

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1995

By: Sullivan

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5
6 AS INTRODUCED

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 1. 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 2. 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
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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 3. This act shall become effective November 1, 2011.

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