

1 ENGROSSED SENATE AMENDMENT  
TO

2 ENGROSSED HOUSE  
3 BILL NO. 1995

By: Sullivan of the House

and

Sykes of the Senate

4  
5  
6  
7  
8 An Act relating to The Governmental Tort Claims Act;  
9 requiring certain hospitals to maintain liability  
10 insurance coverage; specifying minimum amount of  
11 coverage required; amending 51 O.S. 2001, Section  
12 154, as amended by Section 2, Chapter 304, O.S.L.  
2003 (51 O.S. Supp. 2010, Section 154), which relates  
to extent of liability; providing extent of liability  
for certain hospitals; providing for codification;  
and providing an effective date.

13  
14 AUTHOR: Add the following Senate Coauthor: Sparks

15 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and  
16 entire bill and insert

17 "An Act relating to malpractice liability; requiring  
18 physicians to maintain liability insurance coverage;  
19 requiring certain hospitals to maintain liability  
20 insurance coverage; specifying minimum amount of  
21 coverage required; amending 51 O.S. 2001, Section  
22 154, as amended by Section 2, Chapter 304, O.S.L.  
2003 (51 O.S. Supp. 2010, Section 154), which relates  
to extent of liability; providing extent of liability  
for certain hospitals; updating references; providing  
for codification; and providing effective dates.

23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:  
24

1 SECTION 1. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 61.3 of Title 23, unless there  
3 is created a duplication in numbering, reads as follows:

4 Any physician duly licensed to practice medicine in this state  
5 shall maintain malpractice liability insurance coverage with  
6 available limits of at least One Million Dollars (\$1,000,000.00).

7 SECTION 2. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 154.1 of Title 51, unless there  
9 is created a duplication in numbering, reads as follows:

10 Any hospital operated by a public trust pursuant to either  
11 division (1) or (2) of subparagraph d of paragraph 11 of Section 152  
12 of Title 51 of the Oklahoma Statutes shall maintain malpractice  
13 liability insurance coverage with available limits of at least One  
14 Million Dollars (\$1,000,000.00) per claim with an annual aggregate  
15 of at least Three Million Dollars (\$3,000,000.00).

16 SECTION 3. AMENDATORY 51 O.S. 2001, Section 154, as  
17 amended by Section 2, Chapter 304, O.S.L. 2003 (51 O.S. Supp. 2010,  
18 Section 154), is amended to read as follows:

19 Section 154. A. The total liability of the state and its  
20 political subdivisions on claims within the scope of The  
21 Governmental Tort Claims Act, arising out of an accident or  
22 occurrence happening after ~~the effective date of this act, Section~~  
23 ~~151 et seq. of this title~~ June 6, 2000, shall not exceed:

24

1        1. Twenty-five Thousand Dollars (\$25,000.00) for any claim or  
2 to any claimant who has more than one claim for loss of property  
3 arising out of a single act, accident, or occurrence;

4        2. Except as otherwise provided in this paragraph, One Hundred  
5 Twenty-five Thousand Dollars (\$125,000.00) to any claimant for a  
6 claim for any other loss arising out of a single act, accident, or  
7 occurrence. The limit of liability for the state or any city or  
8 county with a population of three hundred thousand (300,000) or more  
9 according to the latest federal Decennial Census shall not exceed  
10 One Hundred Seventy-five Thousand Dollars (\$175,000.00). Except  
11 however, the limits of said liability for the University Hospitals  
12 and State Mental Health Hospitals operated by the Department of  
13 Mental Health and Substance Abuse Services for claims arising from  
14 medical negligence shall be Two Hundred Thousand Dollars  
15 (\$200,000.00). For claims arising from medical negligence by any  
16 licensed physician, osteopathic physician or certified nurse-midwife  
17 rendering prenatal, delivery or infant care services from September  
18 1, 1991, through June 30, 1996, pursuant to a contract authorized by  
19 subsection B of Section 1-106 of Title 63 of the Oklahoma Statutes  
20 and in conformity with the requirements of Section 1-233 of Title 63  
21 of the Oklahoma Statutes, the limits of said liability shall be Two  
22 Hundred Thousand Dollars (\$200,000.00); or

23        3. One Million Dollars (\$1,000,000.00) for any number of claims  
24 arising out of a single occurrence or accident.

1           B. 1. Beginning on ~~the effective date of this act~~ May 28,  
2 2003, claims shall be allowed for wrongful criminal felony  
3 conviction resulting in imprisonment if the claimant has received a  
4 full pardon on the basis of a written finding by the Governor of  
5 actual innocence for the crime for which the claimant was sentenced  
6 or has been granted judicial relief absolving the claimant of guilt  
7 on the basis of actual innocence of the crime for which the claimant  
8 was sentenced. The Governor or the court shall specifically state,  
9 in the pardon or order, the evidence or basis on which the finding  
10 of actual innocence is based.

11           2. As used in paragraph 1 of this subsection, for a claimant to  
12 recover based on "actual innocence", the individual must meet the  
13 following criteria:

- 14           a. the individual was charged, by indictment or  
15           information, with the commission of a public offense  
16           classified as a felony,
- 17           b. the individual did not plead guilty to the offense  
18           charged, or to any lesser included offense, but was  
19           convicted of the offense,
- 20           c. the individual was sentenced to incarceration for a  
21           term of imprisonment as a result of the conviction,
- 22           d. the individual was imprisoned solely on the basis of  
23           the conviction for the offense, and

24

1 e. (1) in the case of a pardon, a determination was made  
2 by either the Pardon and Parole Board or the  
3 Governor that the offense for which the  
4 individual was convicted, sentenced and  
5 imprisoned, including any lesser offenses, was  
6 not committed by the individual, or

7 (2) in the case of judicial relief, a court of  
8 competent jurisdiction found by clear and  
9 convincing evidence that the offense for which  
10 the individual was convicted, sentenced and  
11 imprisoned, including any lesser included  
12 offenses, was not committed by the individual and  
13 issued an order vacating, dismissing or reversing  
14 the conviction and sentence and providing that no  
15 further proceedings can be or will be held  
16 against the individual on any facts and  
17 circumstances alleged in the proceedings which  
18 had resulted in the conviction.

19 3. A claimant shall not be entitled to compensation for any  
20 part of a sentence in prison during which the claimant was also  
21 serving a concurrent sentence for a crime not covered by this  
22 subsection.

23 4. The total liability of the state and its political  
24 subdivisions on any claim within the scope of The Governmental Tort

1 Claims Act arising out of wrongful criminal felony conviction  
2 resulting in imprisonment shall not exceed One Hundred Seventy-five  
3 Thousand Dollars (\$175,000.00).

4 5. The provisions of this subsection shall apply to convictions  
5 occurring on or before ~~the effective date of this act~~ May 28, 2003,  
6 as well as convictions occurring after ~~the effective date of this~~  
7 ~~act~~ May 28, 2003. If a court of competent jurisdiction finds that  
8 retroactive application of this subsection is unconstitutional, the  
9 prospective application of this subsection shall remain valid.

10 C. No award for damages in an action or any claim against the  
11 state or a political subdivision shall include punitive or exemplary  
12 damages.

13 D. When the amount awarded to or settled upon multiple  
14 claimants exceeds the limitations of this section, any party may  
15 apply to the district court which has jurisdiction of the cause to  
16 apportion to each claimant the claimant's proper share of the total  
17 amount as limited herein. The share apportioned to each claimant  
18 shall be in the proportion that the ratio of the award or settlement  
19 made to him bears to the aggregate awards and settlements for all  
20 claims against the state or its political subdivisions arising out  
21 of the occurrence. When the amount of the aggregate losses  
22 presented by a single claimant exceeds the limits of paragraph 1 or  
23 2 of subsection A of this section, each person suffering a loss  
24 shall be entitled to that person's proportionate share.

1 E. The total liability of resident physicians and interns while  
2 participating in a graduate medical education program of the  
3 University of Oklahoma College of Medicine, its affiliated  
4 institutions and the Oklahoma College of Osteopathic Medicine and  
5 Surgery shall not exceed One Hundred Thousand Dollars (\$100,000.00).

6 F. The state or a political subdivision may petition the court  
7 that all parties and actions arising out of a single accident or  
8 occurrence shall be joined as provided by law, and upon order of the  
9 court the proceedings upon good cause shown shall be continued for a  
10 reasonable time or until such joinder has been completed. The state  
11 or political subdivision shall be allowed to interplead in any  
12 action which may impose on it any duty or liability pursuant to this  
13 act.

14 G. The liability of the state or political subdivision under  
15 The Governmental Tort Claims Act shall be several from that of any  
16 other person or entity, and the state or political subdivision shall  
17 only be liable for that percentage of total damages that corresponds  
18 to its percentage of total negligence. Nothing in this section  
19 shall be construed as increasing the liability limits imposed on the  
20 state or political subdivision under The Governmental Tort Claims  
21 Act.

22 H. Any hospital operated by a public trust pursuant to either  
23 division (1) or (2) of subparagraph d of paragraph 11 of Section 152  
24 of this title shall be liable for damages for malpractice to the

1 extent of the hospital's malpractice liability coverage required by  
2 Section 2 of this act.

3 SECTION 4. Section 1 of this act shall become effective  
4 November 1, 2011.

5 SECTION 5. Sections 2 and 3 of this act shall become effective  
6 January 1, 2013."

7 Passed the Senate the 25th day of April, 2011.

8  
9 \_\_\_\_\_  
10 Presiding Officer of the Senate

11 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
12 2011.

13  
14 \_\_\_\_\_  
15 Presiding Officer of the House  
16 of Representatives

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24



1 ENGROSSED HOUSE  
2 BILL NO. 1995

By: Sullivan of the House

3 and

4 Sykes of the Senate

5  
6  
7 An Act relating to The Governmental Tort Claims Act;  
8 requiring certain hospitals to maintain liability  
9 insurance coverage; specifying minimum amount of  
10 coverage required; amending 51 O.S. 2001, Section  
11 154, as amended by Section 2, Chapter 304, O.S.L.  
12 2003 (51 O.S. Supp. 2010, Section 154), which relates  
13 to extent of liability; providing extent of liability  
14 for certain hospitals; providing for codification;  
15 and providing an effective date.

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

17 SECTION 6. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 154.1 of Title 51, unless there  
19 is created a duplication in numbering, reads as follows:

20 Any hospital operated by a public trust pursuant to either  
21 division (1) or (2) of subparagraph d of paragraph 11 of Section 152  
22 of Title 51 of the Oklahoma Statutes shall maintain health care  
23 malpractice liability insurance coverage with available limits of at  
24 least One Million Dollars (\$1,000,000.00) per claim with an annual  
aggregate of at least Three Million Dollars (\$3,000,000.00).

1 SECTION 7. AMENDATORY 51 O.S. 2001, Section 154, as  
2 amended by Section 2, Chapter 304, O.S.L. 2003 (51 O.S. Supp. 2010,  
3 Section 154), is amended to read as follows:

4 Section 154. A. The total liability of the state and its  
5 political subdivisions on claims within the scope of The  
6 Governmental Tort Claims Act, arising out of an accident or  
7 occurrence happening after ~~the effective date of this act~~ June 6,  
8 2000, Section 151 et seq. of this title, shall not exceed:

9 1. Twenty-five Thousand Dollars (\$25,000.00) for any claim or  
10 to any claimant who has more than one claim for loss of property  
11 arising out of a single act, accident, or occurrence;

12 2. Except as otherwise provided in this paragraph, One Hundred  
13 Twenty-five Thousand Dollars (\$125,000.00) to any claimant for a  
14 claim for any other loss arising out of a single act, accident, or  
15 occurrence. The limit of liability for the state or any city or  
16 county with a population of three hundred thousand (300,000) or more  
17 according to the latest federal Decennial Census shall not exceed  
18 One Hundred Seventy-five Thousand Dollars (\$175,000.00). Except  
19 however, the limits of said liability for the University Hospitals  
20 and State Mental Health Hospitals operated by the Department of  
21 Mental Health and Substance Abuse Services for claims arising from  
22 medical negligence shall be Two Hundred Thousand Dollars  
23 (\$200,000.00). For claims arising from medical negligence by any  
24 licensed physician, osteopathic physician or certified nurse-midwife

1 rendering prenatal, delivery or infant care services from September  
2 1, 1991, through June 30, 1996, pursuant to a contract authorized by  
3 subsection B of Section 1-106 of Title 63 of the Oklahoma Statutes  
4 and in conformity with the requirements of Section 1-233 of Title 63  
5 of the Oklahoma Statutes, the limits of said liability shall be Two  
6 Hundred Thousand Dollars (\$200,000.00); or

7 3. One Million Dollars (\$1,000,000.00) for any number of claims  
8 arising out of a single occurrence or accident.

9 B. 1. Beginning on ~~the effective date of this act~~ May 28,  
10 2003, claims shall be allowed for wrongful criminal felony  
11 conviction resulting in imprisonment if the claimant has received a  
12 full pardon on the basis of a written finding by the Governor of  
13 actual innocence for the crime for which the claimant was sentenced  
14 or has been granted judicial relief absolving the claimant of guilt  
15 on the basis of actual innocence of the crime for which the claimant  
16 was sentenced. The Governor or the court shall specifically state,  
17 in the pardon or order, the evidence or basis on which the finding  
18 of actual innocence is based.

19 2. As used in paragraph 1 of this subsection, for a claimant to  
20 recover based on "actual innocence", the individual must meet the  
21 following criteria:

22 a. the individual was charged, by indictment or  
23 information, with the commission of a public offense  
24 classified as a felony,

- 1           b.    the individual did not plead guilty to the offense  
2                    charged, or to any lesser included offense, but was  
3                    convicted of the offense,
- 4           c.    the individual was sentenced to incarceration for a  
5                    term of imprisonment as a result of the conviction,
- 6           d.    the individual was imprisoned solely on the basis of  
7                    the conviction for the offense, and
- 8           e.    (1)  in the case of a pardon, a determination was made  
9                    by either the Pardon and Parole Board or the  
10                   Governor that the offense for which the  
11                   individual was convicted, sentenced and  
12                   imprisoned, including any lesser offenses, was  
13                   not committed by the individual, or
- 14                (2)  in the case of judicial relief, a court of  
15                   competent jurisdiction found by clear and  
16                   convincing evidence that the offense for which  
17                   the individual was convicted, sentenced and  
18                   imprisoned, including any lesser included  
19                   offenses, was not committed by the individual and  
20                   issued an order vacating, dismissing or reversing  
21                   the conviction and sentence and providing that no  
22                   further proceedings can be or will be held  
23                   against the individual on any facts and  
24

1                   circumstances alleged in the proceedings which  
2                   had resulted in the conviction.

3           3. A claimant shall not be entitled to compensation for any  
4 part of a sentence in prison during which the claimant was also  
5 serving a concurrent sentence for a crime not covered by this  
6 subsection.

7           4. The total liability of the state and its political  
8 subdivisions on any claim within the scope of The Governmental Tort  
9 Claims Act arising out of wrongful criminal felony conviction  
10 resulting in imprisonment shall not exceed One Hundred Seventy-five  
11 Thousand Dollars (\$175,000.00).

12           5. The provisions of this subsection shall apply to convictions  
13 occurring on or before the effective date of this act as well as  
14 convictions occurring after the effective date of this act. If a  
15 court of competent jurisdiction finds that retroactive application  
16 of this subsection is unconstitutional, the prospective application  
17 of this subsection shall remain valid.

18           C. No award for damages in an action or any claim against the  
19 state or a political subdivision shall include punitive or exemplary  
20 damages.

21           D. When the amount awarded to or settled upon multiple  
22 claimants exceeds the limitations of this section, any party may  
23 apply to the district court which has jurisdiction of the cause to  
24 apportion to each claimant the claimant's proper share of the total

1 amount as limited herein. The share apportioned to each claimant  
2 shall be in the proportion that the ratio of the award or settlement  
3 made to him bears to the aggregate awards and settlements for all  
4 claims against the state or its political subdivisions arising out  
5 of the occurrence. When the amount of the aggregate losses  
6 presented by a single claimant exceeds the limits of paragraph 1 or  
7 2 of subsection A of this section, each person suffering a loss  
8 shall be entitled to that person's proportionate share.

9 E. The total liability of resident physicians and interns while  
10 participating in a graduate medical education program of the  
11 University of Oklahoma College of Medicine, its affiliated  
12 institutions and the Oklahoma College of Osteopathic Medicine and  
13 Surgery shall not exceed One Hundred Thousand Dollars (\$100,000.00).

14 F. The state or a political subdivision may petition the court  
15 that all parties and actions arising out of a single accident or  
16 occurrence shall be joined as provided by law, and upon order of the  
17 court the proceedings upon good cause shown shall be continued for a  
18 reasonable time or until such joinder has been completed. The state  
19 or political subdivision shall be allowed to interplead in any  
20 action which may impose on it any duty or liability pursuant to this  
21 act.

22 G. The liability of the state or political subdivision under  
23 The Governmental Tort Claims Act shall be several from that of any  
24 other person or entity, and the state or political subdivision shall

1 only be liable for that percentage of total damages that corresponds  
2 to its percentage of total negligence. Nothing in this section  
3 shall be construed as increasing the liability limits imposed on the  
4 state or political subdivision under The Governmental Tort Claims  
5 Act.

6 H. Any hospital operated by a public trust pursuant to either  
7 division (1) or (2) of subparagraph d of paragraph 11 of Section 152  
8 of this title shall be liable for damages for malpractice to the  
9 extent of the hospital's malpractice liability coverage required by  
10 Section 1 of this act.

11 SECTION 8. This act shall become effective November 1, 2011.

12 Passed the House of Representatives the 7th day of March, 2011.

13  
14  
15 \_\_\_\_\_  
16 Presiding Officer of the House of  
Representatives

17 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2011.

18  
19  
20 \_\_\_\_\_  
21 Presiding Officer of the Senate