

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 1924

By: Martinez

4
5
6 AS INTRODUCED

7 An Act relating to The Governmental Tort Claims Act;
8 amending 51 O.S. 2011, Section 152, as last amended
9 by Section 1, Chapter 233, O.S.L. 2018 (51 O.S. Supp.
10 2020, Section 152), which relates to definitions;
11 modifying definition; amending 51 O.S. 2011, Section
12 154, which relates to extent of liability; stating
13 certain liability limits for political subdivision;
14 amending 51 O.S. 2011, Section 155, as last amended
15 by Section 3, Chapter 273, O.S.L. 2016 (51 O.S. Supp.
16 2020, Section 155), which relates to exemptions from
17 liability; making exception for certain regional
18 transportation authority contracts; and providing an
19 effective date.

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

21 SECTION 1. AMENDATORY 51 O.S. 2011, Section 152, as last
22 amended by Section 1, Chapter 233, O.S.L. 2018 (51 O.S. Supp. 2020,
23 Section 152), is amended to read as follows:

24 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;

1 2. "Agency" means any board, commission, committee, department
2 or other instrumentality or entity designated to act ~~in~~ on 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 ~~this act~~
12 The 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
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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~~ on
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 of The Governmental Tort Claims Act,
15 the following are employees of this state, regardless
16 of the place in this state where duties as employees
17 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 OSU College of Osteopathic
23 Medicine ~~of Oklahoma State University~~, or the
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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,
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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 staff of the University
24 of Oklahoma Health Sciences Center and the OSU College

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

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

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

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

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

19 11. "Political subdivision" means:

20 a. a municipality,

21 b. a school district, including, but not limited to, a
22 technology center school district established pursuant
23 to Section 4410, 4411, 4420 or 4420.1 of Title 70 of
24 the Oklahoma Statutes,

1 c. a county,

2 d. a public trust where the sole beneficiary or
3 beneficiaries are a city, town, school district or
4 county. For purposes of The Governmental Tort Claims
5 Act, a public trust shall include:

6 (1) a municipal hospital created pursuant to Sections
7 30-101 through 30-109 of Title 11 of the Oklahoma
8 Statutes, a county hospital created pursuant to
9 Sections 781 through 796 of Title 19 of the
10 Oklahoma Statutes, or is created pursuant to a
11 joint agreement between such governing
12 authorities, that is operated for the public
13 benefit by a public trust created pursuant to
14 Sections 176 through 180.4 of Title 60 of the
15 Oklahoma Statutes and managed by a governing
16 board appointed or elected by the municipality,
17 county, or both, who exercises control of the
18 hospital, subject to the approval of the
19 governing body of the municipality, county, or
20 both,

21 (2) a public trust created pursuant to Sections 176
22 through 180.4 of Title 60 of the Oklahoma
23 Statutes after January 1, 2009, the primary
24 purpose of which is to own, manage, or operate a

1 public acute care hospital in this state that
2 serves as a teaching hospital for a medical
3 residency program provided by a college of
4 osteopathic medicine and provides care to
5 indigent persons, and

6 (3) a corporation in which all of the capital stock
7 is owned, or a limited liability company in which
8 all of the member interest is owned, by a public
9 trust,

10 e. for the purposes of The Governmental Tort Claims Act
11 only, a housing authority created pursuant to the
12 provisions of the Oklahoma Housing Authority Act,

13 f. for the purposes of The Governmental Tort Claims Act
14 only, corporations organized not for profit pursuant
15 to the provisions of the Oklahoma General Corporation
16 Act for the primary purpose of developing and
17 providing rural water supply and sewage disposal
18 facilities to serve rural residents,

19 g. for the purposes of The Governmental Tort Claims Act
20 only, districts formed pursuant to the Rural Water,
21 Sewer, Gas and Solid Waste Management Districts Act,

22 h. for the purposes of The Governmental Tort Claims Act
23 only, master conservancy districts formed pursuant to
24 the Conservancy Act of Oklahoma,

- 1 i. for the purposes of The Governmental Tort Claims Act
2 only, a fire protection district created pursuant to
3 the provisions of Section 901.1 et seq. of Title 19 of
4 the Oklahoma Statutes,
- 5 j. for the purposes of The Governmental Tort Claims Act
6 only, a benevolent or charitable corporate volunteer
7 or full-time fire department for an unincorporated
8 area created pursuant to the provisions of Section 592
9 et seq. of Title 18 of the Oklahoma Statutes,
- 10 k. for purposes of The Governmental Tort Claims Act only,
11 an Emergency Services Provider rendering services
12 within the boundaries of a Supplemental Emergency
13 Services District pursuant to an existing contract
14 between the Emergency Services Provider and the State
15 Department of Health. Provided, however, that the
16 acquisition of commercial liability insurance covering
17 the activities of such Emergency Services Provider
18 performed within the State of Oklahoma shall not
19 operate as a waiver of any of the limitations,
20 immunities or defenses provided for political
21 subdivisions pursuant to the terms of The Governmental
22 Tort Claims Act,
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- 1 l. for purposes of The Governmental Tort Claims Act only,
2 a conservation district created pursuant to the
3 provisions of the Conservation District Act,
4 m. for purposes of The Governmental Tort Claims Act only,
5 districts formed pursuant to the Oklahoma Irrigation
6 District Act,
7 n. for purposes of The Governmental Tort Claims Act only,
8 any community action agency established pursuant to
9 Sections 5035 through 5040 of Title 74 of the Oklahoma
10 Statutes,
11 o. for purposes of The Governmental Tort Claims Act only,
12 any organization that is designated as a youth
13 services agency, pursuant to Section 2-7-306 of Title
14 10A of the Oklahoma Statutes,
15 p. for purposes of The Governmental Tort Claims Act only,
16 any judge presiding over a drug court, as defined by
17 Section 471.1 of Title 22 of the Oklahoma Statutes,
18 q. for purposes of The Governmental Tort Claims Act only,
19 any child-placing agency licensed by this state to
20 place children in foster family homes, ~~and~~
21 r. a circuit engineering district created pursuant to
22 Section 687.1 of Title 69 of the Oklahoma Statutes,
23 and

1 s. for purposes of The Governmental Tort Claims Act only,
2 a regional transportation authority created pursuant
3 to Section 1370.7 of Title 68 of the Oklahoma
4 Statutes, as well as its contract operator or any
5 railroad operating in interstate commerce that sells a
6 property interest to, or provides services to, a
7 regional transportation authority, or allows the
8 regional transportation authority to use such
9 railroad's property or tracks for the provision of
10 public passenger rail service, to the extent claims
11 against the contract operator or such railroad arise
12 out of or are related to or in connection with such
13 property interest, services, or operation of such
14 public passenger rail service. Provided, however,
15 that the acquisition of commercial liability insurance
16 covering the activities of such regional
17 transportation authority, contract operator, or
18 railroad shall not operate as a waiver of any of the
19 liabilities, immunities or defenses provided for
20 political subdivisions pursuant to the terms of The
21 Governmental Tort Claims Act,

22 and all their institutions, instrumentalities or agencies;

23 12. "Scope of employment" means performance by an employee
24 acting in good faith within the duties of the employee's office or

1 employment or of tasks lawfully assigned by a competent authority
2 including the operation or use of an agency vehicle or equipment
3 with actual or implied consent of the supervisor of the employee,
4 but shall not include corruption or fraud;

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

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

16 SECTION 2. AMENDATORY 51 O.S. 2011, Section 154, is
17 amended to read as follows:

18 Section 154. A. The total liability of the state and its
19 political subdivisions on claims within the scope of The
20 Governmental Tort Claims Act, arising out of an accident or
21 occurrence happening after the effective date of this act, Section
22 151 et seq. of this title, shall not exceed:
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1 1. Twenty-five Thousand Dollars (\$25,000.00) for any claim or
2 to any claimant who has more than one claim for loss of property
3 arising out of a single act, accident, or occurrence;

4 2. Except as otherwise provided in this paragraph, One Hundred
5 Twenty-five Thousand Dollars (\$125,000.00) to any claimant for a
6 claim for any other loss arising out of a single act, accident, or
7 occurrence. The limit of liability for the state or any city or
8 county with a population of three hundred thousand (300,000) or more
9 according to the latest Federal Decennial Census, or a political
10 subdivision as defined in paragraph 11 of Section 152 of this title,
11 shall not exceed One Hundred Seventy-five Thousand Dollars
12 (\$175,000.00). Except, however, the limits of said liability for
13 the University Hospitals and State Mental Health Hospitals operated
14 by the Department of Mental Health and Substance Abuse Services for
15 claims arising from medical negligence shall be Two Hundred Thousand
16 Dollars (\$200,000.00). For claims arising from medical negligence
17 by any licensed physician, osteopathic physician or certified nurse-
18 midwife rendering prenatal, delivery or infant care services from
19 September 1, 1991, through June 30, 1996, pursuant to a contract
20 authorized by subsection B of Section 1-106 of Title 63 of the
21 Oklahoma Statutes and in conformity with the requirements of Section
22 1-233 of Title 63 of the Oklahoma Statutes, the limits of said
23 liability shall be Two Hundred Thousand Dollars (\$200,000.00); or
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1 3. One Million Dollars (\$1,000,000.00) for any number of claims
2 arising out of a single occurrence or accident.

3 B. 1. Beginning on the effective date of ~~this act~~ The
4 Governmental Tort Claims Act, claims shall be allowed for wrongful
5 criminal felony conviction resulting in imprisonment if the claimant
6 has received a full pardon on the basis of a written finding by the
7 Governor of actual innocence for the crime for which the claimant
8 was sentenced or has been granted judicial relief absolving the
9 claimant of guilt on the basis of actual innocence of the crime for
10 which the claimant was sentenced. The Governor or the court shall
11 specifically state, in the pardon or order, the evidence or basis on
12 which the finding of actual innocence is based.

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

- 16 a. the individual was charged, by indictment or
17 information, with the commission of a public offense
18 classified as a felony,
- 19 b. the individual did not plead guilty to the offense
20 charged, or to any lesser included offense, but was
21 convicted of the offense,
- 22 c. the individual was sentenced to incarceration for a
23 term of imprisonment as a result of the conviction,

1 d. the individual was imprisoned solely on the basis of
2 the conviction for the offense, and

3 e. (1) in the case of a pardon, a determination was made
4 by either the Pardon and Parole Board or the
5 Governor that the offense for which the
6 individual was convicted, sentenced and
7 imprisoned, including any lesser offenses, was
8 not committed by the individual, or

9 (2) in the case of judicial relief, a court of
10 competent jurisdiction found by clear and
11 convincing evidence that the offense for which
12 the individual was convicted, sentenced and
13 imprisoned, including any lesser included
14 offenses, was not committed by the individual and
15 issued an order vacating, dismissing or reversing
16 the conviction and sentence and providing that no
17 further proceedings can be or will be held
18 against the individual on any facts and
19 circumstances alleged in the proceedings which
20 had resulted in the conviction.

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

1 4. The total liability of the state and its political
2 subdivisions on any claim within the scope of The Governmental Tort
3 Claims Act arising out of wrongful criminal felony conviction
4 resulting in imprisonment shall not exceed One Hundred Seventy-five
5 Thousand Dollars (\$175,000.00).

6 5. The provisions of this subsection shall apply to convictions
7 occurring on or before the effective date of this act as well as
8 convictions occurring after the effective date of this act. If a
9 court of competent jurisdiction finds that retroactive application
10 of this subsection is unconstitutional, the prospective application
11 of this subsection shall remain valid.

12 C. No award for damages in an action or any claim against the
13 state or a political subdivision shall include punitive or exemplary
14 damages.

15 D. When the amount awarded to or settled upon multiple
16 claimants exceeds the limitations of this section, any party may
17 apply to the district court which has jurisdiction of the cause to
18 apportion to each claimant the claimant's proper share of the total
19 amount as limited herein. The share apportioned to each claimant
20 shall be in the proportion that the ratio of the award or settlement
21 made to him or her bears to the aggregate awards and settlements for
22 all claims against the state or its political subdivisions arising
23 out of the occurrence. When the amount of the aggregate losses
24 presented by a single claimant exceeds the limits of paragraph 1 or

1 2 of subsection A of this section, each person suffering a loss
2 shall be entitled to that person's proportionate share.

3 E. The total liability of resident physicians and interns while
4 participating in a graduate medical education program of the
5 University of Oklahoma College of Medicine, its affiliated
6 institutions and the ~~Oklahoma~~ OSU College of Osteopathic Medicine
7 ~~and Surgery~~ shall not exceed One Hundred Thousand Dollars
8 (\$100,000.00).

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

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

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

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

6 1. Legislative functions;

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

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

11 4. Adoption or enforcement of or failure to adopt or enforce a
12 law, whether valid or invalid, including, but not limited to, any
13 statute, charter provision, ordinance, resolution, rule, regulation
14 or written policy;

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

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

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

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

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

5 10. Natural conditions of property of the state or political
6 subdivision;

7 11. Assessment or collection of taxes or special assessments,
8 license or registration fees, or other fees or charges imposed by
9 law;

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

14 13. Inspection powers or functions, including failure to make
15 an inspection, review or approval, or making an inadequate or
16 negligent inspection, review or approval, of any property, real or
17 personal, to determine whether the property complies with or
18 violates any law or contains a hazard to health or safety, or fails
19 to conform to a recognized standard;

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

22 15. Absence, condition, location or malfunction of any traffic
23 or road sign, signal or warning device unless the absence,
24 condition, location or malfunction is not corrected by the state or

1 political subdivision responsible within a reasonable time after
2 actual or constructive notice or the removal or destruction of such
3 signs, signals or warning devices by third parties, action of
4 weather elements or as a result of traffic collision except on
5 failure of the state or political subdivision to correct the same
6 within a reasonable time after actual or constructive notice.
7 Nothing herein shall give rise to liability arising from the failure
8 of the state or any political subdivision to initially place any of
9 the above signs, signals or warning devices. The signs, signals and
10 warning devices referred to herein are those used in connection with
11 hazards normally connected with the use of roadways or public ways
12 and do not apply to the duty to warn of special defects such as
13 excavations or roadway obstructions;

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

15 17. Misrepresentation, if unintentional;

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

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

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

4 21. Participation in any activity approved by a local board of
5 education and held within a building or on the grounds of the school
6 district served by that local board of education before or after
7 normal school hours or on weekends;

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

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

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

21 23. Any court-ordered, Department of Corrections or county_
22 approved work release program; provided, however, this provision
23 shall not apply to claims from individuals not in the custody of the
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1 Department of Corrections based on accidents involving motor
2 vehicles owned or operated by the Department of Corrections;

3 24. The activities of the National Guard, the militia or other
4 military organization administered by the Military Department of the
5 state when on duty pursuant to the lawful orders of competent
6 authority:

- 7 a. in an effort to quell a riot,
- 8 b. in response to a natural disaster or military attack,
- 9 or
- 10 c. if participating in a military mentor program ordered
11 by the court;

12 25. Provision, equipping, operation or maintenance of any
13 prison, jail or correctional facility, or injuries resulting from
14 the parole or escape of a prisoner or injuries by a prisoner to any
15 other prisoner; provided, however, this provision shall not apply to
16 claims from individuals not in the custody of the Department of
17 Corrections based on accidents involving motor vehicles owned or
18 operated by the Department of Corrections;

19 26. Provision, equipping, operation or maintenance of any
20 juvenile detention facility, or injuries resulting from the escape
21 of a juvenile detainee, or injuries by a juvenile detainee to any
22 other juvenile detainee;

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1 27. Any claim or action based on the theory of manufacturer's
2 products liability or breach of warranty, either expressed or
3 implied;

4 28. Any claim or action based on the theory of indemnification
5 or subrogation; except, however, a regional transportation authority
6 created pursuant to Section 1370.7 of Title 68 of the Oklahoma
7 Statutes may enter into a contract with a contract operator or any
8 railroad operating in interstate commerce that sells a property
9 interest to, or provides services to, a regional transportation
10 authority, or allows the regional transportation authority to use
11 such railroad's property or tracks for the provision of public
12 passenger rail service, providing for the allocation of financial
13 responsibility, indemnification, or the procurement of insurance for
14 the parties for all types of claims or damages, provided that funds
15 have been appropriated to cover the resulting contractual obligation
16 at the time the contract is executed. The acquisition of commercial
17 liability insurance covering the activities of such regional
18 transportation authority, contract operator, or railroad shall not
19 operate as a waiver of any of the liabilities, immunities or
20 defenses provided for political subdivisions pursuant to the terms
21 of The Governmental Tort Claims Act. A contract entered into under
22 this section does not affect rights of employees under the Federal
23 Employers Liability Act or the federal Railway Labor Act;

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

3 30. Acts or omissions done in conformance with then current
4 recognized standards;

5 31. Maintenance of the state highway system or any portion
6 thereof unless the claimant presents evidence which establishes
7 either that the state failed to warn of the unsafe condition or that
8 the loss would not have occurred but for a negligent affirmative act
9 of the state;

10 32. Any confirmation of the existence or nonexistence of any
11 effective financing statement on file in the office of the Secretary
12 of State made in good faith by an employee of the office of the
13 Secretary of State as required by the provisions of Section 1-9-
14 320.6 of Title 12A of the Oklahoma Statutes;

15 33. Any court-ordered community sentence;

16 34. Remedial action and any subsequent related maintenance of
17 property pursuant to and in compliance with an authorized
18 environmental remediation program, order, or requirement of a
19 federal or state environmental agency;

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

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1 36. Actions taken in good faith by a school district employee
2 for the out-of-school suspension of a student pursuant to applicable
3 Oklahoma Statutes; or

4 37. Use of a public facility opened to the general public
5 during an emergency.

6 SECTION 4. This act shall become effective November 1, 2021.

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8 58-1-5123 JBH 12/08/20

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