

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB1087 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____ Amendment submitted by: Chris Kannady _____

Reading Clerk

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

FLOOR SUBSTITUTE
FOR ENGROSSED

SENATE BILL NO. 1087

By: Howard of the Senate

and

McEntire of the House

FLOOR SUBSTITUTE

[The Governmental Tort Claims Act - definitions -
effective date]

~~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 18, Chapter 228, O.S.L. 2022 (51 O.S. Supp. 2022,
Section 152), 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;

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

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

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

- 16 a. any person holding an interest in real or personal
17 property which suffers a loss, provided that the claim
18 of the person shall be aggregated with claims of all
19 other persons holding an interest in the property and
20 the claims of all other persons which are derivative
21 of the loss, and that multiple claimants shall be
22 considered a single claimant,
- 23 b. the individual actually involved in the accident or
24 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

1 application, or, if denied, a new application, no
2 later than six (6) months from the date of the
3 official notification from the U.S. Department of
4 Health and Human Services requiring resubmission of a
5 new application;

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

10 a. Employee also includes:

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

18 (2) from September 1, 1991, through June 30, 1996,
19 licensed physicians, licensed osteopathic
20 physicians and certified nurse-midwives providing
21 prenatal, delivery or infant care services to
22 State Department of Health clients pursuant to a
23 contract entered into with the State Department
24 of Health in accordance with paragraph 3 of

1 subsection B of Section 1-106 of Title 63 of the
2 Oklahoma Statutes but only insofar as services
3 authorized by and in conformity with the terms of
4 the contract and the requirements of Section 1-
5 233 of Title 63 of the Oklahoma Statutes, and

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

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

14 (1) physicians acting in an administrative capacity,

15 (2) resident physicians and resident interns
16 participating in a graduate medical education
17 program of the University of Oklahoma Health
18 Sciences Center, the College of Osteopathic
19 Medicine of Oklahoma State University, or the
20 Department of Mental Health and Substance Abuse
21 Services,

22 (3) faculty members and staff of the University of
23 Oklahoma Health Sciences Center and the College
24

- 1 of Osteopathic Medicine of Oklahoma State
2 University, while engaged in teaching duties,
3 (4) physicians who practice medicine or act in an
4 administrative capacity as an employee of an
5 agency of the State of Oklahoma,
6 (5) physicians who provide medical care to inmates
7 pursuant to a contract with the Department of
8 Corrections,
9 (6) any person who is licensed to practice medicine
10 pursuant to Title 59 of the Oklahoma Statutes,
11 who is under an administrative professional
12 services contract with the Oklahoma Health Care
13 Authority under the auspices of the Oklahoma
14 Health Care Authority Chief Medical Officer, and
15 who is limited to performing administrative
16 duties such as professional guidance for medical
17 reviews, reimbursement rates, service
18 utilization, health care delivery and benefit
19 design for the Oklahoma Health Care Authority,
20 only while acting within the scope of such
21 contract,
22 (7) licensed medical professionals under contract
23 with city, county, or state entities who provide
24

- 1 medical care to inmates or detainees in the
2 custody or control of law enforcement agencies,
3 (8) licensed mental health professionals as defined
4 in Sections 1-103 and 5-502 of Title 43A of the
5 Oklahoma Statutes, who are conducting initial
6 examinations of individuals for the purpose of
7 determining whether an individual meets the
8 criteria for emergency detention as part of a
9 contract with the Department of Mental Health and
10 Substance Abuse Services, and
11 (9) licensed mental health professionals as defined
12 in Sections 1-103 and 5-502 of Title 43A of the
13 Oklahoma Statutes, who are providing mental
14 health or substance abuse treatment services
15 under a professional services contract with the
16 Department of Mental Health and Substance Abuse
17 Services and are providing such treatment
18 services at a state-operated facility.

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

1 c. For purposes of The Governmental Tort Claims Act, a
2 physician licensed to practice medicine pursuant to
3 Title 59 of the Oklahoma Statutes who provides medical
4 services on the premises of a public trust hospital,
5 as defined in this section, located in a county with a
6 population of less than seventy-five thousand (75,000)
7 according to the latest Federal Decennial Census, but
8 who is not employed by such hospital, shall be deemed
9 an employee only for medical services provided on the
10 premises of such hospital; provided, that on-premises
11 medical services of the physician must be insured
12 under a liability insurance policy in an amount no
13 less than One Million Dollars (\$1,000,000.00).

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

19 ~~d.~~ e. For purposes of The Governmental Tort Claims Act,
20 members of the state military forces on state active
21 duty orders or on Title 32 active duty orders are
22 employees of this state, regardless of the place,
23 within or outside this state, where their duties as
24 employees are performed;

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

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

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

10 11. "Political subdivision" means:

11 a. a municipality,

12 b. a school district, including, but not limited to, a
13 technology center school district established pursuant
14 to Section 4410, 4411, 4420 or 4420.1 of Title 70 of
15 the Oklahoma Statutes, or a public library as defined
16 pursuant to Section 1-104 of Title 65 of the Oklahoma
17 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
24

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,

13 r. for purposes of The Governmental Tort Claims Act only,
14 a circuit engineering district created pursuant to
15 Section 687.1 of Title 69 of the Oklahoma Statutes,

16 s. for purposes of the Governmental Tort Claims Act only,
17 a substate planning district, regional council of
18 government or other entity created pursuant to Section
19 1001 et seq. of Title 74 of the Oklahoma Statutes, and

20 t. for purposes of The Governmental Tort Claims Act only,
21 a regional transportation authority created pursuant
22 to Section 1370.7 of Title 68 of the Oklahoma Statutes
23 including its contract operator and any railroad
24 operating in interstate commerce that sells a property

1 interest or provides services to a regional
2 transportation authority or allows the authority to
3 use the property or tracks of the railroad for the
4 provision of public passenger rail service to the
5 extent claims against the contract operator or
6 railroad arise out of or are related to or in
7 connection with such property interest, services or
8 operation of the public passenger rail service.
9 Provided, the acquisition of commercial liability
10 insurance to cover the activities of the regional
11 transportation authority, contract operator or
12 railroad shall not operate as a waiver of any
13 liabilities, immunities or defenses provided pursuant
14 to the provisions of the Governmental Tort Claims Act,
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;

3 14. "State active duty" shall be defined in accordance with
4 Section 801 of Title 44 of the Oklahoma Statutes;

5 15. "State military forces" shall be defined in accordance with
6 Section 801 of Title 44 of the Oklahoma Statutes;

7 16. "Title 32 active duty" shall be defined in accordance with
8 Section 801 of Title 44 of the Oklahoma Statutes; and

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

15 SECTION 2. AMENDATORY 51 O.S. 2021, Section 154, is
16 amended to read as follows:

17 Section 154. A. The total liability of the state and its
18 political subdivisions on claims within the scope of The
19 Governmental Tort Claims Act, arising out of an accident or
20 occurrence happening after October 1, 1985, Section 151 et seq. of
21 this title, shall not exceed:

22 1. ~~Twenty-five Thousand Dollars (\$25,000.00)~~ The actual amount
23 of loss for any claim or to any claimant who has more than one claim
24

1 for loss of property arising out of a single act, accident, or
2 occurrence;

3 2. Except as otherwise provided in this paragraph, ~~One Hundred~~
4 ~~Twenty-five Thousand Dollars (\$125,000.00)~~ Two Hundred Fifty
5 Thousand Dollars (\$250,000.00) to any claimant for a claim for any
6 other loss arising out of a single act, accident, or occurrence, or
7 Eighty-Five Thousand Dollar (\$85,000.00) to any claimant for
8 inconvenience, annoyance, and discomfort in all nuisance claims
9 arising out of a single act, accident, or occurrence. The limit of
10 liability for the state or any city or county with a population of
11 three hundred thousand (300,000) or more according to the latest
12 Federal Decennial Census shall not exceed ~~One Hundred Seventy-five~~
13 ~~Thousand Dollars (\$175,000.00)~~ Three Hundred Seventy Five Thousand
14 Dollars (\$375,000.00), or One Hundred Forty Thousand Dollars
15 (\$140,000.00) to any claimant for inconvenience, annoyance, and
16 discomfort in all nuisance claims arising out of a single act,
17 accident or occurrence. Except however, the limits of said
18 liability for the University Hospitals and State Mental Health
19 Hospitals operated by the Department of Mental Health and Substance
20 Abuse Services for claims arising from medical negligence shall be
21 ~~Two Hundred Thousand Dollars (\$200,000.00)~~ Four Hundred Thousand
22 Dollars (\$400,000). For claims arising from medical negligence by
23 any licensed physician, osteopathic physician or certified nurse-
24 midwife rendering prenatal, delivery or infant care services from

1 September 1, 1991, through June 30, 1996, pursuant to a contract
2 authorized by subsection B of Section 1-106 of Title 63 of the
3 Oklahoma Statutes and in conformity with the requirements of Section
4 1-233 of Title 63 of the Oklahoma Statutes, the limits of said
5 liability shall be ~~Two Hundred Thousand Dollars (\$200,000.00)~~ Four
6 Hundred Thousand (\$400,000.00); or

7 3. ~~One Million Dollars (\$1,000,000.00)~~ Two Million Dollars
8 (\$2,000,000.00) for any number of claims arising out of a single
9 occurrence or accident.

10 B. 1. Beginning on the May 28, 2003, claims shall be allowed
11 for wrongful criminal felony conviction resulting in imprisonment if
12 the claimant has received a full pardon on the basis of a written
13 finding by the Governor of actual innocence for the crime for which
14 the claimant was sentenced or has been granted judicial relief
15 absolving the claimant of guilt on the basis of actual innocence of
16 the crime for which the claimant was sentenced. The Governor or the
17 court shall specifically state, in the pardon or order, the evidence
18 or basis on which the finding of actual innocence is based.

19 2. As used in paragraph 1 of this subsection, for a claimant to
20 recover based on "actual innocence", the individual must meet the
21 following criteria:

- 22 a. the individual was charged, by indictment or
23 information, with the commission of a public offense
24 classified as a felony,

- 1 b. the individual did not plead guilty to the offense
2 charged, or to any lesser included offense, but was
3 convicted of the offense,
- 4 c. the individual was sentenced to incarceration for a
5 term of imprisonment as a result of the conviction,
- 6 d. the individual was imprisoned solely on the basis of
7 the conviction for the offense, and
- 8 e. (1) in the case of a pardon, a determination was made
9 by either the Pardon and Parole Board or the
10 Governor that the offense for which the
11 individual was convicted, sentenced and
12 imprisoned, including any lesser offenses, was
13 not committed by the individual, or
- 14 (2) in the case of judicial relief, a court of
15 competent jurisdiction found by clear and
16 convincing evidence that the offense for which
17 the individual was convicted, sentenced and
18 imprisoned, including any lesser included
19 offenses, was not committed by the individual and
20 issued an order vacating, dismissing or reversing
21 the conviction and sentence and providing that no
22 further proceedings can be or will be held
23 against the individual on any facts and
24

1 circumstances alleged in the proceedings which
2 had resulted in the conviction.

3 3. A claimant shall not be entitled to compensation for any
4 part of a sentence in prison during which the claimant was also
5 serving a concurrent sentence for a crime not covered by this
6 subsection.

7 4. The total liability of the state and its political
8 subdivisions on any claim within the scope of The Governmental Tort
9 Claims Act arising out of wrongful criminal felony conviction
10 resulting in imprisonment shall not exceed ~~One Hundred Seventy-five~~
11 ~~Thousand Dollars (\$175,000.00)~~ Three Hundred Fifty Thousand Dollars
12 (\$350,000.00).

13 5. The provisions of this subsection shall apply to convictions
14 occurring on or before May 28, 2003 as well as convictions occurring
15 after the May 28, 2003. If a court of competent jurisdiction finds
16 that retroactive application of this subsection is unconstitutional,
17 the prospective application of this subsection shall remain valid.

18 C. No award for damages in an action or any claim against the
19 state or a political subdivision shall include punitive or exemplary
20 damages.

21 D. When the amount awarded to or settled upon multiple
22 claimants exceeds the limitations of this section, any party may
23 apply to the district court which has jurisdiction of the cause to
24 apportion to each claimant the claimant's proper share of the total

1 amount as limited herein. The share apportioned to each claimant
2 shall be in the proportion that the ratio of the award or settlement
3 made to ~~him~~ each claimant bears to the aggregate awards and
4 settlements for all claims against the state or its political
5 subdivisions arising out of the occurrence. When the amount of the
6 aggregate losses presented by a single claimant exceeds the limits
7 of paragraph 1 or 2 of subsection A of this section, each person
8 suffering a loss shall be entitled to that person's proportionate
9 share.

10 E. The total liability of resident physicians and interns while
11 participating in a graduate medical education program of the
12 University of Oklahoma College of Medicine, its affiliated
13 institutions and the Oklahoma State University College of
14 Osteopathic Medicine ~~and Surgery~~ shall not exceed ~~One Hundred~~
15 ~~Thousand Dollars (\$100,000.00)~~ One Hundred Seventy-five Thousand
16 Dollars (\$175,000.00).

17 F. The total liability of a public trust hospital and physician
18 for the acts of a physician who provides medical services on the
19 premises of a public trust hospital as defined pursuant to Section
20 152 of this Title, that is located in a county with a population of
21 less than seventy-five thousand (75,000) according to the latest
22 Federal Decennial Census, but who is not employed by such hospital,
23 shall not exceed One Million Dollars (\$1,000,000.00); provided, if
24 the medical services of the physician are covered by a liability

insurance policy or policies in excess of One Million Dollars
(1,000,000.00), the combined policy limits of all available
insurance shall be the total limit of the hospital and physicians
liability. If the physician is employed by another group or entity,
the total limit of liability of the physician and hospital shall be
the combined total of all coverage afforded by the liability policy
or self-insurance or assets of that group or entity.

G. The state or a political subdivision may petition the court that all parties and actions arising out of a single accident or occurrence shall be joined as provided by law, and upon order of the court the proceedings upon good cause shown shall be continued for a reasonable time or until such joinder has been completed. The state or political subdivision shall be allowed to interplead in any action which may impose on it any duty or liability pursuant to The Governmental Tort Claims Act.

~~G.~~ H. The liability of the state or political subdivision under The Governmental Tort Claims Act shall be several from that of any other person or entity, and the state or political subdivision shall only be liable for that percentage of total damages that corresponds to its percentage of total negligence. Nothing in this section shall be construed as increasing the liability limits imposed on the state or political subdivision under The Governmental Tort Claims Act.

SECTION 3. This act shall become effective November 1, 2023.

59-1-8299 TJ 04/24/23