

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB487 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Doug Cox _____

Reading Clerk

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 487

By: Paddack, Garrison and
Ballenger of the Senate

7 and

8 Cox of the House

9
10 PROPOSED COMMITTEE SUBSTITUTE

11 (officers - community health care providers -
12 volunteer license - Volunteer Professional Services
13 Immunity Act -
14 - effective date)

15
16
17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. AMENDATORY 51 O.S. 2001, Section 152, as last
19 amended by Section 1, Chapter 348, O.S.L. 2008 (51 O.S. Supp. 2008,
20 Section 152), is amended to read as follows:

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

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

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

4 3. "Charitable health care provider" means a person who is
5 licensed, certified, or otherwise authorized by the laws of this
6 state to administer health care in the ordinary course of business
7 or the practice of a profession and who provides care to a medically
8 indigent person, as defined in paragraph 8 of this section, with no
9 expectation of or acceptance of compensation of any kind;

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

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

19 a. any person holding an interest in real or personal
20 property which suffers a loss, provided that the claim
21 of the person shall be aggregated with claims of all
22 other persons holding an interest in the property and
23 the claims of all other persons which are derivative
24

1 of the loss, and that multiple claimants shall be
2 considered a single claimant,

- 3 b. the individual actually involved in the accident or
4 occurrence who suffers a loss, provided that the
5 individual shall aggregate in the claim the losses of
6 all other persons which are derivative of the loss, or
7 c. in the case of death, an administrator, special
8 administrator or a personal representative who shall
9 aggregate in the claim all losses of all persons which
10 are derivative of the death;

11 6. "Community health care provider" means:

- 12 a. a health care provider who volunteers services at a
13 community health center that has been deemed by the
14 U.S. Department of Health and Human Services as a
15 federally qualified health center as defined by 42
16 U.S.C., Section 1396d(1)(2)(B),
- 17 b. a health provider who provides services to an
18 organization that has been deemed a federally
19 qualified look-alike community health center, and
- 20 c. a health care provider who provides services to a
21 community health center that has made application to
22 the U.S. Department of Health and Human Services for
23 approval and deeming as a federally qualified look-
24 alike community health center in compliance with

1 federal application guidance, and has received
2 comments from the U.S. Department of Health and Human
3 Services as to the status of such application with the
4 established intent of resubmitting a modified
5 application, or, if denied, a new application, no
6 later than six (6) months from the date of the
7 official notification from the U.S. Department of
8 Health and Human Services requiring resubmission of a
9 new application;

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

14 a. Employee also includes:

- 15 (1) all elected or appointed officers, members of
16 governing bodies and other persons designated to
17 act for an agency or political subdivision, but
18 the term does not mean a person or other legal
19 entity while acting in the capacity of an
20 independent contractor or an employee of an
21 independent contractor,
22 (2) from September 1, 1991, through June 30, 1996,
23 licensed physicians, licensed osteopathic
24 physicians and certified nurse-midwives providing

1 prenatal, delivery or infant care services to
2 State Department of Health clients pursuant to a
3 contract entered into with the State Department
4 of Health in accordance with paragraph 3 of
5 subsection B of Section 1-106 of Title 63 of the
6 Oklahoma Statutes but only insofar as services
7 authorized by and in conformity with the terms of
8 the contract and the requirements of Section 1-
9 233 of Title 63 of the Oklahoma Statutes, and

10 (3) any volunteer, full-time or part-time firefighter
11 when performing duties for a fire department
12 provided for in subparagraph j of paragraph 10 of
13 this section.

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

- 18 (1) physicians acting in an administrative capacity,
19 (2) resident physicians and resident interns
20 participating in a graduate medical education
21 program of the University of Oklahoma Health
22 Sciences Center, the College of Osteopathic
23 Medicine of Oklahoma State University, or the
24

1 Department of Mental Health and Substance Abuse
2 Services,

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

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

10 (5) physicians who provide medical care to inmates
11 pursuant to a contract with the Department of
12 Corrections,

13 (6) any person who is licensed to practice medicine
14 pursuant to Title 59 of the Oklahoma Statutes,
15 who is under an administrative professional
16 services contract with the Oklahoma Health Care
17 Authority under the auspices of the Oklahoma
18 Health Care Authority Chief Medical Officer, and
19 who is limited to performing administrative
20 duties such as professional guidance for medical
21 reviews, reimbursement rates, service
22 utilization, health care delivery and benefit
23 design for the Oklahoma Health Care Authority,

24

1 only while acting within the scope of such
2 contract,

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

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

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

22 c. Except as provided in subparagraph b of this
23 paragraph, in no event shall the state be held liable
24 for the tortious conduct of any physician, resident

1 physician or intern while practicing medicine or
2 providing medical treatment to patients;

3 ~~7.~~ 8. "Loss" means death or injury to the body or rights of a
4 person or damage to real or personal property or rights therein;

5 ~~8.~~ 9. "Medically indigent" means a person requiring medically
6 necessary hospital or other health care services for the person or
7 the dependents of the person who has no public or private third-
8 party coverage, and whose personal resources are insufficient to
9 provide for needed health care;

10 ~~9.~~ 10. "Municipality" means any incorporated city or town, and
11 all institutions, agencies or instrumentalities of a municipality;

12 ~~10.~~ 11. "Political subdivision" means:

13 a. a municipality,

14 b. a school district,

15 c. a county,

16 d. a public trust where the sole beneficiary or

17 beneficiaries are a city, town, school district or

18 county. For purposes of The Governmental Tort Claims

19 Act, a public trust shall include a municipal hospital

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

21 of the Oklahoma Statutes, a county hospital created

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

23 Oklahoma Statutes, or is created pursuant to a joint

24 agreement between such governing authorities, that is

1 operated for the public benefit by a public trust
2 created pursuant to Section 176 et seq. of Title 60 of
3 the Oklahoma Statutes and managed by a governing board
4 appointed or elected by the municipality, county, or
5 both, who exercises control of the hospital, subject
6 to the approval of the governing body of the
7 municipality, county, or both,

8 e. for the purposes of The Governmental Tort Claims Act
9 only, a housing authority created pursuant to the
10 provisions of the Oklahoma Housing Authority Act,

11 f. for the purposes of The Governmental Tort Claims Act
12 only, corporations organized not for profit pursuant
13 to the provisions of the Oklahoma General Corporation
14 Act for the primary purpose of developing and
15 providing rural water supply and sewage disposal
16 facilities to serve rural residents,

17 g. for the purposes of The Governmental Tort Claims Act
18 only, districts formed pursuant to the Rural Water,
19 Sewer, Gas and Solid Waste Management Districts Act,

20 h. for the purposes of The Governmental Tort Claims Act
21 only, master conservancy districts formed pursuant to
22 the Conservancy Act of Oklahoma,

23 i. for the purposes of The Governmental Tort Claims Act
24 only, a fire protection district created pursuant to

1 the provisions of Section 901.1 et seq. of Title 19 of
2 the Oklahoma Statutes,

3 j. for the purposes of The Governmental Tort Claims Act
4 only, a benevolent or charitable corporate volunteer
5 or full-time fire department for an unincorporated
6 area created pursuant to the provisions of Section 592
7 et seq. of Title 18 of the Oklahoma Statutes,

8 k. for purposes of The Governmental Tort Claims Act only,
9 an Emergency Services Provider rendering services
10 within the boundaries of a Supplemental Emergency
11 Services District pursuant to an existing contract
12 between the Emergency Services Provider and the
13 Oklahoma State Department of Health. Provided,
14 however, that the acquisition of commercial liability
15 insurance covering the activities of such Emergency
16 Services Provider performed within the State of
17 Oklahoma shall not operate as a waiver of any of the
18 limitations, immunities or defenses provided for
19 political subdivisions pursuant to the terms of The
20 Governmental Tort Claims Act,

21 l. for purposes of The Governmental Tort Claims Act only,
22 a conservation district created pursuant to the
23 provisions of the Conservation District Act,
24

1 m. for purposes of The Governmental Tort Claims Act,
2 districts formed pursuant to the Oklahoma Irrigation
3 District Act,

4 n. for purposes of The Governmental Tort Claims Act only,
5 any community action agency established pursuant to
6 Sections 5035 through 5040 of Title 74 of the Oklahoma
7 Statutes,

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

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

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

19 and all their institutions, instrumentalities or agencies;

20 ~~11.~~ 12. "Scope of employment" means performance by an employee
21 acting in good faith within the duties of the employee's office or
22 employment or of tasks lawfully assigned by a competent authority
23 including the operation or use of an agency vehicle or equipment
24

1 with actual or implied consent of the supervisor of the employee,
2 but shall not include corruption or fraud;

3 ~~12.~~ 13. "State" means the State of Oklahoma or any office,
4 department, agency, authority, commission, board, institution,
5 hospital, college, university, public trust created pursuant to
6 Title 60 of the Oklahoma Statutes of which the State of Oklahoma is
7 the beneficiary, or other instrumentality thereof; and

8 ~~13.~~ 14. "Tort" means a legal wrong, independent of contract,
9 involving violation of a duty imposed by general law or otherwise,
10 resulting in a loss to any person, association or corporation as the
11 proximate result of an act or omission of a political subdivision or
12 the state or an employee acting within the scope of employment.

13 SECTION 2. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 152.3 of Title 51, unless there
15 is created a duplication in numbering, reads as follows:

16 A. 1. The State Department of Health may enter into agreements
17 with community health care providers in which the provider
18 stipulates to the State Department of Health that when the provider
19 renders professional services, such services will be provided
20 without compensation to the community health care provider, although
21 the facility may assess a sliding scale co-pay fee;

22 2. The State Department of Health shall adopt rules which
23 specify the conditions for termination of any such agreement, and
24 the rules shall be made a part of the agreement; and

1 3. A community health care provider, for purposes of any claim
2 for damages arising as a result of rendering professional services
3 to a person, which professional services were rendered without
4 compensation or expectation of payment to the community health care
5 provider, at a time when an agreement entered into by the community
6 health care provider with the State Department of Health, pursuant
7 to this section was in effect, shall be considered an employee of
8 the state under The Governmental Tort Claims Act.

9 B. The State Department of Health shall adopt rules on
10 eligibility criteria for determining whether a person qualifies to
11 receive services on a sliding scale co-pay basis.

12 C. Any claim arising from the rendering of or failure to render
13 professional services by a community health care provider brought
14 pursuant to The Governmental Tort Claims Act shall not be considered
15 by an insurance company in determining the rate charged for any
16 professional liability insurance policy for health care providers
17 nor whether to cancel any such policy.

18 SECTION 3. AMENDATORY Section 1, Chapter 138, O.S.L.
19 2003, as last amended by Section 3, Chapter 133, O.S.L. 2007 (59
20 O.S. Supp. 2008, Section 493.5), is amended to read as follows:

21 Section 493.5 A. 1. There is established a special volunteer
22 ~~medical~~ license for ~~physicians~~ eligible volunteers from a medically
23 related field who are retired from active practice or actively
24 licensed in another state and practicing in that state and wish to

1 donate their expertise for the ~~medical~~ care and treatment of
2 indigent and needy persons of this state.

3 2. For purposes of this section:

4 a. "eligible volunteer" means a physician, physician
5 assistant, nurse, dentist, optometrist or pharmacist,
6 and

7 b. "nurse" means an advanced practice nurse, advanced
8 registered nurse practitioner, registered nurse, or
9 licensed practical nurse.

10 3. The special volunteer ~~medical~~ license shall be:

11 ~~1. Issued~~

12 a. issued by the State Board of Medical Licensure and
13 Supervision to eligible physicians~~;~~

14 ~~2. Issued~~ and physician assistants, by the Oklahoma Board of
15 Nursing to eligible nurses, the Board of Dentistry to
16 eligible dentists, the Board of Examiners in Optometry
17 to eligible optometrists, and by the Board of Pharmacy
18 to eligible pharmacists,

19 b. issued without the payment of an application fee,
20 license fee or renewal fee~~;~~

21 ~~3. Issued,~~

22 c. issued or renewed without any continuing education
23 requirements in this state~~;~~

24 ~~4. Issued,~~

1 d. issued for a fiscal year or part thereof, and

2 ~~5. Renewable~~

3 e. renewable annually upon approval of the applicable
4 Board.

5 B. ~~A physician must~~ An eligible volunteer shall meet the
6 following requirements ~~to be eligible for~~ before obtaining a special
7 volunteer ~~medical~~ license:

8 1. Completion of a special volunteer ~~medical~~ license
9 application, including, as applicable, documentation of:

10 a. the ~~physician's~~ medical school graduation of the
11 physician,

12 b. the completion of a physician assistant program by a
13 physician assistant,

14 c. the completion of the basic professional curricula of
15 a school of nursing by the nurse,

16 d. the dental school graduation of the dentist,

17 e. the optometry school graduation of the optometrist, or

18 f. the school or college of pharmacy graduation of a
19 pharmacist, and

20 g. the relevant practice history of the applicant;

21 2. Documentation that the ~~physician~~ eligible volunteer has been
22 previously issued a full and unrestricted license to practice
23 ~~medicine~~ in Oklahoma or in another state of the United States and
24

1 that he or she has never been the subject of any ~~medical~~
2 professional disciplinary action in any jurisdiction;

3 3. Acknowledgement and documentation that the ~~physician's~~
4 practice of the eligible volunteer under the special volunteer
5 ~~medical~~ license will be exclusively and totally devoted to providing
6 ~~medical~~ care to needy and indigent persons in Oklahoma or to
7 providing care under the Oklahoma Medical Reserve Corps; and

8 4. Acknowledgement and documentation that the ~~physician~~
9 eligible volunteer ~~will~~ shall not receive or have the expectation to
10 receive any payment or compensation, either direct or indirect, for
11 any ~~medical~~ services rendered in this state under the special
12 volunteer ~~medical~~ license. The only exception to the indirect
13 compensation provision is for those out-of-state physicians,
14 physician assistants, nurses, dentists, optometrists or pharmacists
15 that participate in the free ~~medical~~ care given by means of
16 Telemedicine through the Shriners Hospitals for Children national
17 network.

18 SECTION 4. AMENDATORY Section 34, Chapter 368, O.S.L.
19 2004 (76 O.S. Supp. 2008, Section 32), is amended to read as
20 follows:

21 Section 32. A. This section shall be known and may be cited as
22 the "Volunteer ~~Medical~~ Professional Services Immunity Act".

23 B. Any volunteer ~~medical~~ professional and any organization that
24 arranges for the care given by the volunteer professional shall be

1 immune from liability in a civil action on the basis of any act or
2 omission of the volunteer ~~medical~~ professional resulting in damage
3 or injury if:

4 1. The volunteer ~~medical~~ professional services were provided at
5 a free clinic where neither the professional nor the clinic receives
6 any kind of compensation for any treatment provided at the clinic;

7 2. The volunteer ~~medical~~ professional was acting in good faith
8 and, if licensed, the services provided were within the scope of the
9 license of the volunteer ~~medical~~ professional;

10 3. The volunteer ~~medical~~ professional commits the act or
11 omission in the course of providing professional services; and

12 4. The damage or injury was not caused by gross negligence or
13 willful and wanton misconduct by the volunteer ~~medical~~ professional,
14 and

15 ~~5. Before the volunteer medical professional provides~~
16 ~~professional medical services, the volunteer medical professional~~
17 ~~and the person receiving the services or, if that person is a minor~~
18 ~~or otherwise legally incapacitated, the person's parent,~~
19 ~~conservator, legal guardian, or other person with legal~~
20 ~~responsibility for the care of the person signs a written statement~~
21 ~~that acknowledges:~~

22 a. ~~that the volunteer medical professional providing~~
23 ~~professional medical services has no expectation of~~

24

1 ~~and will receive no compensation of any kind for~~
2 ~~providing the professional medical services, and~~

3 b. ~~an understanding of the limitations on the recovery of~~
4 ~~damages from the volunteer medical professional in~~
5 ~~exchange for receiving free professional medical~~
6 ~~services.~~

7 C. In the event the volunteer ~~medical~~ professional refers the
8 patient covered by this section to another volunteer ~~medical~~
9 professional for additional treatment, the referred volunteer
10 ~~medical~~ professional shall be subject to the provisions of this
11 section if:

12 1. The referred volunteer ~~medical~~ professional provides
13 services without receiving any compensation for the treatment;

14 2. The referred volunteer ~~medical~~ professional was acting in
15 good faith and, if licensed, the services provided were within the
16 scope of the license of the referred volunteer ~~medical~~ professional;

17 3. The referred volunteer ~~medical~~ professional commits the act
18 or omission in the course of providing professional services; and

19 4. The damage or injury was not caused by gross negligence or
20 willful and wanton misconduct by the referred volunteer ~~medical~~
21 professional; ~~and~~

22 ~~5. Before the referred volunteer medical professional provides~~
23 ~~professional services, the referred volunteer medical professional~~
24 ~~and the person receiving the services or, if that person is a minor~~

1 ~~or otherwise legally incapacitated, the person's parent,~~
2 ~~conservator, legal guardian, or other person with legal~~
3 ~~responsibility for the care of the person signs a written statement~~
4 ~~that acknowledges:~~

5 a. ~~that the referred volunteer medical professional~~
6 ~~providing professional medical services has no~~
7 ~~expectation of and will receive no compensation of any~~
8 ~~kind for providing the professional medical services,~~
9 ~~and~~

10 b. ~~an understanding of the limitations on the recovery of~~
11 ~~damages from the volunteer medical professional in~~
12 ~~exchange for receiving free professional medical~~
13 ~~services.~~

14 D. The provisions of this section shall not affect the
15 liability that any person may have which arises from the operation
16 of a motor vehicle, watercraft, or aircraft in rendering the
17 service, care, assistance, advice or other benefit as a volunteer
18 ~~medical~~ professional.

19 E. The immunity from civil liability provided by this section
20 shall extend only to the actions taken by a person rendering the
21 service, care, assistance, advice or other benefit as a volunteer
22 ~~medical~~ professional, and does not confer any immunity to any person
23 for actions taken by the volunteer ~~medical~~ professional prior to or
24

1 after the rendering of the service, care, assistance, advice or
2 other benefit as a volunteer ~~medical~~ professional.

3 F. For the purpose of this section, the term "volunteer ~~medical~~
4 professional" and "referred volunteer ~~medical~~ professional" means a
5 person who voluntarily provides professional ~~medical~~ medically
6 related services without compensation or expectation of compensation
7 of any kind. A volunteer ~~medical~~ professional or a referred
8 volunteer ~~medical~~ professional shall include the following licensed
9 professionals, including those persons licensed in accordance with
10 Section 493.5 of Title 59 of the Oklahoma Statutes:

- 11 1. Physician;
- 12 2. ~~Physician's~~ Physician assistant;
- 13 3. Registered nurse;
- 14 4. Advanced nurse practitioner or vocational nurse;
- 15 5. Pharmacist;
- 16 6. Podiatrist;
- 17 7. Dentist or dental hygienist; or
- 18 8. Optometrist.

19 A volunteer ~~medical~~ professional shall be engaged in the active
20 practice of a medical professional or retired from a ~~medical~~
21 medically related profession, if still eligible to provide ~~medical~~
22 medically related professional services within this state.

23 G. Any person participating in a Medical Reserve Corps and
24 assisting with emergency management, emergency operations, or hazard

1 mitigation in response to any emergency, man-made disaster, or
2 natural disaster, or participating in public health initiatives
3 endorsed by a city, county or state health department in the State
4 of Oklahoma, shall not be liable for civil damages on the basis of
5 any act or omission, if:

6 1. The person was acting in good faith and within the scope of
7 the official duties and functions of the Medical Reserve Corps; and

8 2. The acts or omissions were not caused from gross, willful,
9 or wanton acts of negligence.

10 H. This section shall apply to all civil actions filed on or
11 after November 1, 2004.

12 SECTION 5. This act shall become effective November 1, 2009.

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14 52-1-7659 SAB 04/06/09

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