

1 **SENATE FLOOR VERSION**

2 February 6, 2018

3 SENATE BILL NO. 1116

By: Yen

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5
6 An Act relating to the Governmental Tort Claims Act;
7 amending 51 O.S. 2011, Section 152, as amended by
8 Section 1, Chapter 77, O.S.L. 2014 (51 O.S. Supp.
9 2017, Section 152), which relates to definitions;
10 modifying definition; and providing an effective
11 date.

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

13 SECTION 1. AMENDATORY 51 O.S. 2011, Section 152, as
14 amended by Section 1, Chapter 77, O.S.L. 2014 (51 O.S. Supp. 2017,
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 to recover money from the state or political subdivision as
6 compensation for an act or omission of a political subdivision or
7 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
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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,
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, 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.

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

22 c. Except as provided in subparagraph b of this
23 paragraph, in no event shall the state be held liable
24 for the tortious conduct of any physician, resident

1 physician or intern while practicing medicine or
2 providing medical treatment to patients;

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

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

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

12 11. "Political subdivision" means:

13 a. a municipality,

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

18 c. a county,

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

23 (1) a municipal hospital created pursuant to Sections
24 30-101 through 30-109 of Title 11 of the Oklahoma

1 Statutes, a county hospital created pursuant to
2 Sections 781 through 796 of Title 19 of the
3 Oklahoma Statutes, or is created pursuant to a
4 joint agreement between such governing
5 authorities, that is operated for the public
6 benefit by a public trust created pursuant to
7 Sections 176 through 180.4 of Title 60 of the
8 Oklahoma Statutes and managed by a governing
9 board appointed or elected by the municipality,
10 county, or both, who exercises control of the
11 hospital, subject to the approval of the
12 governing body of the municipality, county, or
13 both,

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

23 (3) a corporation in which all of the capital stock
24 is owned, or a limited liability company in which

1 all of the member interest is owned, by a public
2 trust,

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

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

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

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

18 i. for the purposes of The Governmental Tort Claims Act
19 only, a fire protection district created pursuant to
20 the provisions of Section 901.1 et seq. of Title 19 of
21 the Oklahoma Statutes,

22 j. for the purposes of The Governmental Tort Claims Act
23 only, a benevolent or charitable corporate volunteer
24 or full-time fire department for an unincorporated

1 area created pursuant to the provisions of Section 592
2 et seq. of Title 18 of the Oklahoma Statutes,
3 k. for purposes of The Governmental Tort Claims Act only,
4 an Emergency Services Provider rendering services
5 within the boundaries of a Supplemental Emergency
6 Services District pursuant to an existing contract
7 between the Emergency Services Provider and the State
8 Department of Health. Provided, however, that the
9 acquisition of commercial liability insurance covering
10 the activities of such Emergency Services Provider
11 performed within the State of Oklahoma shall not
12 operate as a waiver of any of the limitations,
13 immunities or defenses provided for political
14 subdivisions pursuant to the terms of The Governmental
15 Tort Claims Act,
16 l. for purposes of The Governmental Tort Claims Act only,
17 a conservation district created pursuant to the
18 provisions of the Conservation District Act,
19 m. for purposes of The Governmental Tort Claims Act,
20 districts formed pursuant to the Oklahoma Irrigation
21 District Act,
22 n. for purposes of The Governmental Tort Claims Act only,
23 any community action agency established pursuant to
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1 Sections 5035 through 5040 of Title 74 of the Oklahoma
2 Statutes,

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

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

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

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

15 and all their institutions, instrumentalities or agencies;

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

22 13. "State" means the State of Oklahoma or any office,
23 department, agency, authority, commission, board, institution,
24 hospital, college, university, public trust created pursuant to

1 Title 60 of the Oklahoma Statutes of which the State of Oklahoma is
2 the beneficiary, or other instrumentality thereof; and

3 14. "Tort" means a legal wrong, independent of contract,
4 involving violation of a duty imposed by general law, statute, the
5 Constitution of the State of Oklahoma, or otherwise, resulting in a
6 loss to any person, association or corporation as the proximate
7 result of an act or omission of a political subdivision or the state
8 or an employee acting within the scope of employment.

9 SECTION 2. This act shall become effective November 1, 2018.

10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
11 February 6, 2018 - DO PASS
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