

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2094

By: Lepak

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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 Oklahoma Governmental Tort
11 Claims Act; modifying certain exemption from
12 liability; and providing an effective date.

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

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

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

- 19 1. Legislative functions;
- 20 2. Judicial, quasi-judicial, or prosecutorial functions, other
21 than claims for wrongful criminal felony conviction resulting in
22 imprisonment provided for in Section 154 of this title;
- 23 3. Execution or enforcement of the lawful orders of any court;
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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, unless the loss or claim results
11 from instances where the state or political subdivision was aware of
12 the dangerous condition and failed to take any reasonable action to
13 alleviate or mitigate damage, loss or injury from civil
14 disobedience, riot, insurrection or rebellion or makes an
15 affirmative decision or establishes a policy to allow civil
16 disobedience, riots, insurrection or rebellion;

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

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

22 9 Entry upon any property where that entry is expressly or
23 implied authorized by law;

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1 10. Natural conditions of property of the state or political
2 subdivision;

3 11. Assessment or collection of taxes or special assessments,
4 license or registration fees, or other fees or charges imposed by
5 law;

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

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

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

18 15. Absence, condition, location or malfunction of any traffic
19 or road sign, signal or warning device unless the absence,
20 condition, location or malfunction is not corrected by the state or
21 political subdivision responsible within a reasonable time after
22 actual or constructive notice or the removal or destruction of such
23 signs, signals or warning devices by third parties, action of
24 weather elements or as a result of traffic collision except on

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

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

11 17. Misrepresentation, if unintentional;

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

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

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

22 21. Participation in any activity approved by a local board of
23 education and held within a building or on the grounds of the school

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1 district served by that local board of education before or after
2 normal school hours or on weekends;

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

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

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

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

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

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

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

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

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

20 28. Any claim or action based on the theory of indemnification
21 or subrogation;

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

1 30. Acts or omissions done in conformance with then current
2 recognized standards;

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

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

13 33. Any court-ordered community sentence;

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

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

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

1 37. Use of a public facility opened to the general public
2 during an emergency.

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

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