

1 **SENATE FLOOR VERSION**

2 February 18, 2014

3 SENATE BILL NO. 1503

By: Stanislawski of the Senate

4 and

5 Grau of the House

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7
8 An Act relating to the Governmental Tort Claims Act;
9 amending 51 O.S. 2011, Sections 152 and 155, as last
10 amended by Section 34, Chapter 15, O.S.L. 2013 (51
11 O.S. Supp. 2013, Section 155), which relate to
12 definitions and exemptions from liability; modifying
13 definition; modifying certain exemptions; and
14 providing an effective date.

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

16 SECTION 1. AMENDATORY 51 O.S. 2011, Section 152, is
17 amended to read as follows:

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

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

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

24 3. "Charitable health care provider" means a person who is
licensed, certified, or otherwise authorized by the laws of this

1 state to administer health care in the ordinary course of
2 business or the practice of a profession and who provides care
3 to a medically indigent person, as defined in paragraph 8 of
4 this section, with no expectation of or acceptance of
5 compensation of any kind;

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

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

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

22 b. the individual actually involved in the accident or
23 occurrence who suffers a loss, provided that the
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1 individual shall aggregate in the claim the losses of
2 all other persons which are derivative of the loss, or
3 c. in the case of death, an administrator, special
4 administrator or a personal representative who shall
5 aggregate in the claim all losses of all persons which
6 are derivative of the death;

7 6. "Community health care provider" means:

8 a. a health care provider who volunteers services at a
9 community health center that has been deemed by the
10 U.S. Department of Health and Human Services as a
11 federally qualified health center as defined by 42
12 U.S.C., Section 1396d(1)(2)(B),

13 b. a health provider who provides services to an
14 organization that has been deemed a federally
15 qualified look-alike community health center, and

16 c. a health care provider who provides services to a
17 community health center that has made application to
18 the U.S. Department of Health and Human Services for
19 approval and deeming as a federally qualified look-
20 alike community health center in compliance with
21 federal application guidance, and has received
22 comments from the U.S. Department of Health and Human
23 Services as to the status of such application with the
24 established intent of resubmitting a modified

1 application, or, if denied, a new application, no
2 later than six (6) months from the date of the
3 official notification from the U.S. Department of
4 Health and Human Services requiring resubmission of a
5 new application;

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

10 a. Employee also includes:

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

18 (2) from September 1, 1991, through June 30, 1996,
19 licensed physicians, licensed osteopathic
20 physicians and certified nurse-midwives providing
21 prenatal, delivery or infant care services to
22 State Department of Health clients pursuant to a
23 contract entered into with the State Department
24 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 of
9 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
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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
24 medical care to inmates or detainees in the

1 custody or control of law enforcement agencies,
2 and

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

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

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

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

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

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

8 11. "Political subdivision" means:

9 a. a municipality,

10 b. a school district, including, but not limited to, a
11 technology center school district established pursuant
12 to Section 4410, 4411, 4420 or 4420.1 of Title 70 of
13 the Oklahoma Statutes,

14 c. a county,

15 d. a public trust where the sole beneficiary or
16 beneficiaries are a city, town, school district or
17 county. For purposes of The Governmental Tort Claims
18 Act, a public trust shall include:

19 (1) a municipal hospital created pursuant to Sections
20 30-101 through 30-109 of Title 11 of the Oklahoma
21 Statutes, a county hospital created pursuant to
22 Sections 781 through 796 of Title 19 of the
23 Oklahoma Statutes, or is created pursuant to a
24 joint agreement between such governing

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

10 (2) a public trust created pursuant to Sections 176
11 through 180.4 of Title 60 of the Oklahoma
12 Statutes after January 1, 2009, the primary
13 purpose of which is to own, manage, or operate a
14 public acute care hospital in this state that
15 serves as a teaching hospital for a medical
16 residency program provided by a college of
17 osteopathic medicine and provides care to
18 indigent persons, and

19 (3) a corporation in which all of the capital stock
20 is owned, or a limited liability company in which
21 all of the member interest is owned, by a public
22 trust,
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- 1 e. for the purposes of The Governmental Tort Claims Act
2 only, a housing authority created pursuant to the
3 provisions of the Oklahoma Housing Authority Act,
4 f. for the purposes of The Governmental Tort Claims Act
5 only, corporations organized not for profit pursuant
6 to the provisions of the Oklahoma General Corporation
7 Act for the primary purpose of developing and
8 providing rural water supply and sewage disposal
9 facilities to serve rural residents,
10 g. for the purposes of The Governmental Tort Claims Act
11 only, districts formed pursuant to the Rural Water,
12 Sewer, Gas and Solid Waste Management Districts Act,
13 h. for the purposes of The Governmental Tort Claims Act
14 only, master conservancy districts formed pursuant to
15 the Conservancy Act of Oklahoma,
16 i. for the purposes of The Governmental Tort Claims Act
17 only, a fire protection district created pursuant to
18 the provisions of Section 901.1 et seq. of Title 19 of
19 the Oklahoma Statutes,
20 j. for the purposes of The Governmental Tort Claims Act
21 only, a benevolent or charitable corporate volunteer
22 or full-time fire department for an unincorporated
23 area created pursuant to the provisions of Section 592
24 et seq. of Title 18 of the Oklahoma Statutes,

- 1 k. for purposes of The Governmental Tort Claims Act only,
2 an Emergency Services Provider rendering services
3 within the boundaries of a Supplemental Emergency
4 Services District pursuant to an existing contract
5 between the Emergency Services Provider and the State
6 Department of Health. Provided, however, that the
7 acquisition of commercial liability insurance covering
8 the activities of such Emergency Services Provider
9 performed within the State of Oklahoma shall not
10 operate as a waiver of any of the limitations,
11 immunities or defenses provided for political
12 subdivisions pursuant to the terms of The Governmental
13 Tort Claims Act,
- 14 l. for purposes of The Governmental Tort Claims Act only,
15 a conservation district created pursuant to the
16 provisions of the Conservation District Act,
- 17 m. for purposes of The Governmental Tort Claims Act,
18 districts formed pursuant to the Oklahoma Irrigation
19 District Act,
- 20 n. for purposes of The Governmental Tort Claims Act only,
21 any community action agency established pursuant to
22 Sections 5035 through 5040 of Title 74 of the Oklahoma
23 Statutes,
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1 o. for purposes of The Governmental Tort Claims Act only,
2 any organization that is designated as a youth
3 services agency, pursuant to Section 2-7-306 of Title
4 10A of the Oklahoma Statutes,

5 p. for purposes of The Governmental Tort Claims Act only,
6 any judge presiding over a drug court, as defined by
7 Section 471.1 of Title 22 of the Oklahoma Statutes,

8 q. for purposes of The Governmental Tort Claims Act only,
9 any child-placing agency licensed by this state to
10 place children in foster family homes, and

11 r. a circuit engineering district created pursuant to
12 Section 687.1 of Title 69 of the Oklahoma Statutes,

13 and all their institutions, instrumentalities or agencies;

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

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

1 14. "Tort" means a legal wrong, independent of contract,
2 involving violation of a duty imposed by ~~general~~ common law, the
3 Constitution, statutes, or regulations, or otherwise, resulting in a
4 loss to any person, association or corporation as the proximate
5 result of an act or omission of a political subdivision or the state
6 or an employee acting within the scope of employment.

7 SECTION 2. AMENDATORY 51 O.S. 2011, Section 155, as last
8 amended by Section 34, Chapter 15, O.S.L. 2013 (51 O.S. Supp. 2013,
9 Section 155), is amended to read as follows:

10 Section 155. The state or a political subdivision shall not be
11 liable if a loss or claim results from:

12 1. Legislative functions;

13 2. Judicial, quasi-judicial, or prosecutorial functions, other
14 than claims for wrongful criminal felony conviction resulting in
15 imprisonment provided for in Section 154 of this title;

16 3. Execution or enforcement of the lawful orders of any court;

17 4. Adoption or enforcement of or failure to adopt or enforce a
18 law, whether valid or invalid, including, but not limited to, any
19 statute, charter provision, ordinance, resolution, rule, regulation
20 or written policy;

21 5. Performance of or the failure to exercise or perform any act
22 or service which is in the discretion of the state or political
23 subdivision or its employees;

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1 6. Civil disobedience, riot, insurrection or rebellion or the
2 failure to provide, or the method of providing, police, law
3 enforcement or fire protection;

4 7. Any claim based on the theory of attractive nuisance;

5 8. Snow or ice conditions or temporary or natural conditions on
6 any public way or other public place due to weather conditions,
7 unless the condition is affirmatively caused by the negligent act of
8 the state or a political subdivision;

9 9. Entry upon any property where that entry is expressly or
10 implied authorized by law;

11 10. Natural conditions of property of the state or political
12 subdivision;

13 11. Assessment or collection of taxes or special assessments,
14 license or registration fees, or other fees or charges imposed by
15 law;

16 12. Licensing powers or functions including, but not limited
17 to, the issuance, denial, suspension or revocation of or failure or
18 refusal to issue, deny, suspend or revoke any permit, license,
19 certificate, approval, order or similar authority;

20 13. Inspection powers or functions, including failure to make
21 an inspection, review or approval, or making an inadequate or
22 negligent inspection, review or approval of any property, real or
23 personal, to determine whether the property complies with or
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1 violates any law or contains a hazard to health or safety, or fails
2 to conform to a recognized standard;

3 14. Any loss to any person covered by any workers' compensation
4 act or any employer's liability act;

5 15. Absence, condition, location or malfunction of any traffic
6 or road sign, signal or warning device unless the absence,
7 condition, location or malfunction is not corrected by the state or
8 political subdivision responsible within a reasonable time after
9 actual or constructive notice or the removal or destruction of such
10 signs, signals or warning devices by third parties, action of
11 weather elements or as a result of traffic collision except on
12 failure of the state or political subdivision to correct the same
13 within a reasonable time after actual or constructive notice.
14 Nothing herein shall give rise to liability arising from the failure
15 of the state or any political subdivision to initially place any of
16 the above signs, signals or warning devices. The signs, signals and
17 warning devices referred to herein are those used in connection with
18 hazards normally connected with the use of roadways or public ways
19 and do not apply to the duty to warn of special defects such as
20 excavations or roadway obstructions;

21 16. Any claim which is limited or barred by any other law;

22 17. Misrepresentation, if unintentional;

23 18. An act or omission of an independent contractor or
24 consultant or his or her employees, agents, subcontractors or

1 suppliers or of a person other than an employee of the state or
2 political subdivision at the time the act or omission occurred;

3 19. Theft by a third person of money in the custody of an
4 employee unless the loss was sustained because of the negligence or
5 wrongful act or omission of the employee;

6 20. Participation in or practice for any interscholastic or
7 other athletic contest sponsored or conducted by or on the property
8 of the state or a political subdivision;

9 21. Participation in any activity approved by a local board of
10 education and held within a building or on the grounds of the school
11 district served by that local board of education before or after
12 normal school hours or on weekends;

13 22. Use of indoor or outdoor school property and facilities
14 made available for public recreation before or after normal school
15 hours or on weekends or school vacations, except those claims
16 resulting from willful and wanton acts of negligence. For purposes
17 of this paragraph:

18 a. "public" includes, but is not limited to, students
19 during nonschool hours and school staff when not
20 working as employees of the school, and

21 b. "recreation" means any indoor or outdoor physical
22 activity, either organized or unorganized, undertaken
23 for exercise, relaxation, diversion, sport or
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1 pleasure, and that is not otherwise covered by
2 paragraph 20 or 21 of this section;

3 23. Any court-ordered or Department of Corrections approved
4 work release program; provided, however, this provision shall not
5 apply to claims from individuals not in the custody of the
6 Department of Corrections based on accidents involving motor
7 vehicles owned or operated by the Department of Corrections;

8 24. The activities of the National Guard, the militia or other
9 military organization administered by the Military Department of the
10 state when on duty pursuant to the lawful orders of competent
11 authority:

- 12 a. in an effort to quell a riot,
- 13 b. in response to a natural disaster or military attack,
- 14 or
- 15 c. if participating in a military mentor program ordered
16 by the court;

17 25. Provision, equipping, operation or maintenance of any
18 prison, jail or correctional facility, or injuries resulting from
19 the parole or escape of a prisoner or injuries by a prisoner to any
20 other prisoner; provided, however, this provision shall not apply to
21 claims for the use of excessive force or to claims from individuals
22 not in the custody of the Department of Corrections based on
23 accidents involving motor vehicles owned or operated by the
24 Department of Corrections;

1 26. Provision, equipping, operation or maintenance of any
2 juvenile detention facility, or injuries resulting from the escape
3 of a juvenile detainee, or injuries by a juvenile detainee to any
4 other juvenile detainee; provided, however, this provision shall not
5 apply to claims for the use of excessive force;

6 27. Any claim or action based on the theory of manufacturer's
7 products liability or breach of warranty, either expressed or
8 implied;

9 28. Any claim or action based on the theory of indemnification
10 or subrogation;

11 29. Any claim based upon an act or omission of an employee in
12 the placement of children;

13 30. Acts or omissions done in conformance with then current
14 recognized standards;

15 31. Maintenance of the state highway system or any portion
16 thereof unless the claimant presents evidence which establishes
17 either that the state failed to warn of the unsafe condition or that
18 the loss would not have occurred but for a negligent affirmative act
19 of the state;

20 32. Any confirmation of the existence or nonexistence of any
21 effective financing statement on file in the office of the Secretary
22 of State made in good faith by an employee of the office of the
23 Secretary of State as required by the provisions of Section 1-9-
24 320.6 of Title 12A of the Oklahoma Statutes;

1 33. Any court-ordered community sentence;

2 34. Remedial action and any subsequent related maintenance of
3 property pursuant to and in compliance with an authorized
4 environmental remediation program, order, or requirement of a
5 federal or state environmental agency;

6 35. The use of necessary and reasonable force by a school
7 district employee to control and discipline a student during the
8 time the student is in attendance or in transit to and from the
9 school, or any other function authorized by the school district;

10 36. Actions taken in good faith by a school district employee
11 for the out-of-school suspension of a student pursuant to applicable
12 Oklahoma Statutes; or

13 37. Use of a public facility opened to the general public
14 during an emergency.

15 SECTION 3. This act shall become effective November 1, 2014.

16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
17 February 18, 2014 - DO PASS
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