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February 18, 2020

AS AMENDED

SENATE BILL NO. 1110

By: Bergstrom

[Governmental Tort Claims Act - definition -
effective date]

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

SECTION 1. AMENDATORY 51 O.S. 2011, Section 152, as last amended by Section 1, Chapter 233, O.S.L. 2018 (51 O.S. Supp. 2019, 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;

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

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

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

- 10 a. any person holding an interest in real or personal
11 property which suffers a loss, provided that the claim
12 of the person shall be aggregated with claims of all
13 other persons holding an interest in the property and
14 the claims of all other persons which are derivative
15 of the loss, and that multiple claimants shall be
16 considered a single claimant,
- 17 b. the individual actually involved in the accident or
18 occurrence who suffers a loss, provided that the
19 individual shall aggregate in the claim the losses of
20 all other persons which are derivative of the loss, or
- 21 c. in the case of death, an administrator, special
22 administrator or a personal representative who shall
23 aggregate in the claim all losses of all persons which
24 are derivative of the death;

1 6. "Community health care provider" means:

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

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

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

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

5 a. Employee also includes:

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

13 (2) from September 1, 1991, through June 30, 1996,
14 licensed physicians, licensed osteopathic
15 physicians and certified nurse-midwives providing
16 prenatal, delivery or infant care services to
17 State Department of Health clients pursuant to a
18 contract entered into with the State Department
19 of Health in accordance with paragraph 3 of
20 subsection B of Section 1-106 of Title 63 of the
21 Oklahoma Statutes but only insofar as services
22 authorized by and in conformity with the terms of
23 the contract and the requirements of Section 1-
24 233 of Title 63 of the Oklahoma Statutes, and

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

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

9 (1) physicians acting in an administrative capacity,

10 (2) resident physicians and resident interns
11 participating in a graduate medical education
12 program of the University of Oklahoma Health
13 Sciences Center, the College of Osteopathic
14 Medicine of Oklahoma State University, or the
15 Department of Mental Health and Substance Abuse
16 Services,

17 (3) faculty members and staff of the University of
18 Oklahoma Health Sciences Center and the College
19 of Osteopathic Medicine of Oklahoma State
20 University, while engaged in teaching duties,

21 (4) physicians who practice medicine or act in an
22 administrative capacity as an employee of an
23 agency of the State of Oklahoma,
24

- 1 (5) physicians who provide medical care to inmates
2 pursuant to a contract with the Department of
3 Corrections,
- 4 (6) any person who is licensed to practice medicine
5 pursuant to Title 59 of the Oklahoma Statutes,
6 who is under an administrative professional
7 services contract with the Oklahoma Health Care
8 Authority under the auspices of the Oklahoma
9 Health Care Authority Chief Medical Officer, and
10 who is limited to performing administrative
11 duties such as professional guidance for medical
12 reviews, reimbursement rates, service
13 utilization, health care delivery and benefit
14 design for the Oklahoma Health Care Authority,
15 only while acting within the scope of such
16 contract,
- 17 (7) licensed medical professionals under contract
18 with city, county, or state entities who provide
19 medical care to inmates or detainees in the
20 custody or control of law enforcement agencies,
- 21 (8) licensed mental health professionals as defined
22 in Sections 1-103 and 5-502 of Title 43A of the
23 Oklahoma Statutes, who are conducting initial
24 examinations of individuals for the purpose of

1 determining whether an individual meets the
2 criteria for emergency detention as part of a
3 contract with the Department of Mental Health and
4 Substance Abuse Services, and

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

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

19 c. Except as provided in subparagraph b of this
20 paragraph, in no event shall the state be held liable
21 for the tortious conduct of any physician, resident
22 physician or intern while practicing medicine or
23 providing medical treatment to patients;
24

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,

16 c. a county,

17 d. a public trust where the sole beneficiary or
18 beneficiaries are a city, town, school district or
19 county. For purposes of The Governmental Tort Claims
20 Act, a public trust shall include:

21 (1) a municipal hospital created pursuant to Sections
22 30-101 through 30-109 of Title 11 of the Oklahoma
23 Statutes, a county hospital created pursuant to
24 Sections 781 through 796 of Title 19 of the

Oklahoma Statutes, or is created pursuant to a joint agreement between such governing authorities, that is operated for the public benefit by a public trust created pursuant to Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes and managed by a governing board appointed or elected by the municipality, county, or both, who exercises control of the 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,

- 1 e. for the purposes of The Governmental Tort Claims Act
2 only, a housing authority created pursuant to the
3 provisions of the Oklahoma Housing Authority Act,
4 f. for the purposes of The Governmental Tort Claims Act
5 only, corporations organized not for profit pursuant
6 to the provisions of the Oklahoma General Corporation
7 Act for the primary purpose of developing and
8 providing rural water supply and sewage disposal
9 facilities to serve rural residents,
10 g. for the purposes of The Governmental Tort Claims Act
11 only, districts formed pursuant to the Rural Water,
12 Sewer, Gas and Solid Waste Management Districts Act,
13 h. for the purposes of The Governmental Tort Claims Act
14 only, master conservancy districts formed pursuant to
15 the Conservancy Act of Oklahoma,
16 i. for the purposes of The Governmental Tort Claims Act
17 only, a fire protection district created pursuant to
18 the provisions of Section 901.1 et seq. of Title 19 of
19 the Oklahoma Statutes,
20 j. for the purposes of The Governmental Tort Claims Act
21 only, a benevolent or charitable corporate volunteer
22 or full-time fire department for an unincorporated
23 area created pursuant to the provisions of Section 592
24 et seq. of Title 18 of the Oklahoma Statutes,

- 1 k. for purposes of The Governmental Tort Claims Act only,
2 an Emergency Services Provider rendering services
3 within the boundaries of a Supplemental Emergency
4 Services District pursuant to an existing contract
5 between the Emergency Services Provider and the State
6 Department of Health. Provided, however, that the
7 acquisition of commercial liability insurance covering
8 the activities of such Emergency Services Provider
9 performed within the State of Oklahoma shall not
10 operate as a waiver of any of the limitations,
11 immunities or defenses provided for political
12 subdivisions pursuant to the terms of The Governmental
13 Tort Claims Act,
- 14 l. for purposes of The Governmental Tort Claims Act only,
15 a conservation district created pursuant to the
16 provisions of the Conservation District Act,
- 17 m. for purposes of The Governmental Tort Claims Act only,
18 districts formed pursuant to the Oklahoma Irrigation
19 District Act,
- 20 n. for purposes of The Governmental Tort Claims Act only,
21 any community action agency established pursuant to
22 Sections 5035 through 5040 of Title 74 of the Oklahoma
23 Statutes,
24

- 1 o. for purposes of The Governmental Tort Claims Act only,
2 any organization that is designated as a youth
3 services agency, pursuant to Section 2-7-306 of Title
4 10A of the Oklahoma Statutes,
5 p. for purposes of The Governmental Tort Claims Act only,
6 any judge presiding over a drug court, as defined by
7 Section 471.1 of Title 22 of the Oklahoma Statutes,
8 q. for purposes of The Governmental Tort Claims Act only,
9 any child-placing agency licensed by this state to
10 place children in foster family homes, ~~and~~
11 r. for purposes of The Governmental Tort Claims Act only,
12 a circuit engineering district created pursuant to
13 Section 687.1 of Title 69 of the Oklahoma Statutes,
14 and
15 s. for purposes of The Governmental Tort Claims Act only,
16 a substate planning district, regional council of
17 government or other entity created pursuant to Section
18 1001 et seq. of Title 74 of the Oklahoma Statutes,

19 and all their institutions, instrumentalities or agencies;

20 12. "Scope of employment" means performance by an employee
21 acting in good faith within the duties of the employee's office or
22 employment or of tasks lawfully assigned by a competent authority
23 including the operation or use of an agency vehicle or equipment
24

1 with actual or implied consent of the supervisor of the employee,
2 but shall not include corruption or fraud;

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

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

14 SECTION 2. This act shall become effective November 1, 2020.

15 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
16 February 18, 2020 - DO PASS AS AMENDED
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