

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 54th Legislature (2014)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2405

By: Grau of the House

and

Holt of the Senate

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10 COMMITTEE SUBSTITUTE

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

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

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

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

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

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

1 3. "Charitable health care provider" means a person who is
2 licensed, certified, or otherwise authorized by the laws of this
3 state to administer health care in the ordinary course of
4 business or the practice of a profession and who provides care
5 to a medically indigent person, as defined in paragraph & 9 of
6 this section, with no expectation of or acceptance of
7 compensation of any kind;

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

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

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

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

9 6. "Community health care provider" means:

- 10 a. a health care provider who volunteers services at a
11 community health center that has been deemed by the
12 U.S. Department of Health and Human Services as a
13 federally qualified health center as defined by 42
14 U.S.C., Section 1396d(1) (2) (B),
15 b. a health provider who provides services to an
16 organization that has been deemed a federally
17 qualified look-alike community health center, and
18 c. a health care provider who provides services to a
19 community health center that has made application to
20 the U.S. Department of Health and Human Services for
21 approval and deeming as a federally qualified look-
22 alike community health center in compliance with
23 federal application guidance, and has received
24 comments from the U.S. Department of Health and Human

Services as to the status of such application with the established intent of resubmitting a modified application, or, if denied, a new application, no later than six (6) months from the date of the official notification from the U.S. Department of Health and Human Services requiring resubmission of a new application;

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

a. Employee also includes:

- (1) all elected or appointed officers, members of governing bodies and other persons designated to act for an agency or political subdivision, but the term does not mean a person or other legal entity while acting in the capacity of an independent contractor or an employee of an independent contractor,
- (2) from September 1, 1991, through June 30, 1996, licensed physicians, licensed osteopathic physicians and certified nurse-midwives providing prenatal, delivery or infant care services to State Department of Health clients pursuant to a

1 contract entered into with the State Department
2 of Health in accordance with paragraph 3 of
3 subsection B of Section 1-106 of Title 63 of the
4 Oklahoma Statutes but only insofar as services
5 authorized by and in conformity with the terms of
6 the contract and the requirements of Section 1-
7 233 of Title 63 of the Oklahoma Statutes, and
8 (3) any volunteer, full-time or part-time firefighter
9 when performing duties for a fire department
10 provided for in subparagraph j of paragraph 11 of
11 this section.

12 b. For the purpose of The Governmental Tort Claims Act,
13 the following are employees of this state, regardless
14 of the place in this state where duties as employees
15 are performed:

- 16 (1) physicians acting in an administrative capacity,
17 (2) resident physicians and resident interns
18 participating in a graduate medical education
19 program of the University of Oklahoma Health
20 Sciences Center, the College of Osteopathic
21 Medicine of Oklahoma State University, or the
22 Department of Mental Health and Substance Abuse
23 Services,
24

- 1 (3) faculty members and staff of the University of
2 Oklahoma Health Sciences Center and the College
3 of Osteopathic Medicine of Oklahoma State
4 University, while engaged in teaching duties,
5 (4) physicians who practice medicine or act in an
6 administrative capacity as an employee of an
7 agency of the State of Oklahoma,
8 (5) physicians who provide medical care to inmates
9 pursuant to a contract with the Department of
10 Corrections,
11 (6) any person who is licensed to practice medicine
12 pursuant to Title 59 of the Oklahoma Statutes,
13 who is under an administrative professional
14 services contract with the Oklahoma Health Care
15 Authority under the auspices of the Oklahoma
16 Health Care Authority Chief Medical Officer, and
17 who is limited to performing administrative
18 duties such as professional guidance for medical
19 reviews, reimbursement rates, service
20 utilization, health care delivery and benefit
21 design for the Oklahoma Health Care Authority,
22 only while acting within the scope of such
23 contract,
24

1 (7) licensed medical professionals under contract
2 with city, county, or state entities who provide
3 medical care to inmates or detainees in the
4 custody or control of law enforcement agencies,
5 and

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

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

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

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

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

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

10 11. "Political subdivision" means:

11 a. a municipality,

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

16 c. a county,

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

21 (1) a municipal hospital created pursuant to Sections
22 30-101 through 30-109 of Title 11 of the Oklahoma
23 Statutes, a county hospital created pursuant to
24 Sections 781 through 796 of Title 19 of the

Oklahoma Statutes, or is created pursuant to a joint agreement between such governing authorities, that is operated for the public benefit by a public trust created pursuant to 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,

- 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,
24

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 law, statute, the
3 Constitution of the State of Oklahoma, 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 153, is
8 amended to read as follows:

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

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

1 the state or a political subdivision of the state based on a
2 provision of the Oklahoma Constitution or state law other than The
3 Governmental Tort Claims Act, the limits of liability provided for
4 in The Governmental Tort Claims Act shall apply.

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

9
10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/12/2014 - DO
11 PASS, As Amended and Coauthored.