

1 ENGROSSED SENATE
2 BILL NO. 1503

By: Stanislawski of the Senate

3 and

4 Grau of the House

5
6 [Governmental Tort Claims Act - definition - certain
7 exemptions - effective date]
8

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

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

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

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

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

18 3. "Charitable health care provider" means a person who is
19 licensed, certified, or otherwise authorized by the laws of this
20 state to administer health care in the ordinary course of
21 business or the practice of a profession and who provides care
22 to a medically indigent person, as defined in paragraph 8 of
23 this section, with no expectation of or acceptance of
24 compensation of any kind;

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

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

- 10 a. any person holding an interest in real or personal
11 property which suffers a loss, provided that the claim
12 of the person shall be aggregated with claims of all
13 other persons holding an interest in the property and
14 the claims of all other persons which are derivative
15 of the loss, and that multiple claimants shall be
16 considered a single claimant,
- 17 b. the individual actually involved in the accident or
18 occurrence who suffers a loss, provided that the
19 individual shall aggregate in the claim the losses of
20 all other persons which are derivative of the loss, or
- 21 c. in the case of death, an administrator, special
22 administrator or a personal representative who shall
23 aggregate in the claim all losses of all persons which
24 are derivative of the death;

1 6. "Community health care provider" means:

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

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

10 c. a health care provider who provides services to a
11 community health center that has made application to
12 the U.S. Department of Health and Human Services for
13 approval and deeming as a federally qualified look-
14 alike community health center in compliance with
15 federal application guidance, and has received
16 comments from the U.S. Department of Health and Human
17 Services as to the status of such application with the
18 established intent of resubmitting a modified
19 application, or, if denied, a new application, no
20 later than six (6) months from the date of the
21 official notification from the U.S. Department of
22 Health and Human Services requiring resubmission of a
23 new application;

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

5 a. Employee also includes:

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

13 (2) from September 1, 1991, through June 30, 1996,
14 licensed physicians, licensed osteopathic
15 physicians and certified nurse-midwives providing
16 prenatal, delivery or infant care services to
17 State Department of Health clients pursuant to a
18 contract entered into with the State Department
19 of Health in accordance with paragraph 3 of
20 subsection B of Section 1-106 of Title 63 of the
21 Oklahoma Statutes but only insofar as services
22 authorized by and in conformity with the terms of
23 the contract and the requirements of Section 1-
24 233 of Title 63 of the Oklahoma Statutes, and

1 (3) any volunteer, full-time or part-time firefighter
2 when performing duties for a fire department
3 provided for in subparagraph j of paragraph 11 of
4 this section.

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

9 (1) physicians acting in an administrative capacity,

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

17 (3) faculty members and staff of the University of
18 Oklahoma Health Sciences Center and the College
19 of Osteopathic Medicine of Oklahoma State
20 University, while engaged in teaching duties,

21 (4) physicians who practice medicine or act in an
22 administrative capacity as an employee of an
23 agency of the State of Oklahoma,
24

1 (5) physicians who provide medical care to inmates
2 pursuant to a contract with the Department of
3 Corrections,

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

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

22 (8) licensed mental health professionals as defined
23 in Sections 1-103 and 5-502 of Title 43A of the
24 Oklahoma Statutes, who are conducting initial

1 examinations of individuals for the purpose of
2 determining whether an individual meets the
3 criteria for emergency detention as part of a
4 contract with the Department of Mental Health and
5 Substance Abuse Services.

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

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

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

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

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

3 11. "Political subdivision" means:

4 a. a municipality,

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

9 c. a county,

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

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

1 county, or both, who exercises control of the
2 hospital, subject to the approval of the
3 governing body of the municipality, county, or
4 both,

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

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

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

21 f. for the purposes of The Governmental Tort Claims Act
22 only, corporations organized not for profit pursuant
23 to the provisions of the Oklahoma General Corporation
24 Act for the primary purpose of developing and

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

1 the activities of such Emergency Services Provider
2 performed within the State of Oklahoma shall not
3 operate as a waiver of any of the limitations,
4 immunities or defenses provided for political
5 subdivisions pursuant to the terms of The Governmental
6 Tort Claims Act,

7 l. for purposes of The Governmental Tort Claims Act only,
8 a conservation district created pursuant to the
9 provisions of the Conservation District Act,

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

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

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

21 p. for purposes of The Governmental Tort Claims Act only,
22 any judge presiding over a drug court, as defined by
23 Section 471.1 of Title 22 of the Oklahoma Statutes,
24

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

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

6 and all their institutions, instrumentalities or agencies;

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

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

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

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

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

6 1. Legislative functions;

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

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

11 4. Adoption or enforcement of or failure to adopt or enforce a
12 law, whether valid or invalid, including, but not limited to, any
13 statute, charter provision, ordinance, resolution, rule, regulation
14 or written policy;

15 5. Performance of or the failure to exercise or perform any act
16 or service which is in the discretion of the state or political
17 subdivision or its employees;

18 6. Civil disobedience, riot, insurrection or rebellion or the
19 failure to provide, or the method of providing, police, law
20 enforcement or fire protection;

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

22 8. Snow or ice conditions or temporary or natural conditions on
23 any public way or other public place due to weather conditions,
24

1 unless the condition is affirmatively caused by the negligent act of
2 the state or a political subdivision;

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

5 10. Natural conditions of property of the state or political
6 subdivision;

7 11. Assessment or collection of taxes or special assessments,
8 license or registration fees, or other fees or charges imposed by
9 law;

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

14 13. Inspection powers or functions, including failure to make
15 an inspection, review or approval, or making an inadequate or
16 negligent inspection, review or approval of any property, real or
17 personal, to determine whether the property complies with or
18 violates any law or contains a hazard to health or safety, or fails
19 to conform to a recognized standard;

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

22 15. Absence, condition, location or malfunction of any traffic
23 or road sign, signal or warning device unless the absence,
24 condition, location or malfunction is not corrected by the state or

1 political subdivision responsible within a reasonable time after
2 actual or constructive notice or the removal or destruction of such
3 signs, signals or warning devices by third parties, action of
4 weather elements or as a result of traffic collision except on
5 failure of the state or political subdivision to correct the same
6 within a reasonable time after actual or constructive notice.
7 Nothing herein shall give rise to liability arising from the failure
8 of the state or any political subdivision to initially place any of
9 the above signs, signals or warning devices. The signs, signals and
10 warning devices referred to herein are those used in connection with
11 hazards normally connected with the use of roadways or public ways
12 and do not apply to the duty to warn of special defects such as
13 excavations or roadway obstructions;

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

15 17. Misrepresentation, if unintentional;

16 18. An act or omission of an independent contractor or
17 consultant or his or her employees, agents, subcontractors or
18 suppliers or of a person other than an employee of the state or
19 political subdivision at the time the act or omission occurred;

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

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

4 21. Participation in any activity approved by a local board of
5 education and held within a building or on the grounds of the school
6 district served by that local board of education before or after
7 normal school hours or on weekends;

8 22. Use of indoor or outdoor school property and facilities
9 made available for public recreation before or after normal school
10 hours or on weekends or school vacations, except those claims
11 resulting from willful and wanton acts of negligence. For purposes
12 of this paragraph:

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

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

21 23. Any court-ordered or Department of Corrections approved
22 work release program; provided, however, this provision shall not
23 apply to claims from individuals not in the custody of the
24

1 Department of Corrections based on accidents involving motor
2 vehicles owned or operated by the Department of Corrections;

3 24. The activities of the National Guard, the militia or other
4 military organization administered by the Military Department of the
5 state when on duty pursuant to the lawful orders of competent
6 authority:

- 7 a. in an effort to quell a riot,
- 8 b. in response to a natural disaster or military attack,
- 9 or
- 10 c. if participating in a military mentor program ordered
11 by the court;

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

20 26. Provision, equipping, operation or maintenance of any
21 juvenile detention facility, or injuries resulting from the escape
22 of a juvenile detainee, or injuries by a juvenile detainee to any
23 other juvenile detainee; provided, however, this provision shall not
24 apply to claims for the use of excessive force;

1 27. Any claim or action based on the theory of manufacturer's
2 products liability or breach of warranty, either expressed or
3 implied;

4 28. Any claim or action based on the theory of indemnification
5 or subrogation;

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

8 30. Acts or omissions done in conformance with then current
9 recognized standards;

10 31. Maintenance of the state highway system or any portion
11 thereof unless the claimant presents evidence which establishes
12 either that the state failed to warn of the unsafe condition or that
13 the loss would not have occurred but for a negligent affirmative act
14 of the state;

15 32. Any confirmation of the existence or nonexistence of any
16 effective financing statement on file in the office of the Secretary
17 of State made in good faith by an employee of the office of the
18 Secretary of State as required by the provisions of Section 1-9-
19 320.6 of Title 12A of the Oklahoma Statutes;

20 33. Any court-ordered community sentence;

21 34. Remedial action and any subsequent related maintenance of
22 property pursuant to and in compliance with an authorized
23 environmental remediation program, order, or requirement of a
24 federal or state environmental agency;

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

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

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

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

Passed the Senate the 4th day of March, 2014.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2014.

Presiding Officer of the House
of Representatives