

SB 2148

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THE STATE SENATE  
Thursday, February 11, 2010

Senate Bill No. 2148

SENATE BILL NO. 2148 - By: Wilson of the Senate and Brown 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 315, O.S.L. 2009 (51 O.S. Supp. 2009, Section 152), which relates to definitions; modifying definition; and providing an effective date.

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 315, O.S.L. 2009 (51 O.S. Supp. 2009, 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

1 this section, with no expectation of or acceptance of  
2 compensation of any kind;

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

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

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

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

- 1           c.    in the case of death, an administrator, special  
2                    administrator or a personal representative who shall  
3                    aggregate in the claim all losses of all persons which  
4                    are derivative of the death;
- 5       6.    "Community health care provider" means:
- 6           a.    a health care provider who volunteers services at a  
7                    community health center that has been deemed by the  
8                    U.S. Department of Health and Human Services as a  
9                    federally qualified health center as defined by 42  
10                  U.S.C., Section 1396d(1)(2)(B),
- 11          b.    a health provider who provides services to an  
12                  organization that has been deemed a federally  
13                  qualified look-alike community health center, and
- 14          c.    a health care provider who provides services to a  
15                  community health center that has made application to  
16                  the U.S. Department of Health and Human Services for  
17                  approval and deeming as a federally qualified look-  
18                  alike community health center in compliance with  
19                  federal application guidance, and has received  
20                  comments from the U.S. Department of Health and Human  
21                  Services as to the status of such application with the  
22                  established intent of resubmitting a modified  
23                  application, or, if denied, a new application, no

1 later than six (6) months from the date of the  
2 official notification from the U.S. Department of  
3 Health and Human Services requiring resubmission of a  
4 new application;

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

9 a. Employee also includes:

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

17 (2) from September 1, 1991, through June 30, 1996,  
18 licensed physicians, licensed osteopathic  
19 physicians and certified nurse-midwives providing  
20 prenatal, delivery or infant care services to  
21 State Department of Health clients pursuant to a  
22 contract entered into with the State Department  
23 of Health in accordance with paragraph 3 of

1 subsection B of Section 1-106 of Title 63 of the  
2 Oklahoma Statutes but only insofar as services  
3 authorized by and in conformity with the terms of  
4 the contract and the requirements of Section 1-  
5 233 of Title 63 of the Oklahoma Statutes, and

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

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

14 (1) physicians acting in an administrative capacity,

15 (2) resident physicians and resident interns

16 participating in a graduate medical education

17 program of the University of Oklahoma Health

18 Sciences Center, the College of Osteopathic

19 Medicine of Oklahoma State University, or the

20 Department of Mental Health and Substance Abuse

21 Services,

22 (3) faculty members and staff of the University of

23 Oklahoma Health Sciences Center and the College

- 1 of Osteopathic Medicine of Oklahoma State  
2 University, while engaged in teaching duties,  
3 (4) physicians who practice medicine or act in an  
4 administrative capacity as an employee of an  
5 agency of the State of Oklahoma,  
6 (5) physicians who provide medical care to inmates  
7 pursuant to a contract with the Department of  
8 Corrections,  
9 (6) any person who is licensed to practice medicine  
10 pursuant to Title 59 of the Oklahoma Statutes,  
11 who is under an administrative professional  
12 services contract with the Oklahoma Health Care  
13 Authority under the auspices of the Oklahoma  
14 Health Care Authority Chief Medical Officer, and  
15 who is limited to performing administrative  
16 duties such as professional guidance for medical  
17 reviews, reimbursement rates, service  
18 utilization, health care delivery and benefit  
19 design for the Oklahoma Health Care Authority,  
20 only while acting within the scope of such  
21 contract,  
22 (7) licensed medical professionals under contract  
23 with city, county, or state entities who provide

1 medical care to inmates or detainees in the  
2 custody or control of law enforcement agencies,  
3 ~~and~~

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

12 (9) licensed medical professionals who charge an  
13 amount for medical services that does not exceed  
14 Medicare reimbursement rates for any patient.

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

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

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

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

12          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

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

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

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

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

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

- 1           i.    for the purposes of The Governmental Tort Claims Act  
2                    only, a fire protection district created pursuant to  
3                    the provisions of Section 901.1 et seq. of Title 19 of  
4                    the Oklahoma Statutes,
- 5           j.    for the purposes of The Governmental Tort Claims Act  
6                    only, a benevolent or charitable corporate volunteer  
7                    or full-time fire department for an unincorporated  
8                    area created pursuant to the provisions of Section 592  
9                    et seq. of Title 18 of the Oklahoma Statutes,
- 10          k.    for purposes of The Governmental Tort Claims Act only,  
11                    an Emergency Services Provider rendering services  
12                    within the boundaries of a Supplemental Emergency  
13                    Services District pursuant to an existing contract  
14                    between the Emergency Services Provider and the  
15                    Oklahoma State Department of Health.  Provided,  
16                    however, that the acquisition of commercial liability  
17                    insurance covering the activities of such Emergency  
18                    Services Provider performed within the State of  
19                    Oklahoma shall not operate as a waiver of any of the  
20                    limitations, immunities or defenses provided for  
21                    political subdivisions pursuant to the terms of The  
22                    Governmental Tort Claims Act,

- 1           l.    for purposes of The Governmental Tort Claims Act only,  
2                    a conservation district created pursuant to the  
3                    provisions of the Conservation District Act,  
4            m.    for purposes of The Governmental Tort Claims Act,  
5                    districts formed pursuant to the Oklahoma Irrigation  
6                    District Act,  
7            n.    for purposes of The Governmental Tort Claims Act only,  
8                    any community action agency established pursuant to  
9                    Sections 5035 through 5040 of Title 74 of the Oklahoma  
10                   Statutes,  
11           o.    for purposes of The Governmental Tort Claims Act only,  
12                   any organization that is designated as a youth  
13                   services agency, pursuant to Section 7302-3.6a of  
14                   Title 10 of the Oklahoma Statutes,  
15           p.    for purposes of The Governmental Tort Claims Act only,  
16                   any judge presiding over a drug court, as defined by  
17                   Section 471.1 of Title 22 of the Oklahoma Statutes,  
18                   and  
19           q.    for purposes of The Governmental Tort Claims Act only,  
20                   any child-placing agency licensed by this state to  
21                   place children in foster family homes,  
22   and all their institutions, instrumentalities or agencies;

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

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

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

17        SECTION 2. This act shall become effective November 1, 2010.

18        COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-9-10 - DO PASS,  
19        As Coauthored.