

THE HOUSE OF REPRESENTATIVES
Thursday, April 9, 2009

Committee Substitute for
ENGROSSED
Senate Bill No. 353

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 353 - By: RICE of the Senate and COX, MCDANIEL (JEANNIE) AND RITZE of the House.

(public health and safety – Governmental Tort Claims Act – clarifying definition - effective date - emergency)

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 348, O.S.L. 2008 (51 O.S. Supp. 2008, 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 10 of this section.

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- 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

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, only while acting within the scope of such
4 contract,

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

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

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

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

16 (1) a trust for a municipal hospital created pursuant to ~~Section~~
17 Sections 30-101 et seq. through 30-109 of Title 11 of the
18 Oklahoma Statutes,

19 (2) a trust for a county hospital created pursuant to ~~Section~~
20 Sections 781 et seq. through 796 of Title 19 of the Oklahoma
21 Statutes, or ~~is~~

1 (3) a trust created pursuant to a joint agreement between such
2 governing authorities, that is operated for the public benefit by a
3 public trust created pursuant to ~~Section~~ Sections 176 et seq.
4 through 180.4 of Title 60 of the Oklahoma Statutes and
5 managed by a governing board appointed or elected by the
6 municipality, county, or both, who exercises control of the
7 hospital, subject to the approval of the governing body of the
8 municipality, county, or both, and

9 (4) a public trust created pursuant to Sections 176 through 180.4 of
10 Title 60 of the Oklahoma Statutes after January 1, 2009, the
11 primary purpose of which is to own, manage, or operate a public
12 acute care hospital in this state that serves as a teaching
13 hospital for a medical residency program provided by a college of
14 osteopathic medicine and provides care to indigent persons.
15 Under this subparagraph a public trust shall include a
16 corporation in which all of the capital stock is owned, or a
17 limited liability company in which all of the member interest is
18 owned, by a public trust functioning in accordance with this
19 subparagraph.

20 e. for the purposes of The Governmental Tort Claims Act only, a housing
21 authority created pursuant to the provisions of the Oklahoma Housing
22 Authority Act,

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

1 State Department of Health. Provided, however, that the acquisition
2 of commercial liability insurance covering the activities of such
3 Emergency Services Provider performed within the State of Oklahoma
4 shall not operate as a waiver of any of the limitations, immunities or
5 defenses provided for political subdivisions pursuant to the terms of
6 The Governmental Tort Claims Act,
7 l. for purposes of The Governmental Tort Claims Act only, a conservation
8 district created pursuant to the provisions of the Conservation District
9 Act,
10 m. for purposes of The Governmental Tort Claims Act, districts formed
11 pursuant to the Oklahoma Irrigation District Act,
12 n. for purposes of The Governmental Tort Claims Act only, any
13 community action agency established pursuant to Sections 5035
14 through 5040 of Title 74 of the Oklahoma Statutes,
15 o. for purposes of The Governmental Tort Claims Act only, any
16 organization that is designated as a youth services agency, pursuant to
17 Section 7302-3.6a of Title 10 of the Oklahoma Statutes,
18 p. for purposes of The Governmental Tort Claims Act only, any judge
19 presiding over a drug court, as defined by Section 471.1 of Title 22 of
20 the Oklahoma Statutes, and

1 q. for purposes of The Governmental Tort Claims Act only, any child-
2 placing agency licensed by this state to place children in foster family
3 homes,
4 and all their institutions, instrumentalities or agencies;

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

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

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

18 SECTION 2. This act shall become effective July 1, 2009.

19 SECTION 3. It being immediately necessary for the preservation of the public
20 peace, health and safety, an emergency is hereby declared to exist, by reason whereof
21 this act shall take effect and be in full force from and after its passage and approval.

1 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 04-08-09 - DO
2 PASS, As Amended and Coauthored.