

1 **SENATE FLOOR VERSION**

2 February 14, 2023

3 SENATE BILL NO. 1087

By: Howard

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5
6 An Act relating to The Governmental Tort Claims Act;
7 amending 51 O.S. 2021, Section 152, as last amended
8 by Section 18, Chapter 228, O.S.L. 2022 (51 O.S.
9 Supp. 2022, Section 152), which relates to
10 definitions; modifying definition; and providing an
11 effective date.

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

12 SECTION 1. AMENDATORY 51 O.S. 2021, Section 152, as last
13 amended by Section 18, Chapter 228, O.S.L. 2022 (51 O.S. Supp. 2022,
14 Section 152), is amended to read as follows:

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

16 1. "Action" means a proceeding in a court of competent
17 jurisdiction by which one party brings a suit against another;

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

21 3. "Charitable health care provider" means a person who is
22 licensed, certified, or otherwise authorized by the laws of this
23 state to administer health care in the ordinary course of business
24 or the practice of a profession and who provides care to a medically

1 indigent person, as defined in paragraph 9 of this section, with no
2 expectation of or acceptance of compensation of any kind;

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

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

12 a. any person holding an interest in real or personal
13 property which suffers a loss, provided that the claim
14 of the person shall be aggregated with claims of all
15 other persons holding an interest in the property and
16 the claims of all other persons which are derivative
17 of the loss, and that multiple claimants shall be
18 considered a single claimant,

19 b. the individual actually involved in the accident or
20 occurrence who suffers a loss, provided that the
21 individual shall aggregate in the claim the losses of
22 all other persons which are derivative of the loss, or

23 c. in the case of death, an administrator, special
24 administrator or a personal representative who shall

1 aggregate in the claim all losses of all persons which
2 are derivative of the death;

3 6. "Community health care provider" means:

4 a. a health care provider who volunteers services at a
5 community health center that has been deemed by the
6 U.S. Department of Health and Human Services as a
7 federally qualified health center as defined by 42
8 U.S.C., Section 1396d(1)(2)(B),

9 b. a health provider who provides services to an
10 organization that has been deemed a federally
11 qualified look-alike community health center, and

12 c. a health care provider who provides services to a
13 community health center that has made application to
14 the U.S. Department of Health and Human Services for
15 approval and deeming as a federally qualified look-
16 alike community health center in compliance with
17 federal application guidance, and has received
18 comments from the U.S. Department of Health and Human
19 Services as to the status of such application with the
20 established intent of resubmitting a modified
21 application, or, if denied, a new application, no
22 later than six (6) months from the date of the
23 official notification from the U.S. Department of
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1 Health and Human Services requiring resubmission of a
2 new application;

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

7 a. Employee also includes:

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

15 (2) from September 1, 1991, through June 30, 1996,
16 licensed physicians, licensed osteopathic
17 physicians and certified nurse-midwives providing
18 prenatal, delivery or infant care services to
19 State Department of Health clients pursuant to a
20 contract entered into with the State Department
21 of Health in accordance with paragraph 3 of
22 subsection B of Section 1-106 of Title 63 of the
23 Oklahoma Statutes but only insofar as services
24 authorized by and in conformity with the terms of

1 the contract and the requirements of Section 1-
2 233 of Title 63 of the Oklahoma Statutes, and
3 (3) any volunteer, full-time or part-time firefighter
4 when performing duties for a fire department
5 provided for in subparagraph j of paragraph 11 of
6 this section.

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

- 11 (1) physicians acting in an administrative capacity,
12 (2) resident physicians and resident interns
13 participating in a graduate medical education
14 program of the University of Oklahoma Health
15 Sciences Center, the College of Osteopathic
16 Medicine of Oklahoma State University, or the
17 Department of Mental Health and Substance Abuse
18 Services,
19 (3) faculty members and staff of the University of
20 Oklahoma Health Sciences Center and the College
21 of Osteopathic Medicine of Oklahoma State
22 University, while engaged in teaching duties,
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- 1 (4) physicians who practice medicine or act in an
2 administrative capacity as an employee of an
3 agency of the State of Oklahoma,
- 4 (5) physicians who provide medical care to inmates
5 pursuant to a contract with the Department of
6 Corrections,
- 7 (6) any person who is licensed to practice medicine
8 pursuant to Title 59 of the Oklahoma Statutes,
9 who is under an administrative professional
10 services contract with the Oklahoma Health Care
11 Authority under the auspices of the Oklahoma
12 Health Care Authority Chief Medical Officer, and
13 who is limited to performing administrative
14 duties such as professional guidance for medical
15 reviews, reimbursement rates, service
16 utilization, health care delivery and benefit
17 design for the Oklahoma Health Care Authority,
18 only while acting within the scope of such
19 contract,
- 20 (7) licensed medical professionals under contract
21 with city, county, or state entities who provide
22 medical care to inmates or detainees in the
23 custody or control of law enforcement agencies,
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1 (8) licensed mental health professionals as defined
2 in Sections 1-103 and 5-502 of Title 43A of the
3 Oklahoma Statutes, who are conducting initial
4 examinations of individuals for the purpose of
5 determining whether an individual meets the
6 criteria for emergency detention as part of a
7 contract with the Department of Mental Health and
8 Substance Abuse Services, and

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

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

23 c. For purposes of The Governmental Tort Claims Act, a
24 physician licensed to practice medicine pursuant to

1 Title 59 of the Oklahoma Statutes who provides medical
2 services in a public trust hospital, but who is not
3 employed by such hospital, shall be deemed an employee
4 only for medical services provided in such hospital.

5 d. 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 ~~d.~~ e. For purposes of The Governmental Tort Claims Act,
11 members of the state military forces on state active
12 duty orders or on Title 32 active duty orders are
13 employees of this state, regardless of the place,
14 within or outside this state, where their duties as
15 employees are performed;

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

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

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

1 11. "Political subdivision" means:

2 a. a municipality,

3 b. a school district, including, but not limited to, a
4 technology center school district established pursuant
5 to Section 4410, 4411, 4420 or 4420.1 of Title 70 of
6 the Oklahoma Statutes,

7 c. a county,

8 d. a public trust where the sole beneficiary or
9 beneficiaries are a city, town, school district or
10 county. For purposes of The Governmental Tort Claims
11 Act, a public trust shall include:

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

governing body of the municipality, county, or both,

(2) a public trust created pursuant to Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes after January 1, 2009, the primary purpose of which is to own, manage, or operate a public acute care hospital in this state that serves as a teaching hospital for a medical residency program provided by a college of osteopathic medicine and provides care to indigent persons, and

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

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

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

- 1 g. for the purposes of The Governmental Tort Claims Act
2 only, districts formed pursuant to the Rural Water,
3 Sewer, Gas and Solid Waste Management Districts Act,
4 h. for the purposes of The Governmental Tort Claims Act
5 only, master conservancy districts formed pursuant to
6 the Conservancy Act of Oklahoma,
7 i. for the purposes of The Governmental Tort Claims Act
8 only, a fire protection district created pursuant to
9 the provisions of Section 901.1 et seq. of Title 19 of
10 the Oklahoma Statutes,
11 j. for the purposes of The Governmental Tort Claims Act
12 only, a benevolent or charitable corporate volunteer
13 or full-time fire department for an unincorporated
14 area created pursuant to the provisions of Section 592
15 et seq. of Title 18 of the Oklahoma Statutes,
16 k. for purposes of The Governmental Tort Claims Act only,
17 an Emergency Services Provider rendering services
18 within the boundaries of a Supplemental Emergency
19 Services District pursuant to an existing contract
20 between the Emergency Services Provider and the State
21 Department of Health. Provided, however, that the
22 acquisition of commercial liability insurance covering
23 the activities of such Emergency Services Provider
24 performed within the State of Oklahoma shall not

1 operate as a waiver of any of the limitations,
2 immunities or defenses provided for political
3 subdivisions pursuant to the terms of The Governmental
4 Tort Claims Act,

5 1. for purposes of The Governmental Tort Claims Act only,
6 a conservation district created pursuant to the
7 provisions of the Conservation District Act,

8 m. for purposes of The Governmental Tort Claims Act,
9 districts formed pursuant to the Oklahoma Irrigation
10 District Act,

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

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

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

22 q. for purposes of The Governmental Tort Claims Act only,
23 any child-placing agency licensed by this state to
24 place children in foster family homes,

1 r. for purposes of The Governmental Tort Claims Act only,
2 a circuit engineering district created pursuant to
3 Section 687.1 of Title 69 of the Oklahoma Statutes,
4 s. for purposes of the Governmental Tort Claims Act only,
5 a substate planning district, regional council of
6 government or other entity created pursuant to Section
7 1001 et seq. of Title 74 of the Oklahoma Statutes, and
8 t. for purposes of The Governmental Tort Claims Act only,
9 a regional transportation authority created pursuant
10 to Section 1370.7 of Title 68 of the Oklahoma Statutes
11 including its contract operator and any railroad
12 operating in interstate commerce that sells a property
13 interest or provides services to a regional
14 transportation authority or allows the authority to
15 use the property or tracks of the railroad for the
16 provision of public passenger rail service to the
17 extent claims against the contract operator or
18 railroad arise out of or are related to or in
19 connection with such property interest, services or
20 operation of the public passenger rail service.
21 Provided, the acquisition of commercial liability
22 insurance to cover the activities of the regional
23 transportation authority, contract operator or
24 railroad shall not operate as a waiver of any

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;

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

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

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

21 17. "Tort" means a legal wrong, independent of contract,
22 involving violation of a duty imposed by general law, statute, the
23 Constitution of the State of Oklahoma, or otherwise, resulting in a
24 loss to any person, association or corporation as the proximate

1 result of an act or omission of a political subdivision or the state
2 or an employee acting within the scope of employment.

3 SECTION 2. This act shall become effective November 1, 2023.

4 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
5 February 14, 2023 - DO PASS
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