

THE HOUSE OF REPRESENTATIVES
Wednesday, March 5, 2008

Committee Substitute for
House Bill No. 2458

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2458 - By: SCHWARTZ of the House.

An Act relating to The Governmental Tort Claims Act; amending 51 O.S. 2001, Section 152, as last amended by Section 1, Chapter 139, O.S.L. 2007 (51 O.S. Supp. 2007, Section 152), which relates to definitions; modifying definition; and providing an effective date.

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

1 SECTION 1. AMENDATORY 51 O.S. 2001, Section 152, as last amended by
2 Section 1, Chapter 139, O.S.L. 2007 (51 O.S. Supp. 2007, Section 152), is amended to
3 read as follows:

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

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

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

9 3. "Charitable health care provider" means a person who is licensed, certified, or
10 otherwise authorized by the laws of this state to administer health care in the ordinary
11 course of business or the practice of a profession and who provides care to a medically

1 indigent person, as defined in paragraph 8 of this section, with no expectation of or
2 acceptance of compensation of any kind;

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

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

- 10 a. any person holding an interest in real or personal property which
11 suffers a loss, provided that the claim of the person shall be aggregated
12 with claims of all other persons holding an interest in the property and
13 the claims of all other persons which are derivative of the loss, and
14 that multiple claimants shall be considered a single claimant,
- 15 b. the individual actually involved in the accident or occurrence who
16 suffers a loss, provided that the individual shall aggregate in the claim
17 the losses of all other persons which are derivative of the loss, or
- 18 c. in the case of death, an administrator, special administrator or a
19 personal representative who shall aggregate in the claim all losses of
20 all persons which are derivative of the death;

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

4 a. Employee also includes:

- 5 (1) all elected or appointed officers, members of governing bodies
6 and other persons designated to act for an agency or political
7 subdivision, but the term does not mean a person or other legal
8 entity while acting in the capacity of an independent contractor
9 or an employee of an independent contractor,
10 (2) from September 1, 1991, through June 30, 1996, licensed
11 physicians, licensed osteopathic physicians and certified nurse-
12 midwives providing prenatal, delivery or infant care services to
13 State Department of Health clients pursuant to a contract
14 entered into with the State Department of Health in accordance
15 with paragraph 3 of subsection B of Section 1-106 of Title 63 of
16 the Oklahoma Statutes but only insofar as services authorized
17 by and in conformity with the terms of the contract and the
18 requirements of Section 1-233 of Title 63 of the Oklahoma
19 Statutes, and
20 (3) any volunteer, full-time or part-time firefighter when
21 performing duties for a fire department provided for in
22 subparagraph j of paragraph 8 10 of this section.

1 b. For the purpose of The Governmental Tort Claims Act, the following
2 are employees of this state, regardless of the place in this state where
3 duties as employees are performed:

4 (1) physicians acting in an administrative capacity,

5 (2) resident physicians and resident interns participating in a
6 graduate medical education program of the University of
7 Oklahoma Health Sciences Center, the College of Osteopathic
8 Medicine of Oklahoma State University, or the Department of
9 Mental Health and Substance Abuse Services,

10 (3) faculty members and staff of the University of Oklahoma Health
11 Sciences Center and the College of Osteopathic Medicine of
12 Oklahoma State University, while engaged in teaching duties,

13 (4) physicians who practice medicine or act in an administrative
14 capacity as an employee of an agency of the State of Oklahoma,

15 (5) physicians who provide medical care to inmates pursuant to a
16 contract with the Department of Corrections,

17 (6) any person who is licensed to practice medicine pursuant to Title
18 59 of the Oklahoma Statutes, who is under an administrative
19 professional services contract with the Oklahoma Health Care
20 Authority under the auspices of the Oklahoma Health Care
21 Authority Chief Medical Officer, and who is limited to
22 performing administrative duties such as professional guidance

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 for medical reviews, reimbursement rates, service utilization,
2 health care delivery and benefit design for the Oklahoma Health
3 Care Authority.

4 (7) licensed medical professionals under contract with city, county,
5 or state entities who provide medical care to inmates or
6 detainees in the custody or control of law enforcement agencies,
7 and

8 ~~(7)~~ (8) licensed mental health professionals as defined in Sections 1-103
9 and 5-502 of Title 43A of the Oklahoma Statutes, who are
10 conducting initial examinations of individuals for the purpose of
11 determining whether an individual meets the criteria for
12 emergency detention as part of a contract with the Department
13 of Mental Health and Substance Abuse Services.

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

18 c. Except as provided in subparagraph b of this paragraph, in no event
19 shall the state be held liable for the tortious conduct of any physician,
20 resident physician or intern while practicing medicine or providing
21 medical treatment to patients;

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

3 8. "Medically indigent" means a person requiring medically necessary hospital or
4 other health care services for the person or the dependents of the person who has no
5 public or private third-party coverage, and whose personal resources are insufficient to
6 provide for needed health care;

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

9 10. "Political subdivision" means:

- 10 a. a municipality,
11 b. a school district,
12 c. a county,
13 d. a public trust where the sole beneficiary or beneficiaries are a city,
14 town, school district or county. For purposes of The Governmental
15 Tort Claims Act, a public trust shall include a municipal hospital
16 created pursuant to Section 30-101 et seq. of Title 11 of the Oklahoma
17 Statutes, a county hospital created pursuant to Section 781 et seq. of
18 Title 19 of the Oklahoma Statutes, or is created pursuant to a joint
19 agreement between such governing authorities, that is operated for the
20 public benefit by a public trust created pursuant to Section 176 et seq.
21 of Title 60 of the Oklahoma Statutes and managed by a governing
22 board appointed or elected by the municipality, county, or both, who

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

- 1 department for an unincorporated area created pursuant to the
2 provisions of Section 592 et seq. of Title 18 of the Oklahoma Statutes,
3 k. for purposes of The Governmental Tort Claims Act only, an Emergency
4 Services Provider rendering services within the boundaries of a
5 Supplemental Emergency Services District pursuant to an existing
6 contract between the Emergency Services Provider and the Oklahoma
7 State Department of Health. Provided, however, that the acquisition
8 of commercial liability insurance covering the activities of such
9 Emergency Services Provider performed within the State of Oklahoma
10 shall not operate as a waiver of any of the limitations, immunities or
11 defenses provided for political subdivisions pursuant to the terms of
12 The Governmental Tort Claims Act,
13 l. for purposes of The Governmental Tort Claims Act only, a conservation
14 district created pursuant to the provisions of the Conservation District
15 Act,
16 m. for purposes of The Governmental Tort Claims Act, districts formed
17 pursuant to the Oklahoma Irrigation District Act,
18 n. for purposes of The Governmental Tort Claims Act only, any
19 community action agency established pursuant to Sections 5035
20 through 5040 of Title 74 of the Oklahoma Statutes,

- 1 o. for purposes of The Governmental Tort Claims Act only, any
2 organization that is designated as a youth services agency, pursuant to
3 Section 7302-3.6a of Title 10 of the Oklahoma Statutes,
4 p. for purposes of The Governmental Tort Claims Act only, any judge
5 presiding over a drug court, as defined by Section 471.1 of Title 22 of
6 the Oklahoma Statutes, and
7 q. for purposes of The Governmental Tort Claims Act only, any child-
8 placing agency licensed by this state to place children in foster family
9 homes,
10 and all their institutions, instrumentalities or agencies;

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

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

20 13. "Tort" means a legal wrong, independent of contract, involving violation of a
21 duty imposed by general law or otherwise, resulting in a loss to any person, association

1 or corporation as the 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, 2008.

4 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 03-04-08 - DO PASS, As
5 Amended.