

1 ENGROSSED SENATE
2 BILL NO. 1311

By: Howard of the Senate
and
Kannady of the House

3
4
5
6 An Act relating to The Governmental Tort Claims Act;
7 amending 51 O.S. 2021, Sections 152, as last amended
8 by Section 1, Chapter 241, O.S.L. 2021, and 156,
9 which relate to definitions and presentation of
10 claim; modifying definition; clarifying language;
11 requiring certain information or documentation to
12 support claim of certain loss; providing for
13 invalidation of notice upon refusal to furnish
14 certain information or documentation; and providing
15 an effective date.

16
17
18
19
20
21
22
23
24
BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 51 O.S. 2021, Section 152, as last
amended by Section 1, Chapter 241, O.S.L. 2021, 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

1 state to administer health care in the ordinary course of business
2 or the practice of a profession and who provides care to a medically
3 indigent person, as defined in paragraph 9 of this section, with no
4 expectation of or acceptance of compensation of any kind;

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

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

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

21 b. the individual actually involved in the accident or
22 occurrence who suffers a loss, provided that the
23 individual shall aggregate in the claim the losses of
24 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
24 later than six (6) months from the date of the

1 official notification from the U.S. Department of
2 Health and Human Services requiring resubmission of a
3 new application;

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

8 a. Employee also includes:

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

16 (2) from September 1, 1991, through June 30, 1996,
17 licensed physicians, licensed osteopathic
18 physicians and certified nurse-midwives providing
19 prenatal, delivery or infant care services to
20 State Department of Health clients pursuant to a
21 contract entered into with the State Department
22 of Health in accordance with paragraph 3 of
23 subsection B of Section 1-106 of Title 63 of the
24 Oklahoma Statutes but only insofar as services

1 authorized by and in conformity with the terms of
2 the contract and the requirements of Section 1-
3 233 of Title 63 of the Oklahoma Statutes, and
4 (3) any volunteer, full-time or part-time firefighter
5 when performing duties for a fire department
6 provided for in subparagraph j of paragraph 11 of
7 this section.

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

- 12 (1) physicians acting in an administrative capacity,
13 (2) resident physicians and resident interns
14 participating in a graduate medical education
15 program of the University of Oklahoma Health
16 Sciences Center, the College of Osteopathic
17 Medicine of Oklahoma State University, or the
18 Department of Mental Health and Substance Abuse
19 Services,
20 (3) faculty members and staff of the University of
21 Oklahoma Health Sciences Center and the College
22 of Osteopathic Medicine of Oklahoma State
23 University, while engaged in teaching duties,
24

1 (4) physicians who practice medicine or act in an
2 administrative capacity as an employee of an
3 agency of the State of Oklahoma,

4 (5) physicians who provide medical care to inmates
5 pursuant to a contract with the Department of
6 Corrections,

7 (6) any person who is licensed to practice medicine
8 pursuant to Title 59 of the Oklahoma Statutes,
9 who is under an administrative professional
10 services contract with the Oklahoma Health Care
11 Authority under the auspices of the Oklahoma
12 Health Care Authority Chief Medical Officer, and
13 who is limited to performing administrative
14 duties such as professional guidance for medical
15 reviews, reimbursement rates, service
16 utilization, health care delivery and benefit
17 design for the Oklahoma Health Care Authority,
18 only while acting within the scope of such
19 contract,

20 (7) licensed medical professionals under contract
21 with city, county, or state entities who provide
22 medical care to inmates or detainees in the
23 custody or control of law enforcement agencies,
24

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

9 (9) licensed mental health professionals as defined
10 in Sections 1-103 and 5-502 of Title 43A of the
11 Oklahoma Statutes, who are providing mental
12 health or substance abuse treatment services
13 under a professional services contract with the
14 Department of Mental Health and Substance Abuse
15 Services and are providing such treatment
16 services at a state-operated facility.

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

23 c. For the purposes of The Governmental Tort Claims Act,
24 employee shall include independent contractors and

1 employees of independent contractors while actively
2 engaged in the transport of individuals in need of
3 initial assessment, emergency detention, or protective
4 custody as authorized by Section 1-110 of Title 43A of
5 the Oklahoma Statutes.

6 d. Except as provided in subparagraph b of this
7 paragraph, in no event shall the state be held liable
8 for the tortious conduct of any physician, resident
9 physician or intern while practicing medicine or
10 providing medical treatment to patients;

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

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

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

20 11. "Political subdivision" means:

21 a. a municipality,

22 b. a school district, including, but not limited to, a
23 technology center school district established pursuant
24

1 to Section 4410, 4411, 4420 or 4420.1 of Title 70 of
2 the Oklahoma Statutes,

3 c. a county,

4 d. a public trust where the sole beneficiary or
5 beneficiaries are a city, town, school district or
6 county. For purposes of The Governmental Tort Claims
7 Act, a public trust shall include:

8 (1) a municipal hospital created pursuant to Sections
9 30-101 through 30-109 of Title 11 of the Oklahoma
10 Statutes, a county hospital created pursuant to
11 Sections 781 through 796 of Title 19 of the
12 Oklahoma Statutes, or is created pursuant to a
13 joint agreement between such governing
14 authorities, that is operated for the public
15 benefit by a public trust created pursuant to
16 Sections 176 through 180.4 of Title 60 of the
17 Oklahoma Statutes and managed by a governing
18 board appointed or elected by the municipality,
19 county, or both, who exercises control of the
20 hospital, subject to the approval of the
21 governing body of the municipality, county, or
22 both,

23 (2) a public trust created pursuant to Sections 176
24 through 180.4 of Title 60 of the Oklahoma

1 Statutes after January 1, 2009, the primary
2 purpose of which is to own, manage, or operate a
3 public acute care hospital in this state that
4 serves as a teaching hospital for a medical
5 residency program provided by a college of
6 osteopathic medicine and provides care to
7 indigent persons, and

8 (3) a corporation in which all of the capital stock
9 is owned, or a limited liability company in which
10 all of the member interest is owned, by a public
11 trust,

12 e. for the purposes of The Governmental Tort Claims Act
13 only, a housing authority created pursuant to the
14 provisions of the Oklahoma Housing ~~Authority~~
15 Authorities Act,

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

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

- 1 h. for the purposes of The Governmental Tort Claims Act
2 only, master conservancy districts formed pursuant to
3 the Conservancy Act of Oklahoma,
- 4 i. for the purposes of The Governmental Tort Claims Act
5 only, a fire protection district created pursuant to
6 the provisions of Section 901.1 et seq. of Title 19 of
7 the Oklahoma Statutes,
- 8 j. for the purposes of The Governmental Tort Claims Act
9 only, a benevolent or charitable corporate volunteer
10 or full-time fire department for an unincorporated
11 area created pursuant to the provisions of Section 592
12 et seq. of Title 18 of the Oklahoma Statutes,
- 13 k. for purposes of The Governmental Tort Claims Act only,
14 an Emergency Services Provider rendering services
15 within the boundaries of a Supplemental Emergency
16 Services District pursuant to an existing contract
17 between the Emergency Services Provider and the State
18 Department of Health. Provided, however, that the
19 acquisition of commercial liability insurance covering
20 the activities of such Emergency Services Provider
21 performed within ~~the State of Oklahoma~~ this state
22 shall not operate as a waiver of any of the
23 limitations, immunities or defenses provided for
24

1 political subdivisions pursuant to the terms of The
2 Governmental Tort Claims Act,

3 l. for purposes of The Governmental Tort Claims Act only,
4 a conservation district created pursuant to the
5 provisions of the Conservation District Act,

6 m. for purposes of The Governmental Tort Claims Act,
7 districts formed pursuant to the Oklahoma Irrigation
8 District Act,

9 n. for purposes of The Governmental Tort Claims Act only,
10 any community action agency established pursuant to
11 Sections 5035 through 5040 of Title 74 of the Oklahoma
12 Statutes,

13 o. for purposes of The Governmental Tort Claims Act only,
14 any organization that is designated as a youth
15 services agency, pursuant to Section 2-7-306 of Title
16 10A of the Oklahoma Statutes,

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

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

1 r. a circuit engineering district created pursuant to
2 Section 687.1 of Title 69 of the Oklahoma Statutes,
3 and
4 s. for purposes of The Governmental Tort Claims Act only,
5 a regional transportation authority created pursuant
6 to Section 1370.7 of Title 68 of the Oklahoma Statutes
7 including its contract operator and any railroad
8 operating in interstate commerce that sells a property
9 interest or provides services to a regional
10 transportation authority or allows the authority to
11 use the property or tracks of the railroad for the
12 provision of public passenger rail service to the
13 extent claims against the contract operator or
14 railroad arise out of or are related to or in
15 connection with such property interest, services or
16 operation of the public passenger rail service.
17 Provided, the acquisition of commercial liability
18 insurance to cover the activities of the regional
19 transportation authority, contract operator or
20 railroad shall not operate as a waiver of any
21 liabilities, immunities or defenses provided pursuant
22 to the provisions of the Governmental Tort Claims Act,
23 and all their institutions, instrumentalities or agencies;

24

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, statute, the
14 Constitution of the State of Oklahoma, or otherwise, resulting in a
15 loss to any person, association or corporation as the proximate
16 result of an act or omission of a political subdivision or the state
17 or an employee acting within the scope of employment; provided,
18 however, a tort shall not include a claim for inverse condemnation.

19 SECTION 2. AMENDATORY 51 O.S. 2021, Section 156, is
20 amended to read as follows:

21 Section 156. A. Any person having a claim against the state or
22 a political subdivision within the scope of Section 151 et seq. of
23 this title shall present a claim to the state or political
24

1 subdivision for any appropriate relief including the award of money
2 damages.

3 B. Except as provided in subsection H of this section, and not
4 withstanding any other provision of law, claims against the state or
5 a political subdivision are to be presented within one (1) year of
6 the date the loss occurs. A claim against the state or a political
7 subdivision shall be forever barred unless notice thereof is
8 presented within one (1) year after the loss occurs.

9 C. A claim against the state shall be in writing and filed with
10 the Office of the Risk Management Administrator of the Office of
11 Management and Enterprise Services who shall immediately notify the
12 Attorney General and the agency concerned and conduct a diligent
13 investigation of the validity of the claim within the time specified
14 for approval or denial of claims by Section 157 of this title. A
15 claim may be filed by certified mail with return receipt requested.
16 A claim which is mailed shall be considered filed upon receipt by
17 the Office of the Risk Management Administrator.

18 D. A claim against a political subdivision shall be in writing
19 and filed with the office of the clerk of the governing body.

20 E. The written notice of claim to the state or a political
21 subdivision shall state the date, time, place and circumstances of
22 the claim, the identity of the state agency or agencies involved,
23 the amount of compensation or other relief demanded, the name,
24 address and telephone number of the claimant, the name, address and

1 telephone number of any agent authorized to settle the claim, and
2 any and all other information required to meet the reporting
3 requirements of the Medicare Secondary Payer Mandatory Reporting
4 Provisions in Section 111 of the Medicare, Medicaid and SCHIP
5 Extension Act of 2007 (MMSEA) through the Centers for Medicare &
6 Medicaid Services (CMS). Failure to state either the date, time,
7 place and circumstances and amount of compensation demanded, or any
8 information requested to comply with the reporting claims to CMS
9 under MMSEA shall not invalidate the notice unless the claimant
10 declines or refuses to furnish such information after demand by the
11 state or political subdivision. The time for giving written notice
12 of claim pursuant to the provisions of this section does not include
13 the time during which the person injured is unable due to
14 incapacitation from the injury to give such notice, not exceeding
15 ninety (90) days of incapacity.

16 F. If the written notice of claim demands relief for personal
17 injuries, the claimant shall provide the name and address of all
18 health care providers who treated the claimant since the date and
19 time of the circumstances claimant set forth in the notice of claim
20 required by subsection E of this section and the date of the notice
21 required by subsection E of this section. For each health care
22 provider required to be identified, the claimant shall provide a
23 HIPPA compliant authorization for release of health information.
24 Failure to provide the name and address of all health care providers

1 and the HIPPA compliant authorization required by this subsection
2 shall not invalidate the notice required by subsection E of this
3 section unless the claimant declines or refuses to furnish such
4 information after demanded by the state or political subdivision.

5 G. If the written notice of claim demands relief for loss of
6 earnings, the claimant shall provide the documentation of the loss
7 of earnings since the date and time of the circumstances claimant
8 set forth in the notice of claim required by subsection E of this
9 section and the date of the notice required by subsection E of this
10 section. Failure to provide the documentation required by this
11 subsection shall not invalidate the notice required by subsection E
12 of this section unless claimant declines or refuses to furnish such
13 information after demanded by the state or political subdivision.

14 H. If the written notice of claim demands relief for losses of
15 real or personal property, the claimant shall provide the amount of
16 the property loss claimed, the method used to calculate the amount
17 of loss, documentation relied upon in determining the amount of
18 loss, and proof of the claimant's ownership of property. Failure to
19 provide the documentation required by this subsection shall not
20 invalidate the notice required by subsection E of this section
21 unless claimant declines or refuses to furnish such information
22 after demanded by the state or political subdivision.

23 I. When the claim is one for death by wrongful act or omission,
24 notice may be presented by the personal representative within one

1 (1) year after the death occurs. If the person for whose death the
2 claim is made has presented notice that would have been sufficient
3 had he lived, an action for wrongful death may be brought without
4 any additional notice.

5 ~~G.~~ J. Claims and suits against resident physicians or interns
6 shall be made in accordance with the provisions of Titles 12 and 76
7 of the Oklahoma Statutes.

8 ~~H.~~ K. For purposes of claims based on wrongful felony
9 conviction resulting in imprisonment provided for in Section 154 of
10 this title, loss occurs on the date that the claimant receives a
11 pardon based on actual innocence from the Governor or the date that
12 the claimant receives judicial relief absolving the claimant of
13 guilt based on actual innocence; provided, for persons whose basis
14 for a claim occurred prior to the effective date of this act, the
15 claim must be submitted within one (1) year after the effective date
16 of this act.

17 SECTION 3. This act shall become effective November 1, 2022.
18
19
20
21
22
23
24

