

STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 2405

By: Grau

COMMITTEE SUBSTITUTE

An Act relating to The Governmental Tort Claims Act;
amending 51 O.S. 2011, Sections 152 and 153, which
relate to The Governmental Tort Claims Act; modifying
definition; modifying scope of liability; and
declaring an emergency.

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

SECTION 1. AMENDATORY 51 O.S. 2011, Section 152, 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
state to administer health care in the ordinary course of

1 business or the practice of a profession and who provides care
2 to a medically indigent person, as defined in paragraph ~~8~~ 9 of
3 this section, with no expectation of or acceptance of
4 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 this act
7 to recover money from the state or political subdivision as
8 compensation for an act or omission of a political subdivision or
9 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 of The Governmental Tort Claims Act,
9 the following are employees of this state, regardless
10 of the place in this state where duties as employees
11 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 and

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.

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

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

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

22 9. "Medically indigent" means a person requiring medically
23 necessary hospital or other health care services for the person or
24 the dependents of the person who has no public or private third-

1 party coverage, and whose personal resources are insufficient to
2 provide for needed health care;

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

5 11. "Political subdivision" means:

6 a. a municipality,

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

11 c. a county,

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

16 (1) a municipal hospital created pursuant to Sections
17 30-101 through 30-109 of Title 11 of the Oklahoma
18 Statutes, a county hospital created pursuant to
19 Sections 781 through 796 of Title 19 of the
20 Oklahoma Statutes, or is created pursuant to a
21 joint agreement between such governing
22 authorities, that is operated for the public
23 benefit by a public trust created pursuant to
24 Sections 176 through 180.4 of Title 60 of the

Oklahoma Statutes and managed by a governing board appointed or elected by the municipality, county, or both, who exercises control of the hospital, subject to the approval of the governing body of the municipality, county, or both,

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

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

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

f. for the purposes of The Governmental Tort Claims Act only, corporations organized not for profit pursuant

- 1 to the provisions of the Oklahoma General Corporation
2 Act for the primary purpose of developing and
3 providing rural water supply and sewage disposal
4 facilities to serve rural residents,
- 5 g. for the purposes of The Governmental Tort Claims Act
6 only, districts formed pursuant to the Rural Water,
7 Sewer, Gas and Solid Waste Management Districts Act,
- 8 h. for the purposes of The Governmental Tort Claims Act
9 only, master conservancy districts formed pursuant to
10 the Conservancy Act of Oklahoma,
- 11 i. for the purposes of The Governmental Tort Claims Act
12 only, a fire protection district created pursuant to
13 the provisions of Section 901.1 et seq. of Title 19 of
14 the Oklahoma Statutes,
- 15 j. for the purposes of The Governmental Tort Claims Act
16 only, a benevolent or charitable corporate volunteer
17 or full-time fire department for an unincorporated
18 area created pursuant to the provisions of Section 592
19 et seq. of Title 18 of the Oklahoma Statutes,
- 20 k. for purposes of The Governmental Tort Claims Act only,
21 an Emergency Services Provider rendering services
22 within the boundaries of a Supplemental Emergency
23 Services District pursuant to an existing contract
24 between the Emergency Services Provider and the State

1 Department of Health. Provided, however, that the
2 acquisition of commercial liability insurance covering
3 the activities of such Emergency Services Provider
4 performed within the State of Oklahoma shall not
5 operate as a waiver of any of the limitations,
6 immunities or defenses provided for political
7 subdivisions pursuant to the terms of The Governmental
8 Tort Claims Act,

9 1. for purposes of The Governmental Tort Claims Act only,
10 a conservation district created pursuant to the
11 provisions of the Conservation District Act,

12 m. for purposes of The Governmental Tort Claims Act,
13 districts formed pursuant to the Oklahoma Irrigation
14 District Act,

15 n. for purposes of The Governmental Tort Claims Act only,
16 any community action agency established pursuant to
17 Sections 5035 through 5040 of Title 74 of the Oklahoma
18 Statutes,

19 o. for purposes of The Governmental Tort Claims Act only,
20 any organization that is designated as a youth
21 services agency, pursuant to Section 2-7-306 of Title
22 10A of the Oklahoma Statutes,

- 1 p. for purposes of The Governmental Tort Claims Act only,
2 any judge presiding over a drug court, as defined by
3 Section 471.1 of Title 22 of the Oklahoma Statutes,
4 q. for purposes of The Governmental Tort Claims Act only,
5 any child-placing agency licensed by this state to
6 place children in foster family homes, and
7 r. a circuit engineering district created pursuant to
8 Section 687.1 of Title 69 of the Oklahoma Statutes,
9 and all their institutions, instrumentalities or agencies;

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

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

21 14. "Tort" means a legal wrong, independent of contract,
22 involving violation of a duty imposed by general law, statute, the
23 Constitution of the State of Oklahoma, or otherwise, resulting in a
24 loss to any person, association or corporation as the proximate

1 result of an act or omission of a political subdivision or the state
2 or an employee acting within the scope of employment.

3 SECTION 2. AMENDATORY 51 O.S. 2011, Section 153, is
4 amended to read as follows:

5 Section 153. A. The state or a political subdivision shall be
6 liable for loss resulting from its torts or the torts of its
7 employees acting within the scope of their employment subject to the
8 limitations and exceptions specified in ~~this act~~ The Governmental
9 Tort Claims Act and only where the state or political subdivision,
10 if a private person or entity, would be liable for money damages
11 under the laws of this state. The state or a political subdivision
12 shall not be liable under the provisions of ~~this act~~ The
13 Governmental Tort Claims Act for any act or omission of an employee
14 acting outside the scope of ~~his~~ the employee's employment.

15 B. The liability of the state or political subdivision under
16 ~~this act~~ The Governmental Tort Claims Act shall be exclusive and ~~in~~
17 ~~place of all other~~ shall constitute the extent of tort liability of
18 the state, a political subdivision or employee ~~at~~ arising from
19 common law, statute, the Oklahoma Constitution, or otherwise. If a
20 court of competent jurisdiction finds tort liability on the part of
21 the state or a political subdivision of the state based on a
22 provision of the Oklahoma Constitution or state law other than The
23 Governmental Tort Claims Act, the limits of liability provided for
24 in The Governmental Tort Claims Act shall apply.

1 SECTION 3. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

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