

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 3287

By: Humphrey

AS INTRODUCED

An Act relating to officers; amending 51 O.S. 2021, Section 155, which relates to The Oklahoma Governmental Tort Claims Act; providing an exception to certain liability exemption; and providing an effective date.

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

SECTION 1. AMENDATORY 51 O.S. 2021, Section 155, is amended to read as follows:

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

1. Legislative functions;
2. Judicial, quasi-judicial, or prosecutorial functions, other than claims for wrongful criminal felony conviction resulting in imprisonment provided for in Section 154 of this title;
3. Execution or enforcement of the lawful orders of any court;
4. Adoption or enforcement of or failure to adopt or enforce a law, whether valid or invalid, including, but not limited to, any statute, charter provision, ordinance, resolution, rule, regulation

1 or written policy; provided, however, this provision shall not apply  
2 to claims from correctional officers previously employed by the  
3 Department of Corrections based on willful violations of the  
4 policies and procedures of the Department by supervisors and wardens  
5 of the Department;

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

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

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

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

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

19 10. Natural conditions of property of the state or political  
20 subdivision;

21 11. Assessment or collection of taxes or special assessments,  
22 license or registration fees, or other fees or charges imposed by  
23 law;

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

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

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

13       15. Absence, condition, location or malfunction of any traffic  
14 or road sign, signal or warning device unless the absence,  
15 condition, location or malfunction is not corrected by the state or  
16 political subdivision responsible within a reasonable time after  
17 actual or constructive notice or the removal or destruction of such  
18 signs, signals or warning devices by third parties, action of  
19 weather elements or as a result of traffic collision except on  
20 failure of the state or political subdivision to correct the same  
21 within a reasonable time after actual or constructive notice.  
22 Nothing herein shall give rise to liability arising from the failure  
23 of the state or any political subdivision to initially place any of  
24 the above signs, signals or warning devices. The signs, signals and

1 warning devices referred to herein are those used in connection with  
2 hazards normally connected with the use of roadways or public ways  
3 and do not apply to the duty to warn of special defects such as  
4 excavations or roadway obstructions;

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

6 17. Misrepresentation, if unintentional;

7 18. An act or omission of an independent contractor or  
8 consultant or his or her employees, agents, subcontractors or  
9 suppliers or of a person other than an employee of the state or  
10 political subdivision at the time the act or omission occurred;

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

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

17 21. Participation in any activity approved by a local board of  
18 education and held within a building or on the grounds of the school  
19 district served by that local board of education before or after  
20 normal school hours or on weekends;

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

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

6 b. "recreation" means any indoor or outdoor physical  
7 activity, either organized or unorganized, undertaken  
8 for exercise, relaxation, diversion, sport or  
9 pleasure, and that is not otherwise covered by  
10 paragraph 20 or 21 of this section;

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

16 24. The activities of the National Guard, the militia or other  
17 military organization administered by the Military Department of the  
18 state when on duty pursuant to the lawful orders of competent  
19 authority:

20 a. in an effort to quell a riot,

21 b. in response to a natural disaster or military attack,  
22 or

23 c. if participating in a military mentor program ordered  
24 by the court;

1        25. Provision, equipping, operation or maintenance of any  
2 prison, jail or correctional facility, or injuries resulting from  
3 the parole or escape of a prisoner or injuries by a prisoner to any  
4 other prisoner; provided, however, this provision shall not apply to  
5 claims from individuals not in the custody of the Department of  
6 Corrections based on accidents involving motor vehicles owned or  
7 operated by the Department of Corrections;

8        26. Provision, equipping, operation or maintenance of any  
9 juvenile detention facility, or injuries resulting from the escape  
10 of a juvenile detainee, or injuries by a juvenile detainee to any  
11 other juvenile detainee;

12        27. Any claim or action based on the theory of manufacturer's  
13 products liability or breach of warranty, either expressed or  
14 implied;

15        28. Any claim or action based on the theory of indemnification  
16 or subrogation; provided, however, a political subdivision as  
17 defined in subparagraph s of paragraph 11 of Section 152 of this  
18 title may enter into a contract with a contract operator or any  
19 railroad operating in interstate commerce that sells a property  
20 interest or provides services to a regional transportation  
21 authority, or allows the regional transportation authority to use  
22 the railroad's property or tracks for the provision of public  
23 passenger rail service, providing for the allocation of financial  
24 responsibility, indemnification, or the procurement of insurance for

1 the parties for all types of claims or damages, provided that funds  
2 have been appropriated to cover the resulting contractual obligation  
3 at the time the contract is executed. The acquisition of commercial  
4 liability insurance to cover the activities of the regional  
5 transportation authority, contract operator or railroad shall not  
6 operate as a waiver of any of the liabilities, immunities or  
7 defenses provided for political subdivisions pursuant to the  
8 provisions of The Governmental Tort Claims Act. A contract entered  
9 into under this paragraph shall not affect rights of employees under  
10 the Federal Employers Liability Act or the Federal Railway Labor  
11 Act;

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.

17 SECTION 2. This act shall become effective November 1, 2022.

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