

1 ENGROSSED SENATE  
2 BILL NO. 28

By: Bergstrom of the Senate

3 and

4 West (Josh) of the House

5  
6 An Act relating to The Governmental Tort Claims Act;  
7 amending 51 O.S. 2011, Section 152, as last amended  
8 by Section 1, Chapter 233, O.S.L. 2018 (51 O.S. Supp.  
9 2020, Section 152), which relates to definitions;  
10 modifying definition; conforming language; updating  
11 statutory reference; and providing an effective date.

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

13 SECTION 1. AMENDATORY 51 O.S. 2011, Section 152, as last  
14 amended by Section 1, Chapter 233, O.S.L. 2018 (51 O.S. Supp. 2020,  
15 Section 152), is amended to read as follows:

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

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

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

22 3. "Charitable health care provider" means a person who is  
23 licensed, certified, or otherwise authorized by the laws of this  
24 state to administer health care in the ordinary course of business  
or the practice of a profession and who provides care to a medically

1 indigent person, as defined in paragraph 9 of this section, with no  
2 expectation of or acceptance of 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 The Governmental Tort Claims Act to recover money from the state or  
6 political subdivision as compensation for an act or omission of a  
7 political subdivision or 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

23 c. in the case of death, an administrator, special  
24 administrator or a personal representative who shall

1 aggregate in the claim all losses of all persons which  
2 are derivative of the death;

3 6. "Community health care provider" means:

- 4 a. a health care provider who volunteers services at a  
5 community health center that has been deemed by the  
6 U.S. Department of Health and Human Services as a  
7 federally qualified health center as defined by 42  
8 U.S.C., Section 1396d(1)(2)(B),
- 9 b. a health provider who provides services to an  
10 organization that has been deemed a federally  
11 qualified look-alike community health center, and
- 12 c. a health care provider who provides services to a  
13 community health center that has made application to  
14 the U.S. Department of Health and Human Services for  
15 approval and deeming as a federally qualified look-  
16 alike community health center in compliance with  
17 federal application guidance, and has received  
18 comments from the U.S. Department of Health and Human  
19 Services as to the status of such application with the  
20 established intent of resubmitting a modified  
21 application, or, if denied, a new application, no  
22 later than six (6) months from the date of the  
23 official notification from the U.S. Department of  
24

1 Health and Human Services requiring resubmission of a  
2 new application;

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

7 a. Employee also includes:

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

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

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

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

11 (1) physicians acting in an administrative capacity,

12 (2) resident physicians and resident interns  
13 participating in a graduate medical education  
14 program of the University of Oklahoma Health  
15 Sciences Center, the College of Osteopathic  
16 Medicine of Oklahoma State University, or the  
17 Department of Mental Health and Substance Abuse  
18 Services,

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

23 c. Except as provided in subparagraph b of this  
24 paragraph, in no event shall the state be held liable

1 for the tortious conduct of any physician, resident  
2 physician or intern while practicing medicine or  
3 providing medical treatment to patients;

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

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

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

13 11. "Political subdivision" means:

14 a. a municipality,

15 b. a school district, including, but not limited to, a  
16 technology center school district established pursuant  
17 to Section 4410, 4411, 4420 or 4420.1 of Title 70 of  
18 the Oklahoma Statutes,

19 c. a county,

20 d. a public trust where the sole beneficiary or  
21 beneficiaries are a city, town, school district or  
22 county. For purposes of The Governmental Tort Claims  
23 Act, a public trust shall include:  
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1 (1) a municipal hospital created pursuant to Sections  
2 30-101 through 30-109 of Title 11 of the Oklahoma  
3 Statutes, a county hospital created pursuant to  
4 Sections 781 through 796 of Title 19 of the  
5 Oklahoma Statutes, or is created pursuant to a  
6 joint agreement between such governing  
7 authorities, that is operated for the public  
8 benefit by a public trust created pursuant to  
9 Sections 176 through 180.4 of Title 60 of the  
10 Oklahoma Statutes and managed by a governing  
11 board appointed or elected by the municipality,  
12 county, or both, who exercises control of the  
13 hospital, subject to the approval of the  
14 governing body of the municipality, county, or  
15 both,

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

1 (3) a corporation in which all of the capital stock  
2 is owned, or a limited liability company in which  
3 all of the member interest is owned, by a public  
4 trust,

5 e. for the purposes of The Governmental Tort Claims Act  
6 only, a housing authority created pursuant to the  
7 provisions of the Oklahoma Housing Authority Act,

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

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

17 h. for the purposes of The Governmental Tort Claims Act  
18 only, master conservancy districts formed pursuant to  
19 the Conservancy Act of Oklahoma,

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

1 n. for purposes of The Governmental Tort Claims Act only,  
2 any community action agency established pursuant to  
3 Sections 5035 through 5040 of Title 74 of the Oklahoma  
4 Statutes,

5 o. for purposes of The Governmental Tort Claims Act only,  
6 any organization that is designated as a youth  
7 services agency, pursuant to Section 2-7-306 of Title  
8 10A of the Oklahoma Statutes,

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

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

15 r. for purposes of The Governmental Tort Claims Act only,  
16 a circuit engineering district created pursuant to  
17 Section 687.1 of Title 69 of the Oklahoma Statutes,  
18 and

19 s. for purposes of The Governmental Tort Claims Act only,  
20 a substate planning district, regional council of  
21 government or other entity created pursuant to Section  
22 1001 et seq. of Title 74 of the Oklahoma Statutes,

23 and all their institutions, instrumentalities or agencies;  
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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.

18       SECTION 2. This act shall become effective November 1, 2021.

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1 Passed the Senate the 2nd day of March, 2021.

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3 \_\_\_\_\_  
4 Presiding Officer of the Senate

5 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
6 2021.

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8 \_\_\_\_\_  
9 Presiding Officer of the House  
10 of Representatives