Services in the
16 course of providing such services, except for acts of
17 gross negligence or willful or wanton misconduct,

18 and all their institutions, instrumentalities or agencies;

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

1 10. "State" means the State of Oklahoma or any office,
2 department, agency, authority, commission, board, institution,
3 hospital, college, university, public trust created pursuant to
4 Title 60 of the Oklahoma Statutes of which the State of Oklahoma is
5 the beneficiary, or other instrumentality thereof; and

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

11 SECTION 2. This act shall become effective November 1, 2007.

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