

March 1, 2022

By: Howard of the Senate

Kannady of the House

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

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

SENATE FLOOR VERSION - SB1311 SFLR
(Bold face denotes Committee Amendments)

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

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

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

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

- 19 a. any person holding an interest in real or personal
20 property which suffers a loss, provided that the claim
21 of the person shall be aggregated with claims of all
22 other persons holding an interest in the property and
23 the claims of all other persons which are derivative
24

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

11 6. "Community health care provider" means:

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

1 federal application guidance, and has received
2 comments from the U.S. Department of Health and Human
3 Services as to the status of such application with the
4 established intent of resubmitting a modified
5 application, or, if denied, a new application, no
6 later than six (6) months from the date of the
7 official notification from the U.S. Department of
8 Health and Human Services requiring resubmission of a
9 new application;

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

14 a. Employee also includes:

15 (1) all elected or appointed officers, members of
16 governing bodies and other persons designated to
17 act for an agency or political subdivision, but
18 the term does not mean a person or other legal
19 entity while acting in the capacity of an
20 independent contractor or an employee of an
21 independent contractor,

22 (2) from September 1, 1991, through June 30, 1996,
23 licensed physicians, licensed osteopathic
24 physicians and certified nurse-midwives providing

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

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

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

1 Department of Mental Health and Substance Abuse
2 Services,

3 (3) faculty members and staff of the University of
4 Oklahoma Health Sciences Center and the College
5 of Osteopathic Medicine of Oklahoma State
6 University, while engaged in teaching duties,

7 (4) physicians who practice medicine or act in an
8 administrative capacity as an employee of an
9 agency of the State of Oklahoma,

10 (5) physicians who provide medical care to inmates
11 pursuant to a contract with the Department of
12 Corrections,

13 (6) any person who is licensed to practice medicine
14 pursuant to Title 59 of the Oklahoma Statutes,
15 who is under an administrative professional
16 services contract with the Oklahoma Health Care
17 Authority under the auspices of the Oklahoma
18 Health Care Authority Chief Medical Officer, and
19 who is limited to performing administrative
20 duties such as professional guidance for medical
21 reviews, reimbursement rates, service
22 utilization, health care delivery and benefit
23 design for the Oklahoma Health Care Authority,
24

1 only while acting within the scope of such
2 contract,

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

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

15 (9) licensed mental health professionals as defined
16 in Sections 1-103 and 5-502 of Title 43A of the
17 Oklahoma Statutes, who are providing mental
18 health or substance abuse treatment services
19 under a professional services contract with the
20 Department of Mental Health and Substance Abuse
21 Services and are providing such treatment
22 services at a state-operated facility.

23 Physician faculty members and physician staff of the
24 University of Oklahoma Health Sciences Center and the

1 College of Osteopathic Medicine of Oklahoma State
2 University not acting in an administrative capacity or
3 engaged in teaching duties are not employees or agents
4 of the state.

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

12 d. 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~~
21 Authorities Act,

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

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

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

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

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

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

18 o. for purposes of The Governmental Tort Claims Act only,
19 any organization that is designated as a youth
20 services agency, pursuant to Section 2-7-306 of Title
21 10A of the Oklahoma Statutes,

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

- 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,
- 4 r. a circuit engineering district created pursuant to
5 Section 687.1 of Title 69 of the Oklahoma Statutes,
6 and
- 7 s. for purposes of The Governmental Tort Claims Act only,
8 a regional transportation authority created pursuant
9 to Section 1370.7 of Title 68 of the Oklahoma Statutes
10 including its contract operator and any railroad
11 operating in interstate commerce that sells a property
12 interest or provides services to a regional
13 transportation authority or allows the authority to
14 use the property or tracks of the railroad for the
15 provision of public passenger rail service to the
16 extent claims against the contract operator or
17 railroad arise out of or are related to or in
18 connection with such property interest, services or
19 operation of the public passenger rail service.
20 Provided, the acquisition of commercial liability
21 insurance to cover the activities of the regional
22 transportation authority, contract operator or
23 railroad shall not operate as a waiver of any
24

1 liabilities, immunities or defenses provided pursuant
2 to the provisions of the Governmental Tort Claims Act,
3 and all their institutions, instrumentalities or agencies;

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

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

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

22 SECTION 2. AMENDATORY 51 O.S. 2021, Section 156, is
23 amended to read as follows:
24

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

6 B. Except as provided in subsection H of this section, and not
7 withstanding any other provision of law, claims against the state or
8 a political subdivision are to be presented within one (1) year of
9 the date the loss occurs. A claim against the state or a political
10 subdivision shall be forever barred unless notice thereof is
11 presented within one (1) year after the loss occurs.

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

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

23 E. The written notice of claim to the state or a political
24 subdivision shall state the date, time, place and circumstances of

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

19 F. If the written notice of claim demands relief for personal
20 injuries, the claimant shall provide the name and address of all
21 health care providers who treated the claimant since the date and
22 time of the circumstances claimant set forth in the notice of claim
23 required by subsection E of this section and the date of the notice
24 required by subsection E of this section. For each health care

1 provider required to be identified, the claimant shall provide a
2 HIPPA compliant authorization for release of health information.
3 Failure to provide the name and address of all health care providers
4 and the HIPPA compliant authorization required by this subsection
5 shall not invalidate the notice required by subsection E of this
6 section unless the claimant declines or refuses to furnish such
7 information after demanded by the state or political subdivision.

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

17 H. If the written notice of claim demands relief for losses of
18 real or personal property, the claimant shall provide the amount of
19 the property loss claimed, the method used to calculate the amount
20 of loss, documentation relied upon in determining the amount of
21 loss, and proof of the claimant's ownership of property. Failure to
22 provide the documentation required by this subsection shall not
23 invalidate the notice required by subsection E of this section
24

1 unless claimant declines or refuses to furnish such information
2 after demanded by the state or political subdivision.

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

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

12 ~~H.~~ K. For purposes of claims based on wrongful felony
13 conviction resulting in imprisonment provided for in Section 154 of
14 this title, loss occurs on the date that the claimant receives a
15 pardon based on actual innocence from the Governor or the date that
16 the claimant receives judicial relief absolving the claimant of
17 guilt based on actual innocence; provided, for persons whose basis
18 for a claim occurred prior to the effective date of this act, the
19 claim must be submitted within one (1) year after the effective date
20 of this act.

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

22 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
23 March 1, 2022 - DO PASS AS AMENDED
24