ENGROSSED HOUSE AMENDMENTS
TO
ENGROSSED SENATE BILL NO. 261 By: Howard of the Senate
and
Kannady of the House

An Act relating to The Governmental Tort Claims Act; amending 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), which relates to definitions; modifying definition; and providing an effective date.

AMENDMENT NO. 1. Page 1, Lines 6 through 8 1/2, strike the title to read:

"[ The Governmental Tort Claims Act – definitions –
   effective date ]"

AMENDMENT NO. 2. Page 1, Line 11, strike the enacting clause

AMENDMENT NO. 3. Page 1, Line 12, delete SECTION 1 in its entirety and replace with a new SECTION 1 to read as follows:

"SECTION 1. AMENDATORY 51 O.S. 2021, Section 24A.16, is amended to read as follows:

Section 24A.16 A. Except as set forth in subsection B of this section, public educational institutions and their employees may keep confidential:

1. Individual student records;"
2. Teacher lesson plans, tests and other teaching material; and
3. Personal communications concerning individual students; and
4. Contracts for use of a student athlete's name, image, or likeness disclosed to a postsecondary institution.

B. If kept, statistical information not identified with a particular student and directory information shall be open for inspection and copying. Except as provided in subsection C of this section, each educational institution may choose to designate specific information which shall be classified as directory information for students attending the educational institution. In accordance with the Family Educational Rights and Privacy Act, Section 1232g of Title 20 of the United States Code and Part 99 of Title 34 of the Code of Federal Regulations, "directory information" includes a student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational institution attended by the student. Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as directory information with respect to each student attending the institution or agency and shall allow a reasonable period of time after the notice has been given for a parent to inform the institution or agency that any or
all of the information designated should not be released without prior consent of the parent or guardian or the student if the student is eighteen (18) years of age or older.

C. All educational agencies or institutions which are not the primary custodians of student directory information of students attending the educational institution, but which are allowed to access the information for educational purposes, shall be prohibited from releasing or selling any or all student directory information unless disclosure is authorized by the Family Educational Rights and Privacy Act, Section 1232g of Title 20 of the United States Code and Part 99 of Title 34 of the Code of Federal Regulations, or Section 3-168 of Title 70 of the Oklahoma Statutes.

D. A public school district may release individual student records for the current or previous school year to a school district at which the student was previously enrolled for purposes of evaluating educational programs and school effectiveness."

and renumber subsequent sections

and amend title to conform
Passed the House of Representatives the 27th day of April, 2023.

Presiding Officer of the House of Representatives

Passed the Senate the ___ day of ________, 2023.

Presiding Officer of the Senate
ENGROSSED SENATE
BILL NO. 261

By: Howard of the Senate
and
Kannady of the House

An Act relating to The Governmental Tort Claims Act; amending 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), which relates to definitions; modifying definition; and providing an effective date.

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

SECTION 2. 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;

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;

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

5. “Claimant” means the person or the person’s authorized
representative who files notice of a claim in accordance with The
Governmental Tort Claims Act. Only the following persons and no
others may be claimants:

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

   b. the individual actually involved in the accident or
      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
      application, or, if denied, a new application, no
      later than six (6) months from the date of the
      official notification from the U.S. Department of
Health and Human Services requiring resubmission of a new application;

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

a. Employee also includes:

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

(2) from September 1, 1991, through June 30, 1996, licensed physicians, licensed osteopathic physicians and certified nurse-midwives providing prenatal, delivery or infant care services to State Department of Health clients pursuant to a contract entered into with the State Department of Health in accordance with paragraph 3 of subsection B of Section 1-106 of Title 63 of the Oklahoma Statutes but only insofar as services authorized by and in conformity with the terms of
the contract and the requirements of Section 1-233 of Title 63 of the Oklahoma Statutes, and
(3) any volunteer, full-time or part-time firefighter when performing duties for a fire department provided for in subparagraph j of paragraph 11 of this section.

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

(1) physicians acting in an administrative capacity,
(2) resident physicians and resident interns participating in a graduate medical education program of the University of Oklahoma Health Sciences Center, the College of Osteopathic Medicine of Oklahoma State University, or the Department of Mental Health and Substance Abuse Services,
(3) faculty members and staff of the University of Oklahoma Health Sciences Center and the College of Osteopathic Medicine of Oklahoma State University, while engaged in teaching duties,
(4) physicians who practice medicine or act in an administrative capacity as an employee of an agency of the State of Oklahoma,

(5) physicians who provide medical care to inmates pursuant to a contract with the Department of Corrections,

(6) any person who is licensed to practice medicine pursuant to Title 59 of the Oklahoma Statutes, who is under an administrative professional services contract with the Oklahoma Health Care Authority under the auspices of the Oklahoma Health Care Authority Chief Medical Officer, and who is limited to performing administrative duties such as professional guidance for medical reviews, reimbursement rates, service utilization, health care delivery and benefit design for the Oklahoma Health Care Authority, only while acting within the scope of such contract,

(7) licensed medical professionals under contract with city, county, or state entities who provide medical care to inmates or detainees in the custody or control of law enforcement agencies,
(8) licensed mental health professionals as defined in Sections 1-103 and 5-502 of Title 43A of the Oklahoma Statutes, who are conducting initial examinations of individuals for the purpose of determining whether an individual meets the criteria for emergency detention as part of a contract with the Department of Mental Health and Substance Abuse Services, and

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

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

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

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

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

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

10. “Municipality” means any incorporated city or town, and all
institutions, agencies or instrumentalities of a municipality;

11. “Political subdivision” means:
   a. a municipality,
   b. a school district, including, but not limited to, a
technology center school district established pursuant
to Section 4410, 4411, 4420 or 4420.1 of Title 70 of
the Oklahoma Statutes, or a public library as defined
pursuant to Section 1-104 of Title 65 of the Oklahoma Statutes,

c. a county,

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

(1) a municipal hospital created pursuant to Sections 30-101 through 30-109 of Title 11 of the Oklahoma Statutes, a county hospital created pursuant to 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.
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,

g. for the purposes of The Governmental Tort Claims Act only, districts formed pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act,
h. for the purposes of The Governmental Tort Claims Act only, master conservancy districts formed pursuant to the Conservancy Act of Oklahoma,

i. for the purposes of The Governmental Tort Claims Act only, a fire protection district created pursuant to the provisions of Section 901.1 et seq. of Title 19 of the Oklahoma Statutes,

j. for the purposes of The Governmental Tort Claims Act only, a benevolent or charitable corporate volunteer or full-time fire department for an unincorporated area created pursuant to the provisions of Section 592 et seq. of Title 18 of the Oklahoma Statutes,

k. for purposes of The Governmental Tort Claims Act only, an Emergency Services Provider rendering services within the boundaries of a Supplemental Emergency Services District pursuant to an existing contract between the Emergency Services Provider and the State Department of Health. Provided, however, that the acquisition of commercial liability insurance covering the activities of such Emergency Services Provider performed within the State of Oklahoma shall not operate as a waiver of any of the limitations, immunities or defenses provided for political
subdivisions pursuant to the terms of The Governmental
Tort Claims Act,

l. for purposes of The Governmental Tort Claims Act only,
a conservation district created pursuant to the
provisions of the Conservation District Act,
m. for purposes of The Governmental Tort Claims Act,
districts formed pursuant to the Oklahoma Irrigation
District Act,
n. for purposes of The Governmental Tort Claims Act only,
any community action agency established pursuant to
Sections 5035 through 5040 of Title 74 of the Oklahoma
Statutes,
o. for purposes of The Governmental Tort Claims Act only,
any organization that is designated as a youth
services agency, pursuant to Section 2-7-306 of Title
10A of the Oklahoma Statutes,
p. for purposes of The Governmental Tort Claims Act only,
any judge presiding over a drug court, as defined by
Section 471.1 of Title 22 of the Oklahoma Statutes,
q. for purposes of The Governmental Tort Claims Act only,
any child-placing agency licensed by this state to
place children in foster family homes,
r. for purposes of The Governmental Tort Claims Act only, a circuit engineering district created pursuant to Section 687.1 of Title 69 of the Oklahoma Statutes,

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

t. for purposes of The Governmental Tort Claims Act only, a regional transportation authority created pursuant to Section 1370.7 of Title 68 of the Oklahoma Statutes including its contract operator and any railroad operating in interstate commerce that sells a property interest or provides services to a regional transportation authority or allows the authority to use the property or tracks of the railroad for the provision of public passenger rail service to the extent claims against the contract operator or railroad arise out of or are related to or in connection with such property interest, services or operation of the public passenger rail service.

Provided, the acquisition of commercial liability insurance to cover the activities of the regional transportation authority, contract operator or railroad shall not operate as a waiver of any
liabilities, immunities or defenses provided pursuant
to the provisions of the Governmental Tort Claims Act,
and all their institutions, instrumentalities or agencies;

12. “Scope of employment” means performance by an employee
acting in good faith within the duties of the employee’s office or
employment or of tasks lawfully assigned by a competent authority
including the operation or use of an agency vehicle or equipment
with actual or implied consent of the supervisor of the employee,
but shall not include corruption or fraud;

13. “State” means the State of Oklahoma or any office,
department, agency, authority, commission, board, institution,
hospital, college, university, public trust created pursuant to
Title 60 of the Oklahoma Statutes of which the State of Oklahoma is
the beneficiary, or other instrumentality thereof;

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

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

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

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

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

Passed the Senate the 22nd day of February, 2023.

Presiding Officer of the Senate

Passed the House of Representatives the ___ day of ________, 2023.

Presiding Officer of the House of Representatives