

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1859

By: Fugate

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5
6 AS INTRODUCED

7 An Act relating to officers; amending 51 O.S. 2011,
8 Section 155, as last amended by Section 3, Chapter
9 273, O.S.L. 2016 (51 O.S. Supp. 2020, Section 155),
10 which relates to The Governmental Tort Claims Act;
11 eliminating liability for certain actions of a peace
12 officer; eliminating liability for use of public
13 property for recreation; and providing an effective
14 date.

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

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

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

- 21 1. Legislative functions;
- 22 2. Judicial, quasi-judicial, or prosecutorial functions, other
23 than claims for wrongful criminal felony conviction resulting in
24 imprisonment provided for in Section 154 of this title;
3. Execution or enforcement of the lawful orders of any court;

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

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

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

11 7. Actions of a peace officer commissioned by a law
12 enforcement agency when such officer is providing services to a
13 secondary employer outside his or her primary employment as a peace
14 officer;

15 8. Operation of state- or political-subdivision-owned vehicles
16 or equipment by a peace officer commissioned by a law enforcement
17 agency not engaged in the furtherance of state or political
18 subdivision business at the time of loss or claim;

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

20 ~~8.~~ 10. Snow or ice conditions or temporary or natural
21 conditions on any public way or other public place due to weather
22 conditions, unless the condition is affirmatively caused by the
23 negligent act of the state or a political subdivision;

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1 ~~9.~~ 11. Entry upon any property where that entry is expressly or
2 implied authorized by law;

3 ~~10.~~ 12. Natural conditions of property of the state or
4 political subdivision;

5 ~~11.~~ 13. Assessment or collection of taxes or special
6 assessments, license or registration fees, or other fees or charges
7 imposed by law;

8 ~~12.~~ 14. Licensing powers or functions including, but not
9 limited to, the issuance, denial, suspension or revocation of or
10 failure or refusal to issue, deny, suspend or revoke any permit,
11 license, certificate, approval, order or similar authority;

12 ~~13.~~ 15. Inspection powers or functions, including failure to
13 make an inspection, review or approval, or making an inadequate or
14 negligent inspection, review or approval of any property, real or
15 personal, to determine whether the property complies with or
16 violates any law or contains a hazard to health or safety, or fails
17 to conform to a recognized standard;

18 ~~14.~~ 16. Any loss to any person covered by any workers'
19 compensation act or any employer's liability act;

20 ~~15.~~ 17. Absence, condition, location or malfunction of any
21 traffic or road sign, signal or warning device unless the absence,
22 condition, location or malfunction is not corrected by the state or
23 political subdivision responsible within a reasonable time after
24 actual or constructive notice or the removal or destruction of such

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

12 ~~16.~~ 18. Any claim which is limited or barred by any other law;

13 ~~17.~~ 19. Misrepresentation, if unintentional;

14 ~~18.~~ 20. An act or omission of an independent contractor or
15 consultant or his or her employees, agents, subcontractors or
16 suppliers or of a person other than an employee of the state or
17 political subdivision at the time the act or omission occurred;

18 ~~19.~~ 21. Theft by a third person of money in the custody of an
19 employee unless the loss was sustained because of the negligence or
20 wrongful act or omission of the employee;

21 ~~20.~~ 22. Participation in or practice for any interscholastic or
22 other athletic contest sponsored or conducted by or on the property
23 of the state or a political subdivision;

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1 ~~21.~~ 23. Participation in any activity approved by a local board
2 of education and held within a building or on the grounds of the
3 school district served by that local board of education before or
4 after normal school hours or on weekends;

5 ~~22.~~ 24. Use of indoor or outdoor school property and facilities
6 made available for public recreation before or after normal school
7 hours or on weekends or school vacations, except those claims
8 resulting from willful and wanton acts of negligence. For purposes
9 of this paragraph:

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

13 b. "recreation" means any indoor or outdoor physical
14 activity, either organized or unorganized, undertaken
15 for exercise, relaxation, diversion, sport or
16 pleasure, and that is not otherwise covered by
17 paragraph ~~20~~ 22 or ~~21~~ 23 of this section;

18 ~~23.~~ 25. Any court-ordered, Department of Corrections or county-
19 approved work release program; provided, however, this provision
20 shall not apply to claims from individuals not in the custody of the
21 Department of Corrections based on accidents involving motor
22 vehicles owned or operated by the Department of Corrections;

23 ~~24.~~ 26. The activities of the National Guard, the militia or
24 other military organization administered by the Military Department

1 of the state when on duty pursuant to the lawful orders of competent
2 authority:

- 3 a. in an effort to quell a riot,
- 4 b. in response to a natural disaster or military attack,
- 5 or
- 6 c. if participating in a military mentor program ordered
7 by the court;

8 ~~25.~~ 27. Provision, equipping, operation or maintenance of any
9 prison, jail or correctional facility, or injuries resulting from
10 the parole or escape of a prisoner or injuries by a prisoner to any
11 other prisoner; provided, however, this provision shall not apply to
12 claims from individuals not in the custody of the Department of
13 Corrections based on accidents involving motor vehicles owned or
14 operated by the Department of Corrections;

15 ~~26.~~ 28. Provision, equipping, operation or maintenance of any
16 juvenile detention facility, or injuries resulting from the escape
17 of a juvenile detainee, or injuries by a juvenile detainee to any
18 other juvenile detainee;

19 ~~27.~~ 29. Any claim or action based on the theory of
20 manufacturer's products liability or breach of warranty, either
21 expressed or implied;

22 ~~28.~~ 30. Any claim or action based on the theory of
23 indemnification or subrogation;

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1 ~~29.~~ 31. Any claim based upon an act or omission of an employee
2 in the placement of children;

3 ~~30.~~ 32. Acts or omissions done in conformance with then current
4 recognized standards;

5 ~~31.~~ 33. 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.~~ 34. Any confirmation of the existence or nonexistence of
11 any effective financing statement on file in the ~~office~~ Office of
12 the Secretary of State made in good faith by an employee of the
13 office of the Secretary of State as required by the provisions of
14 Section 1-9-320.6 of Title 12A of the Oklahoma Statutes;

15 ~~33.~~ 35. Any court-ordered community sentence;

16 ~~34.~~ 36. Remedial action and any subsequent related maintenance
17 of 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.~~ 37. 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.~~ 38. Actions taken in good faith by a school district
2 employee for the out-of-school suspension of a student pursuant to
3 applicable Oklahoma Statutes; ~~or~~

4 ~~37.~~ 39. Use of a public facility opened to the general public
5 during an emergency; or

6 40. Use of outdoor public property and facilities made
7 available for public recreation, except those claims resulting from
8 willful and wanton acts of negligence.

9 SECTION 2. This act shall become effective November 1, 2021.

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