

ENROLLED SENATE
BILL NO. 353

By: Rice and Leftwich of the
Senate

and

Cox, McDaniel (Jeannie),
Ritze, Lamons, Walker and
Tibbs of the House

An Act relating to health care; amending 51 O.S. 2001, Section 152, as last amended by Section 1, Chapter 348, O.S.L. 2008 (51 O.S. Supp. 2008, Section 152), which relates to the Governmental Tort Claims Act; expanding certain definition; amending Section 34, Chapter 368, O.S.L. 2004 (76 O.S. Supp. 2008, Section 32), as amended by Section 1 of Enrolled House Bill No. 2093 of the 1st Session of the 52nd Oklahoma Legislature, which relates to the Volunteer Medical Professional Services Immunity Act; expanding scope of act; deleting requirement for certain written statement; modifying certain definition; providing an effective date; and declaring an emergency.

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

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

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

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

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

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

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

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

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

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

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

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

- (1) physicians acting in an administrative capacity,

- (2) resident physicians and resident interns participating in a graduate medical education program of the University of Oklahoma Health Sciences Center, the College of Osteopathic Medicine of Oklahoma State University, or the Department of Mental Health and Substance Abuse Services,
- (3) faculty members and staff of the University of Oklahoma Health Sciences Center and the College of Osteopathic Medicine of Oklahoma State University, while engaged in teaching duties,
- (4) physicians who practice medicine or act in an administrative capacity as an employee of an agency of the State of Oklahoma,
- (5) physicians who provide medical care to inmates pursuant to a contract with the Department of Corrections,
- (6) any person who is licensed to practice medicine pursuant to Title 59 of the Oklahoma Statutes, who is under an administrative professional services contract with the Oklahoma Health Care Authority under the auspices of the Oklahoma Health Care Authority Chief Medical Officer, and who is limited to performing administrative duties such as professional guidance for medical reviews, reimbursement rates, service utilization, health care delivery and benefit design for the Oklahoma Health Care Authority, only while acting within the scope of such contract,
- (7) licensed medical professionals under contract with city, county, or state entities who provide medical care to inmates or detainees in the custody or control of law enforcement agencies, and

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

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

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

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

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

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

10. "Political subdivision" means:

- a. a municipality,
- b. a school district,
- c. a county,

- d. a public trust where the sole beneficiary or beneficiaries are a city, town, school district or county. For purposes of The Governmental Tort Claims Act, a public trust shall include:
- (1) a municipal hospital created pursuant to ~~Section~~ Sections 30-101 et seq. through 30-109 of Title 11 of the Oklahoma Statutes, a county hospital created pursuant to ~~Section~~ Sections 781 et seq. through 796 of Title 19 of the Oklahoma Statutes, or is created pursuant to a joint agreement between such governing authorities, that is operated for the public benefit by a public trust created pursuant to ~~Section~~ Sections 176 et seq. through 180.4 of Title 60 of the Oklahoma Statutes and managed by a governing board appointed or elected by the municipality, county, or both, who exercises control of the hospital, subject to the approval of the governing body of the municipality, county, or both,
 - (2) a public trust created pursuant to Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes after January 1, 2009, the primary purpose of which is to own, manage, or operate a public acute care hospital in this state that serves as a teaching hospital for a medical residency program provided by a college of osteopathic medicine and provides care to indigent persons, and
 - (3) a corporation in which all of the capital stock is owned, or a limited liability company in which all of the member interest is owned, by a public trust,
- e. for the purposes of The Governmental Tort Claims Act only, a housing authority created pursuant to the provisions of the Oklahoma Housing Authority Act,
- f. for the purposes of The Governmental Tort Claims Act only, corporations organized not for profit pursuant

to the provisions of the Oklahoma General Corporation Act for the primary purpose of developing and providing rural water supply and sewage disposal facilities to serve rural residents,

- g. for the purposes of The Governmental Tort Claims Act only, districts formed pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act,
- h. for the purposes of The Governmental Tort Claims Act only, master conservancy districts formed pursuant to the Conservancy Act of Oklahoma,
- i. for the purposes of The Governmental Tort Claims Act only, a fire protection district created pursuant to the provisions of Section 901.1 et seq. of Title 19 of the Oklahoma Statutes,
- j. for the purposes of The Governmental Tort Claims Act only, a benevolent or charitable corporate volunteer or full-time fire department for an unincorporated area created pursuant to the provisions of Section 592 et seq. of Title 18 of the Oklahoma Statutes,
- k. for purposes of The Governmental Tort Claims Act only, an Emergency Services Provider rendering services within the boundaries of a Supplemental Emergency Services District pursuant to an existing contract between the Emergency Services Provider and the Oklahoma State Department of Health. Provided, however, that the acquisition of commercial liability insurance covering the activities of such Emergency Services Provider performed within the State of Oklahoma shall not operate as a waiver of any of the limitations, immunities or defenses provided for political subdivisions pursuant to the terms of The Governmental Tort Claims Act,
- l. for purposes of The Governmental Tort Claims Act only, a conservation district created pursuant to the provisions of the Conservation District Act,

- m. for purposes of The Governmental Tort Claims Act, districts formed pursuant to the Oklahoma Irrigation District Act,
- n. for purposes of The Governmental Tort Claims Act only, any community action agency established pursuant to Sections 5035 through 5040 of Title 74 of the Oklahoma Statutes,
- o. for purposes of The Governmental Tort Claims Act only, any organization that is designated as a youth services agency, pursuant to Section 7302-3.6a of Title 10 of the Oklahoma Statutes,
- p. for purposes of The Governmental Tort Claims Act only, any judge presiding over a drug court, as defined by Section 471.1 of Title 22 of the Oklahoma Statutes, and
- q. for purposes of The Governmental Tort Claims Act only, any child-placing agency licensed by this state to place children in foster family homes,

and all their institutions, instrumentalities or agencies;

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

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

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

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

SECTION 2. AMENDATORY Section 34, Chapter 368, O.S.L. 2004 (76 O.S. Supp. 2008, Section 32), as amended by Section 1 of Enrolled House Bill No. 2093 of the 1st Session of the 52nd Oklahoma Legislature, is amended to read as follows:

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

B. Any volunteer ~~medical~~ professional and any organization that arranges for the care given by the volunteer professional shall be immune from liability in a civil action on the basis of any act or omission of the volunteer ~~medical~~ professional resulting in damage or injury if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- ~~a. that the referred volunteer medical professional providing professional medical services has no expectation of and will receive no compensation of any kind for providing the professional medical services, and~~

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

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

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

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

1. Physician;
2. ~~Physician's~~ Physician assistant;
3. Registered nurse;
4. Advanced nurse practitioner or vocational nurse;
5. Pharmacist;
6. Podiatrist;
7. Dentist or dental hygienist; or

8. Optometrist.

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

G. Any person or entity participating in a Medical Reserve Corps and assisting with emergency management, emergency operations, or hazard mitigation in response to any emergency, man-made disaster, or natural disaster, or participating as authorized in public health initiatives endorsed by a city, county or state health department in the State of Oklahoma, shall not be liable for civil damages on the basis of any act or omission, if:

1. The person was acting in good faith and within the scope of the official duties and functions of the Medical Reserve Corps; and
2. The acts or omissions were not caused from gross, willful, or wanton acts of negligence.

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

SECTION 3. This act shall become effective July 1, 2009.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 18th day of May, 2009.

Presiding Officer of the Senate

Passed the House of Representatives the 19th day of May, 2009.

Presiding Officer of the House
of Representatives