

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 ENGROSSED SENATE
5 BILL NO. 458

By: Daniels of the Senate

and

Kannady of the House

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9 [Governmental Tort Claims Act - certain exemption
10 from liability - exception - effective date]

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

13 SECTION 1. AMENDATORY 51 O.S. 2011, Section 155, as last
14 amended by Section 3, Chapter 273, O.S.L. 2016 (51 O.S. Supp. 2020,
15 Section 155), is amended to read as follows:

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

18 1. Legislative functions;

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

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

23 4. Adoption or enforcement of or failure to adopt or enforce a
24 law, whether valid or invalid, including, but not limited to, any

1 statute, charter provision, ordinance, resolution, rule, regulation
2 or written policy;

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

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

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

10 8. Snow or ice conditions or temporary or natural conditions on
11 any public way or other public place due to weather conditions,
12 unless the condition is affirmatively caused by the negligent act of
13 the state or a political subdivision;

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

16 10. Natural conditions of property of the state or political
17 subdivision;

18 11. Assessment or collection of taxes or special assessments,
19 license or registration fees, or other fees or charges imposed by
20 law;

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

1 13. Inspection powers or functions, including failure to make
2 an inspection, review or approval, or making an inadequate or
3 negligent inspection, review or approval of any property, real or
4 personal, to determine whether the property complies with or
5 violates any law or contains a hazard to health or safety, or fails
6 to conform to a recognized standard;

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

9 15. Absence, condition, location or malfunction of any traffic
10 or road sign, signal or warning device unless the absence,
11 condition, location or malfunction is not corrected by the state or
12 political subdivision responsible within a reasonable time after
13 actual or constructive notice or the removal or destruction of such
14 signs, signals or warning devices by third parties, action of
15 weather elements or as a result of traffic collision except on
16 failure of the state or political subdivision to correct the same
17 within a reasonable time after actual or constructive notice.
18 Nothing herein shall give rise to liability arising from the failure
19 of the state or any political subdivision to initially place any of
20 the above signs, signals or warning devices. The signs, signals and
21 warning devices referred to herein are those used in connection with
22 hazards normally connected with the use of roadways or public ways
23 and do not apply to the duty to warn of special defects such as
24 excavations or roadway obstructions;

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

2 17. Misrepresentation, if unintentional;

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

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

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

13 21. Participation in any activity approved by a local board of
14 education and held within a building or on the grounds of the school
15 district served by that local board of education before or after
16 normal school hours or on weekends;

17 22. Use of indoor or outdoor school property and facilities
18 made available for public recreation before or after normal school
19 hours or on weekends or school vacations, except those claims
20 resulting from willful and wanton acts of negligence. For purposes
21 of this paragraph:

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

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

6 23. Any court-ordered, Department of Corrections or county
7 approved work release program; provided, however, this provision
8 shall not apply to claims from individuals not in the custody of the
9 Department of Corrections based on accidents involving motor
10 vehicles owned or operated by the Department of Corrections;

11 24. The activities of the National Guard, the militia or other
12 military organization administered by the Military Department of the
13 state when on duty pursuant to the lawful orders of competent
14 authority:

- 15 a. in an effort to quell a riot,
16 b. in response to a natural disaster or military attack,
17 or
18 c. if participating in a military mentor program ordered
19 by the court;

20 25. Provision, equipping, operation or maintenance of any
21 prison, jail or correctional facility, or injuries resulting from
22 the parole or escape of a prisoner or injuries by a prisoner to any
23 other prisoner; provided, however, this provision shall not apply to
24 claims from individuals not in the custody of the Department of

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

3 26. Provision, equipping, operation or maintenance of any
4 juvenile detention facility, or injuries resulting from the escape
5 of a juvenile detainee, or injuries by a juvenile detainee to any
6 other juvenile detainee;

7 27. Any claim or action based on the theory of manufacturer's
8 products liability or breach of warranty, either expressed or
9 implied;

10 28. Any claim or action based on the theory of indemnification
11 or subrogation;

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

14 30. Acts or omissions done in conformance with then current
15 recognized standards;

16 31. Maintenance of the state highway system or any portion
17 thereof unless the claimant presents evidence which establishes
18 either that the state failed to warn of the unsafe condition or that
19 the loss would not have occurred but for a negligent affirmative act
20 of the state;

21 32. Any confirmation of the existence or nonexistence of any
22 effective financing statement on file in the office of the Secretary
23 of State made in good faith by an employee of the office of the
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1 Secretary of State as required by the provisions of Section 1-9-
2 320.6 of Title 12A of the Oklahoma Statutes;

3 33. Any court-ordered community sentence;

4 34. Remedial action and any subsequent related maintenance of
5 property pursuant to and in compliance with an authorized
6 environmental remediation program, order, or requirement of a
7 federal or state environmental agency;

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

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

15 37. Use of a public facility opened to the general public
16 during an emergency; or

17 38. A sanitary sewer overflow occurring on private property;
18 provided, however, such exception shall not apply to claims for loss
19 of property.

20 SECTION 2. This act shall become effective November 1, 2021.
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22 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated
23 04/07/2021 - DO PASS, As Amended.
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