

# An Act

ENROLLED SENATE  
BILL NO. 1311

By: Howard of the Senate

and

Moore of the House

An Act relating to The Governmental Tort Claims Act; amending 51 O.S. 2021, Sections 152, as last amended by Section 1, Chapter 241, O.S.L. 2021, and 156, which relate to definitions and presentation of claim; modifying definition; clarifying language; requiring certain information or documentation to support claim of certain loss; providing for invalidation of notice upon refusal to furnish certain information or documentation; and providing an effective date.

SUBJECT: Governmental Tort Claims Act

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

SECTION 1. AMENDATORY 51 O.S. 2021, Section 152, as last amended by Section 1, Chapter 241, O.S.L. 2021, 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 business or the practice of a profession and who provides care to a medically indigent person, as defined in paragraph 9 of this section, with no expectation of or acceptance of compensation of any kind;

4. "Claim" means any written demand presented by a claimant or the claimant's authorized representative in accordance with The Governmental Tort Claims Act to recover money from the state or political subdivision as compensation for an act or omission of a political subdivision or the state or an employee;

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

- a. any person holding an interest in real or personal property which suffers a loss, provided that the claim of the person shall be aggregated with claims of all other persons holding an interest in the property and the claims of all other persons which are derivative of the loss, and that multiple claimants shall be considered a single claimant,
- b. the individual actually involved in the accident or occurrence who suffers a loss, provided that the individual shall aggregate in the claim the losses of all other persons which are derivative of the loss, or
- c. in the case of death, an administrator, special administrator or a personal representative who shall aggregate in the claim all losses of all persons which are derivative of the death;

6. "Community health care provider" means:

- a. a health care provider who volunteers services at a community health center that has been deemed by the U.S. Department of Health and Human Services as a

federally qualified health center as defined by 42 U.S.C., Section 1396d(1) (2) (B),

- b. a health provider who provides services to an organization that has been deemed a federally qualified look-alike community health center, and
- c. a health care provider who provides services to a community health center that has made application to the U.S. Department of Health and Human Services for approval and deeming as a federally qualified look-alike community health center in compliance with federal application guidance, and has received 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

contract entered into with the State Department of Health in accordance with paragraph 3 of subsection B of Section 1-106 of Title 63 of the Oklahoma Statutes but only insofar as services authorized by and in conformity with the terms of the contract and the requirements of Section 1-233 of Title 63 of the Oklahoma Statutes, and

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

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

- (1) physicians acting in an administrative capacity,
- (2) resident physicians and resident interns participating in a graduate medical education program of the University of Oklahoma Health Sciences Center, the College of Osteopathic Medicine of Oklahoma State University, or the Department of Mental Health and Substance Abuse Services,
- (3) faculty members and staff of the University of Oklahoma Health Sciences Center and the College of Osteopathic Medicine of Oklahoma State University, while engaged in teaching duties,
- (4) physicians who practice medicine or act in an administrative capacity as an employee of an agency of the State of Oklahoma,
- (5) physicians who provide medical care to inmates pursuant to a contract with the Department of Corrections,

- (6) any person who is licensed to practice medicine pursuant to Title 59 of the Oklahoma Statutes, who is under an administrative professional services contract with the Oklahoma Health Care Authority under the auspices of the Oklahoma Health Care Authority Chief Medical Officer, and who is limited to performing administrative duties such as professional guidance for medical reviews, reimbursement rates, service utilization, health care delivery and benefit design for the Oklahoma Health Care Authority, only while acting within the scope of such contract,
- (7) licensed medical professionals under contract with city, county, or state entities who provide medical care to inmates or detainees in the custody or control of law enforcement agencies,
- (8) licensed mental health professionals as defined in Sections 1-103 and 5-502 of Title 43A of the Oklahoma Statutes, who are conducting initial examinations of individuals for the purpose of determining whether an individual meets the criteria for emergency detention as part of a contract with the Department of Mental Health and Substance Abuse Services, and
- (9) licensed mental health professionals as defined in Sections 1-103 and 5-502 of Title 43A of the Oklahoma Statutes, who are providing mental health or substance abuse treatment services under a professional services contract with the Department of Mental Health and Substance Abuse Services and are providing such treatment services at a state-operated facility.

Physician faculty members and physician staff of the University of Oklahoma Health Sciences Center and the College of Osteopathic Medicine of Oklahoma State University not acting in an administrative capacity or

engaged in teaching duties are not employees or agents of the state.

c. For the purposes of The Governmental Tort Claims Act, employee shall include independent contractors and employees of independent contractors while actively engaged in the transport of individuals in need of initial assessment, emergency detention, or protective custody as authorized by Section 1-110 of Title 43A of the Oklahoma Statutes.

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

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

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

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

11. "Political subdivision" means:

- a. a municipality,
- b. a school district, including, but not limited to, a technology center school district established pursuant to Section 4410, 4411, 4420 or 4420.1 of Title 70 of the Oklahoma Statutes,
- c. a county,
- d. a public trust where the sole beneficiary or beneficiaries are a city, town, school district or

county. For purposes of The Governmental Tort Claims Act, a public trust shall include:

- (1) a municipal hospital created pursuant to Sections 30-101 through 30-109 of Title 11 of the Oklahoma Statutes, a county hospital created pursuant to 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,
- e. for the purposes of The Governmental Tort Claims Act only, a housing authority created pursuant to the provisions of the Oklahoma Housing ~~Authority~~ Authorities Act,
- f. for the purposes of The Governmental Tort Claims Act only, corporations organized not for profit pursuant to the provisions of the Oklahoma General Corporation

Act for the primary purpose of developing and providing rural water supply and sewage disposal facilities to serve rural residents,

- g. for the purposes of The Governmental Tort Claims Act only, districts formed pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act,
- h. for the purposes of The Governmental Tort Claims Act only, master conservancy districts formed pursuant to the Conservancy Act of Oklahoma,
- i. for the purposes of The Governmental Tort Claims Act only, a fire protection district created pursuant to the provisions of Section 901.1 et seq. of Title 19 of the Oklahoma Statutes,
- j. for the purposes of The Governmental Tort Claims Act only, a benevolent or charitable corporate volunteer or full-time fire department for an unincorporated area created pursuant to the provisions of Section 592 et seq. of Title 18 of the Oklahoma Statutes,
- k. for purposes of The Governmental Tort Claims Act only, an Emergency Services Provider rendering services within the boundaries of a Supplemental Emergency Services District pursuant to an existing contract between the Emergency Services Provider and the State Department of Health. Provided, however, that the acquisition of commercial liability insurance covering the activities of such Emergency Services Provider performed within ~~the State of Oklahoma~~ this state shall not operate as a waiver of any of the limitations, immunities or defenses provided for political subdivisions pursuant to the terms of The Governmental Tort Claims Act,
- l. for purposes of The Governmental Tort Claims Act only, a conservation district created pursuant to the provisions of the Conservation District Act,



- m. for purposes of The Governmental Tort Claims Act, districts formed pursuant to the Oklahoma Irrigation District Act,
- n. for purposes of The Governmental Tort Claims Act only, any community action agency established pursuant to Sections 5035 through 5040 of Title 74 of the Oklahoma Statutes,
- o. for purposes of The Governmental Tort Claims Act only, any organization that is designated as a youth services agency, pursuant to Section 2-7-306 of Title 10A of the Oklahoma Statutes,
- p. for purposes of The Governmental Tort Claims Act only, any judge presiding over a drug court, as defined by Section 471.1 of Title 22 of the Oklahoma Statutes,
- q. for purposes of The Governmental Tort Claims Act only, any child-placing agency licensed by this state to place children in foster family homes,
- r. a circuit engineering district created pursuant to Section 687.1 of Title 69 of the Oklahoma Statutes, and
- s. for purposes of The Governmental Tort Claims Act only, a regional transportation authority created pursuant to Section 1370.7 of Title 68 of the Oklahoma Statutes including its contract operator and any railroad operating in interstate commerce that sells a property interest or provides services to a regional transportation authority or allows the authority to use the property or tracks of the railroad for the provision of public passenger rail service to the extent claims against the contract operator or railroad arise out of or are related to or in connection with such property interest, services or operation of the public passenger rail service. Provided, the acquisition of commercial liability insurance to cover the activities of the regional transportation authority, contract operator or

railroad shall not operate as a waiver of any liabilities, immunities or defenses provided pursuant to the provisions of the Governmental Tort Claims Act,

and all their institutions, instrumentalities or agencies;

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

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

14. "Tort" means a legal wrong, independent of contract, involving violation of a duty imposed by general law, statute, the Constitution of the State of Oklahoma, or otherwise, resulting in a loss to any person, association or corporation as the proximate result of an act or omission of a political subdivision or the state or an employee acting within the scope of employment; provided, however, a tort shall not include a claim for inverse condemnation.

SECTION 2. AMENDATORY 51 O.S. 2021, Section 156, is amended to read as follows:

Section 156. A. Any person having a claim against the state or a political subdivision within the scope of Section 151 et seq. of this title shall present a claim to the state or political subdivision for any appropriate relief including the award of money damages.

B. Except as provided in subsection H of this section, and notwithstanding any other provision of law, claims against the state or a political subdivision are to be presented within one (1) year of the date the loss occurs. A claim against the state or a political subdivision shall be forever barred unless notice thereof is presented within one (1) year after the loss occurs.

C. A claim against the state shall be in writing and filed with the Office of the Risk Management Administrator of the Office of Management and Enterprise Services who shall immediately notify the Attorney General and the agency concerned and conduct a diligent investigation of the validity of the claim within the time specified for approval or denial of claims by Section 157 of this title. A claim may be filed by certified mail with return receipt requested. A claim which is mailed shall be considered filed upon receipt by the Office of the Risk Management Administrator.

D. A claim against a political subdivision shall be in writing and filed with the office of the clerk of the governing body.

E. The written notice of claim to the state or a political subdivision shall state the date, time, place and circumstances of the claim, the identity of the state agency or agencies involved, the amount of compensation or other relief demanded, the name, address and telephone number of the claimant, the name, address and telephone number of any agent authorized to settle the claim, and any and all other information required to meet the reporting requirements of the Medicare Secondary Payer Mandatory Reporting Provisions in Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA) through the Centers for Medicare & Medicaid Services (CMS). Failure to state either the date, time, place and circumstances and amount of compensation demanded, or any information requested to comply with the reporting claims to CMS under MMSEA shall not invalidate the notice unless the claimant declines or refuses to furnish such information after demand by the state or political subdivision. The time for giving written notice of claim pursuant to the provisions of this section does not include the time during which the person injured is unable due to incapacitation from the injury to give such notice, not exceeding ninety (90) days of incapacity.

F. If the written notice of claim demands relief for personal injuries, the claimant shall provide the name and address of all health care providers who treated the claimant since the date and time of the circumstances claimant set forth in the notice of claim required by subsection E of this section and the date of the notice required by subsection E of this section. For each health care provider required to be identified, the claimant shall provide a

HIPPA compliant authorization for release of health information. Failure to provide the name and address of all health care providers and the HIPPA compliant authorization required by this subsection shall not invalidate the notice required by subsection E of this section unless the claimant declines or refuses to furnish such information after demanded by the state or political subdivision.

G. If the written notice of claim demands relief for loss of earnings, the claimant shall provide the documentation of the loss of earnings since the date and time of the circumstances claimant set forth in the notice of claim required by subsection E of this section and the date of the notice required by subsection E of this section. Failure to provide the documentation required by this subsection shall not invalidate the notice required by subsection E of this section unless claimant declines or refuses to furnish such information after demanded by the state or political subdivision.

H. If the written notice of claim demands relief for losses of real or personal property, the claimant shall provide the amount of the property loss claimed, the method used to calculate the amount of loss, documentation relied upon in determining the amount of loss, and proof of the claimant's ownership of property. Failure to provide the documentation required by this subsection shall not invalidate the notice required by subsection E of this section unless claimant declines or refuses to furnish such information after demanded by the state or political subdivision.

I. When the claim is one for death by wrongful act or omission, notice may be presented by the personal representative within one (1) year after the death occurs. If the person for whose death the claim is made has presented notice that would have been sufficient had he lived, an action for wrongful death may be brought without any additional notice.

~~G.~~ J. Claims and suits against resident physicians or interns shall be made in accordance with the provisions of Titles 12 and 76 of the Oklahoma Statutes.

~~H.~~ K. For purposes of claims based on wrongful felony conviction resulting in imprisonment provided for in Section 154 of this title, loss occurs on the date that the claimant receives a pardon based on actual innocence from the Governor or the date that

the claimant receives judicial relief absolving the claimant of guilt based on actual innocence; provided, for persons whose basis for a claim occurred prior to the effective date of this act, the claim must be submitted within one (1) year after the effective date of this act.

SECTION 3. This act shall become effective November 1, 2022.

Passed the Senate the 8th day of March, 2022.

\_\_\_\_\_  
Presiding Officer of the Senate

Passed the House of Representatives the 28th day of April, 2022.

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Presiding Officer of the House  
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_