Task Force Meeting Attendance Sheet

Medical Malpractice Task Force

Date: 6 Oct 05 **Meeting Type:** Working Group

Location: 328 NW

Committee Member	Present	Absent	Excused
Representative Curtis Gielow, Chair	☒	☐	☐
Representative Mike Huebsch	☒	☐	☐
Representative Ann Nischke	☒	☐	☐
Representative Jason Fields	☒	☐	☐
Representative Bob Ziegelbauer	☒	☐	☐
Mr. David Strifling	☒	☐	☐
Ms. Mary Wolverton	☒	☐	☐
Dr. Clyde "Bud" Chumbley	☒	☐	☐
Mr. David Olson	☒	☐	☐
Mr. Ralph Topinka	☒	☐	☐

Totals: 10 0 0

John Reinemann

John Reinemann
Task Force Clerk

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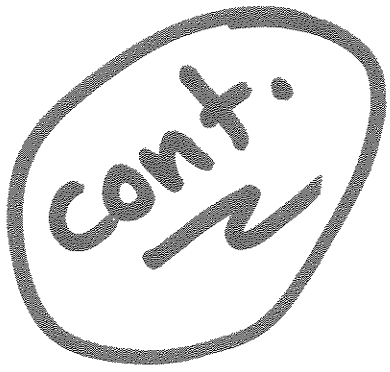
Cont. 2

"TAKING THE BEST"
Contributory Legislative Elements for Developing the Proposed Model Act on Medical Liability Reform

Prepared for the Civil Justice Task Force and Health and Human Services Task Force



Section 8

Immunities

Including State Sovereign and Emergency Care Immunity Provisions

8) Immunities, including state sovereign and emergency care immunity provisions.

A) Nevada

B) Alaska

C) Virginia

D) Florida

E) Oklahoma

SUMMARY:

Nevada

Nevada has waived its immunity from liability. Nev. Rev. Stat. Ann. § 41.031 (Michie Supp. 1997). The waiver includes all political subdivisions, including counties and cities. *Butler v. Bogdanovich*, 101 Nev. 449, 705 P.2d 662 (1985); *Crucil v. Carson City*, 95 Nev. 583, 600 P.2d 216 (1979). Damage awards grounded in tort against state institutions and employees cannot exceed $50,000, exclusive of pre-judgment interest. § 41.035(1) (Michie 1996). Also, the damage award cannot include any amount constituting exemplary or punitive damages. *Id.* A governmental entity does not waive its remaining sovereign immunity by its purchase of insurance. *Taylor v. State*, 73 Nev. 151, 311 P.2d 733 (1957).

A claimant must file an action against the state within two years after the time the cause of action accrued. Nev. Rev. Stat. Ann. § 41.036 (Michie Supp. 1997).

Alaska

Generally, the State of Alaska, including the University of Alaska, is subject to suit in the Superior Court of Alaska. Alaska Stat. § 09.50.250 (Michie Supp. 1997). However, tort actions against the state or its university may not be brought if based on an act or omission of an employee of the state exercising due care in the performance of a discretionary function or duty. *Id.* The state is not liable for punitive damages. Alaska Stat. § 09.50.280 (Michie Supp. 1997).

Similarly, actions may be maintained against municipalities in their corporate character and within the scope of their authority. Alaska Stat. § 09.65.070 (Michie 1996). There are a number of exceptions that apply to this general rule, including that no action may be brought based on the exercise or performance of a discretionary function by the

municipality or its employees, and no action may be brought based upon the exercise or performance of a gratuitous extension of municipal services on an extra- territorial basis. *Id.*

A person or hospital who renders emergency care to an injured person who reasonably appears to be in immediate need of emergency care in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid. Alaska Stat. § 09.65.090 (1996). However, this statute does not extend immunity to physicians who have a pre-existing duty to render emergency care. *Deal v. Kearney* 851 P.2d 1353 (1993).

Virginia

Virginia has waived sovereign immunity in tort cases, subject to significant limitations. No claimant may recover more than $100,000 or the limits of applicable insurance, whichever is greater. No judgment against the state may include pre-judgment interest or punitive damages. Va. Code Ann. § 8.01-195.3 (LEXIS 2003). This immunity extends sometimes to physicians employed by the state, depending on the degree of control exercised over them, *Lohr v. Larsen*, 246 Va. 81, 431 S.E.2d 642, (1993), but never to independent contractors. *Atkinson v. Sachno*, 261 Va. 278, 541 S.E.2d 902 (2001). Virginia has not waived sovereign immunity for local units of government. Municipalities are immune for negligence in the performance of governmental functions, including the operation of a hospital. *Edwards v. Portsmouth*, 237 Va. 167, 375 S.E.2d 747 (1989) (dictum).

A charitable entity is not liable to its beneficiaries for the negligent acts of its agents if due care has been exercised in their selection and retention. *Mann v. Sentara Hospitals, Inc.*, 59 Va. Cir. 433 (2002) (discussing application of the doctrine to a medical faculty foundation). However, charitable immunity has been withdrawn from hospitals, except where a hospital renders exclusively charitable medical services, or where the patient signed an express agreement providing that all medical services would be supplied on a charitable basis. Va. Code Ann. § 8.01-38 (LEXIS 2003).

Florida

The State of Florida and its counties, municipalities, and other political subdivisions no longer enjoy sovereign immunity. Fla. Stat. Ann. § 768.28 (West 1997 & Supp. 1998). The statutory waiver of immunity, however, is limited to $100,000 per claimant and $200,000 per occurrence. *Id.* Further, neither the state nor any of its political subdivisions is liable for punitive damages. *Id.* Litigants who obtain an unenforceable judgment in excess of the cap can petition the state legislature for a "claim bill," that is, a private bill granting compensation in excess of the cap. A small number of these are routinely granted every year.

A Florida statute allows independent contractors to share in this sovereign immunity, and thus to enjoy the benefits of the low limits on damages. Fla. Stat. Ann. § 766.1115 (West 1997 & Supp. 1998) is specifically designed to allow those providing medical services to the indigent at county hospitals and the like to be considered agents of the immune entity, and thus to avoid being the "deep pocket" defendant in cases where co-defendants' liabilities will be capped. *Id.* The contractor must meet risk management standards, pay his own legal fees, and give notice of the arrangement to every patient. *Id.* There are no reported decisions yet in which the cap has been applied to a contractor under this section. However, in a case originating prior to the effective date of § 766.1115, the Florida Supreme Court held that doctors who contracted to work at a children's clinic run by the state at a county hospital were agents of the state under common law criteria having to do with the degree of control exercised over them, and thus possessed limited liability under § 768.28. *Stoll v. Noel*, 694 So. 2d 701 (Fla. 1997).

Claims against the state or its political subdivisions must be made in writing to the Department of Insurance within three years from the date of the occurrence, and a complaint must be filed within four years. *Id.* The State Tort Claims Act also provides that attorneys' fees in such actions may not exceed 25 percent of the judgment or settlement amount. *Id.* State employees are immune from suit for injuries caused in the course of their employment provided the employee does not act in bad faith or a willful wanton manner. *Id.*

Oklahoma

Under Okla. Stat. Ann. tit. 51, § 152.1 (West 1988), the doctrine of sovereign immunity was adopted by the State of Oklahoma. However, the state and all its political subdivisions, including counties and municipal corporations, are liable in tort to the same extent an individual would be subject to liability therefor. Okla. Stat. Ann. tit. 51, § 154 (West Supp. 1998). Such liability is limited to $100,000 to any claimant for personal injury, except the limit of liability is increased to $200,000 with respect to the Oklahoma Medical Center and state mental health hospitals operated by the Department of Mental Health. *Id.* Liability is capped at $1,000,000 for claims arising out of one accident or occurrence. *Id.* Also, the liability of resident physicians and interns participating in a graduate medical education program of the University of Oklahoma College of Medicine, its affiliated institutions, and the Oklahoma College of Osteopathic Medicine and Surgery, may not exceed $100,000. *Id.* Notably, a state and its political subdivisions are only severally liable for a claimant's damages. *Id.*

No claim may be brought against the state or any of its political subdivisions after one year from the date of the injury. Okla. Stat. Ann. tit. 51, § 156(b) (West Supp. 1998). Further, if a claim is not brought within 90 days following the occurrence of the injury, the claimant's damages must be reduced by ten percent. *Id.* The state, or a political subdivision, does not waive the act's notice requirement by purchasing liability insurance. *Gurley v. Memorial Hospital of Guymon*, 770 P.2d 573 (Okla. 1989).

N.R.S. 41.031

West's Nevada Revised Statutes Annotated Currentness

Title 3. Remedies; Special Actions and Proceedings
Chapter 41. Actions and Proceedings in Particular Cases Concerning Persons (Refs & Annos)
Liability of and Actions Against This State, Its Agencies and Political Subdivisions
Waiver of Sovereign Immunity

➡41.031. Waiver applies to state and its political subdivisions; naming state as defendant; service of process; state does not waive immunity conferred by Eleventh Amendment

1. The State of Nevada hereby waives its immunity from liability and action and hereby consents to have its liability determined in accordance with the same rules of law as are applied to civil actions against natural persons and corporations, except as otherwise provided in NRS 41.032 to 41.038, inclusive, 485.318, subsection 3 and any statute which expressly provides for governmental immunity, if the claimant complies with the limitations of NRS 41.010 or the limitations of NRS 41.032 to 41.036, inclusive. The State of Nevada further waives the immunity from liability and action of all political subdivisions of the State, and their liability must be determined in the same manner, except as otherwise provided in NRS 41.032 to 41.038, inclusive, subsection 3 and any statute which expressly provides for governmental immunity, if the claimant complies with the limitations of NRS 41.032 to 41.036, inclusive.

2. An action may be brought under this section against the State of Nevada or any political subdivision of the State. In any action against the State of Nevada, the action must be brought in the name of the State of Nevada on relation of the particular department, commission, board or other agency of the State whose actions are the basis for the suit. An action against the State of Nevada must be filed in the county where the cause or some part thereof arose or in Carson City. In an action against the State of Nevada, the summons and a copy of the complaint must be served upon:

(a) The Attorney General, or a person designated by the Attorney General, at the Office of the Attorney General in Carson City; and

(b) The person serving in the office of administrative head of the named agency.

3. The State of Nevada does not waive its immunity from suit conferred by Amendment XI of the Constitution of the United States.

Added by Laws 1965, p. 1413. Amended by Laws 1975, pp. 209, 421; Laws 1977, p. 275; Laws 1979, p. 628; Laws 1987, p. 95; Laws 1989, p. 695; Laws 1991, p. 142; Laws 1993, pp. 148, 824, 1501, 2489, 2491, 2492; Laws 1995, pp. 583, 639; Laws 1997, p. 473; Laws 2003, c. 6, § 3, eff. Oct. 1, 2003.

N.R.S. 41.036

West's Nevada Revised Statutes Annotated Currentness

Title 3. Remedies; Special Actions and Proceedings
Chapter 41. Actions and Proceedings in Particular Cases Concerning Persons (Refs & Annos)
Liability of and Actions Against This State, Its Agencies and Political Subdivisions
Miscellaneous Provisions

➡41.036. Filing tort claim against state with attorney general; filing tort claim against political subdivision with governing body; review and investigation by attorney general of tort claim against state; regulations by state board of examiners

1. Each person who has a claim against the state or any of its agencies arising out of a tort must file his claim within 2 years after the time the cause of action accrues with the attorney general.

2. Each person who has a claim against any political subdivision of the state arising out of a tort must file his claim within 2 years after the time the cause of action accrues with the governing body of that political subdivision.

3. The filing of a claim in tort against the state or a political subdivision as required by subsections 1 and 2 is not a condition precedent to bringing an action pursuant to NRS 41.031.

4. The attorney general shall, if authorized by regulations adopted by the state board of examiners pursuant to subsection 6, approve, settle or deny each claim that is:

(a) Filed pursuant to subsection 1; and

(b) Not required to be passed upon by the legislature.

5. If the attorney general is not authorized to approve, settle or deny a claim filed pursuant to subsection 1, the attorney general shall investigate the claim and submit a report of findings to the state board of examiners concerning that claim.

6. The state board of examiners shall adopt regulations that specify:

(a) The type of claim that the attorney general is required to approve, settle or deny pursuant to subsection 4; and

(b) The procedure to be used by the attorney general to approve, settle or deny that claim.

AS 09.50.250

ALASKA STATUTES
Title 9. Code of Civil Procedure.
Chapter 50. Actions Where State a Party.
Article 3. Claims Against the State or State Employees.
Sec. 09.50.250 Actionable claims against the state.

A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state. A person who may present the claim under AS 44.77 may not bring an action under this section except as set out in AS 44.77.040(c). A person who may bring an action under AS 36.30.560 - 36.30.695 may not bring an action under this section except as set out in AS 36.30.685. However, an action may not be brought if the claim

(1) is an action for tort, and is based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not the statute or regulation is valid; or is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused;

(2) is for damages caused by the imposition or establishment of a quarantine by the state;

(3) arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

(4) arises out of the use of an ignition interlock device certified under AS 33.05.020(c); or

(5) arises out of injury, illness, or death of a seaman that occurs or manifests itself during or in the course of, or arises out of, employment with the state; AS 23.30 provides the exclusive remedy for such a claim, and no action may be brought against the state, its vessels, or its employees under the Jones Act (46 U.S.C. 688), in admiralty, or under the general maritime law.

(§ 26.01 ch 101 SLA 1962; am § 1 ch 30 SLA 1965; am § 5 ch 106 SLA 1986; am § 1 ch 57 SLA 1989; am § 1 ch 119 SLA 1992; am § 9 ch 32 SLA 1997; am § 1 ch 30 SLA 2003)

<General Materials (GM) - References, Annotations, or Tables>

NEW CHANGES TO 9.50.250 :!!!!

<< AK ST § **09.50.250 >>**

Sec. 09.50.250. Actionable claims against the state.

A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state in a state court that has jurisdiction over the claim. A person who may present the claim under AS 44.77 may not bring an action under this section except as set out in AS 44.77.040(c). A person who may bring an action under AS 36.30.560--36.30.695 may not bring an action under this section except as set out in AS 36.30.685. However, an action may not be brought if the claim
(1) is an action for tort, and is based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not the statute or regulation is valid; or is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused;
(2) is for damages caused by the imposition or establishment of**, or the failure to impose or establish,** a quarantine **or isolation, or by other actions,** by the state **or its agents, officers, or employees under AS 18.15.355--18.15.395, except for damages caused by negligent medical treatment provided under AS 18.15.355--18.15.395 by a state employee, or except that, if a state employee quarantines or isolates a person with gross negligence or in intentional violation of AS 18.15.385, the state shall pay to the person who was quarantined or isolated a penalty of $500 for each day of the improper quarantine**;
(3) arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;
(4) arises out of the use of an ignition interlock device certified under AS 33.05.020(c); or
(5) arises out of injury, illness, or death of a seaman that occurs or manifests itself during or in the course of, or arises out of, employment with the state; AS 23.30 provides the exclusive remedy for such a claim, and no action may be brought against the state, its vessels, or its employees under the Jones Act (46 U.S.C. 688), in admiralty, or under the general maritime law.
* Sec. 3. AS 14.07.020(a) is amended to

AS 09.65.070

ALASKA STATUTES
Title 9. Code of Civil Procedure.
Chapter 65. Actions, Immunities, Defenses, and Duties.

Sec. 09.65.070 Suits against incorporated units of local government.

(a) Except as provided in this section, an action may be maintained against a municipality in its corporate character and within the scope of its authority.

(b) A municipality may not require a person to post bond as a condition to bringing a cause of action against it.

(c) An action may not be maintained against an employee or member of a fire department operated and maintained by a municipality or village if the claim is an action for tort or breach of a contractual duty and is based upon the act or omission of the employee or member of the fire department in the execution of a function for which the department is established.

(d) An action for damages may not be brought against a municipality or any of its agents, officers, or employees if the claim

(1) is based on a failure of the municipality, or its agents, officers, or employees, when the municipality is neither owner nor lessee of the property involved,

(A) to inspect property for a violation of any statute, regulation, or ordinance, or a hazard to health or safety;

(B) to discover a violation of any statute, regulation, or ordinance, or a hazard to health or safety if an inspection of property is made; or

(C) to abate a violation of any statute, regulation, or ordinance, or a hazard to health or safety discovered on property inspected;

(2) is based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty by a municipality or its agents, officers, or employees, whether or not the discretion involved is abused;

(3) is based upon the grant, issuance, refusal, suspension, delay, or denial of a license, permit, appeal, approval, exception, variance, or other entitlement, or a rezoning;

(4) is based on the exercise or performance during the course of gratuitous extension of municipal services on an extraterritorial basis;

(5) is based upon the exercise or performance of a duty or function upon the request of, or by the terms of an agreement or contract with, the state to meet emergency public safety requirements; or

(6) is based on the exercise or performance of a duty in connection with an enhanced 911 emergency system and is not based on an intentional act of misconduct or on an act of gross negligence.

(e) In this section

(1) "municipality" has the meaning given in AS 01.10.060 and includes a public corporation established by a municipality;

(2) "village" means an unincorporated community where at least 25 people reside as a social unit.

(§ 5.13 ch 101 SLA 1962; am § 1 ch 23 SLA 1964; am § 1 ch 19 SLA 1975; am § 1 ch 215 SLA 1975; am §§ 1-3 ch 37 SLA 1977; am § 24 ch 74 SLA 1985; am § 2 ch 57 SLA 1993)

<General Materials (GM) - References, Annotations, or Tables>

AS 09.65.090

ALASKA STATUTES
Title 9. Code of Civil Procedure.
Chapter 65. Actions, Immunities, Defenses, and Duties.

Sec. 09.65.090 Civil liability for emergency aid.

(a) A person at a hospital or any other location who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

(b) A member of an organization that exists for the purpose of providing emergency services is not liable for civil damages for injury to a person that results from an act or omission in providing first aid, search, rescue, or other emergency services to the person, regardless of whether the member is under a preexisting duty to render assistance, if the member provided the service while acting as a volunteer member of the organization; in this subsection, "volunteer" means a person who is paid not more than $10 a day and a total of not more than $500 a year, not including ski lift tickets and reimbursement for expenses actually incurred, for providing emergency services.

(c) The immunity provided under (b) of this section does not apply to civil damages that result from providing or attempting to provide any of the following advanced life support techniques unless the person who provided them was authorized by law to provide them:

(1) manual electric cardiac defibrillation;

(2) administration of antiarrhythmic agents;

(3) intravenous therapy;

(4) intramuscular therapy; or

(5) use of endotracheal intubation devices.

(d) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

(e) *[Repealed, § 2 ch 92 SLA 2003.]*

(f) *[Repealed, § 2 ch 92 SLA 2003.]*

Virginia Tort Claims Act § 8.01-195.3

West's Annotated Code of Virginia Currentness

Title 8.01. Civil Remedies and Procedure (Refs & Annos)
Chapter 3. Actions (Refs & Annos)
Article 18.1. Tort Claims Against The Commonwealth of Virginia (Refs & Annos)
➡§ 8.01-195.3. Commonwealth, transportation district or locality liable for damages in certain cases

Subject to the provisions of this article, the Commonwealth shall be liable for claims for money only accruing on or after July 1, 1982, and any transportation district shall be liable for claims for money only accruing on or after July 1, 1986, on account of damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee while acting within the scope of his employment under circumstances where the Commonwealth or transportation district, if a private person, would be liable to the claimant for such damage, loss, injury or death. However, except to the extent that a transportation district contracts to do so pursuant to § 15.2-4518, neither the Commonwealth nor any transportation district shall be liable for interest prior to judgment or for punitive damages. The amount recoverable by any claimant shall not exceed (i) $25,000 for causes of action accruing prior to July 1, 1988, $75,000 for causes of action accruing on or after July 1, 1988, or $100,000 for causes of action accruing on or after July 1, 1993, or (ii) the maximum limits of any liability policy maintained to insure against such negligence or other tort, if such policy is in force at the time of the act or omission complained of, whichever is greater, exclusive of interest and costs.

Notwithstanding any provision hereof, the individual immunity of judges, the Attorney General, attorneys for the Commonwealth, and other public officers, their agents and employees from tort claims for damages is hereby preserved to the extent and degree that such persons presently are immunized. Any recovery based on the following claims are hereby excluded from the provisions of this article:

1. Any claim against the Commonwealth based upon an act or omission which occurred prior to July 1, 1982.

1a. Any claim against a transportation district based upon an act or omission which occurred prior to July 1, 1986.

2. Any claim based upon an act or omission of the General Assembly or district commission of any transportation district, or any member or staff thereof acting in his official capacity, or to the legislative function of any agency subject to the provisions of this article.

3. Any claim based upon an act or omission of any court of the Commonwealth, or any member thereof acting in his official capacity, or to the judicial functions of any agency subject to the provisions of this article.

4. Any claim based upon an act or omission of an officer, agent or employee of any agency of government in the execution of a lawful order of any court.

5. Any claim arising in connection with the assessment or collection of taxes.

6. Any claim arising out of the institution or prosecution of any judicial or administrative proceeding, even if without probable cause.

7. Any claim by an inmate of a state correctional facility, as defined in § 53.1-1, unless the claimant verifies under oath, by affidavit, that he has exhausted his remedies under the adult institutional inmate grievance procedures promulgated by the Department of Corrections. The time for filing the notice of tort claim shall be tolled during the pendency of the grievance procedure.

8. Any claim arising from the failure of a computer, software program, database, network, information system, firmware or any other device, whether operated by or on behalf of the Commonwealth of Virginia or one of its agencies, to interpret, produce, calculate, generate, or account for a date which is compatible with the "Year 2000" date change.

Nothing contained herein shall operate to reduce or limit the extent to which the Commonwealth or any transportation district, agency or employee was deemed liable for negligence as of July 1, 1982, nor shall any provision of this article be applicable to any county, city or town in the Commonwealth or be so construed as to remove or in any way diminish the sovereign immunity of any county, city or town in the Commonwealth.

Va. Code Ann. § 8.01-38

West's Annotated Code of Virginia Currentness

Title 8.01. Civil Remedies and Procedure (Refs & Annos)
Chapter 3. Actions (Refs & Annos)
Article 3. Injury to Person or Property (Refs & Annos)
➡§ 8.01-38. Tort liability of hospitals

Hospital as referred to in this section shall include any institution within the definition of hospital in § 32.1-123.

No hospital, as defined in this section, shall be immune from liability for negligence or any other tort on the ground that it is a charitable institution unless (i) such hospital renders exclusively charitable medical services for which service no bill for service is rendered to, nor any charge is ever made to the patient or (ii) the party alleging such negligence or other tort was accepted as a patient by such institution under an express written agreement executed by the hospital and delivered at the time of admission to the patient or the person admitting such patient providing that all medical services furnished such patient are to be supplied on a charitable basis without financial liability to the patient. However, notwithstanding the provisions of § 8.01-581.15 a hospital which is exempt from taxation pursuant to § 501 (c) (3) of Title 26 of the United States Code (Internal Revenue Code of 1954) and which is insured against liability for negligence or other tort in an amount not less than $500,000 for each occurrence shall not be liable for damage in excess of the limits of such insurance, or in actions for medical malpractice pursuant to Chapter 21.1 (§ 8.01-581.1 et seq.) for damages in excess of the amount set forth in § 8.01-581.15.

West's F.S.A. § 768.28
******SOME PENDING LEGISLATION TO ALTER***

West's Florida Statutes Annotated Currentness

Title XLV. Torts (Chapters 766-774) (Refs & Annos)
Chapter 768. Negligence (Refs & Annos)
Part I. General Provisions
➡768.28. Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs

(1) In accordance with s. 13, Art. X of the State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant, in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act. Any such action may be brought in the county where the property in litigation is located or, if the affected agency

or subdivision has an office in such county for the transaction of its customary business, where the cause of action accrued. However, any such action against a state university board of trustees shall be brought in the county in which that university's main campus is located or in the county in which the cause of action accrued if the university maintains therein a substantial presence for the transaction of its customary business.

(2) As used in this act, "state agencies or subdivisions" include the executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the Florida Space Authority.

(3) Except for a municipality and the Florida Space Authority, the affected agency or subdivision may, at its discretion, request the assistance of the Department of Financial Services in the consideration, adjustment, and settlement of any claim under this act.

(4) Subject to the provisions of this section, any state agency or subdivision shall have the right to appeal any award, compromise, settlement, or determination to the court of appropriate jurisdiction.

(5) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of $100,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of $200,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to $100,000 or $200,000, as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature. Notwithstanding the limited waiver of sovereign immunity provided herein, the state or an agency or subdivision thereof may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action by the Legislature, but the state or agency or subdivision thereof shall not be deemed to have waived any defense of sovereign immunity or to have increased the limits of its liability as a result of its obtaining insurance coverage for tortious acts in excess of the $100,000 or $200,000 waiver provided above. The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity before July 1, 1974.

(6)(a) An action may not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency, and also, except as to any claim against a municipality or the Florida Space Authority, presents such claim in writing to the Department of Financial Services, within 3 years after such claim accrues and the Department of Financial Services or the appropriate agency denies the claim in writing; except that, if such claim is for contribution pursuant to s. 768.31, it must be so presented within 6 months after the judgment against the tortfeasor seeking contribution has become final by lapse of time for appeal or after appellate review or, if there is no such judgment, within 6 months

after the tortfeasor seeking contribution has either discharged the common liability by payment or agreed, while the action is pending against her or him, to discharge the common liability.

(b) For purposes of this section, the requirements of notice to the agency and denial of the claim pursuant to paragraph (a) are conditions precedent to maintaining an action but shall not be deemed to be elements of the cause of action and shall not affect the date on which the cause of action accrues.

(c) The claimant shall also provide to the agency the claimant's date and place of birth and social security number if the claimant is an individual, or a federal identification number if the claimant is not an individual. The claimant shall also state the case style, tribunal, the nature and amount of all adjudicated penalties, fines, fees, victim restitution fund, and other judgments in excess of $200, whether imposed by a civil, criminal, or administrative tribunal, owed by the claimant to the state, its agency, officer or subdivision. If there exists no prior adjudicated unpaid claim in excess of $200, the claimant shall so state.

(d) For purposes of this section, complete, accurate, and timely compliance with the requirements of paragraph (c) shall occur prior to settlement payment, close of discovery or commencement of trial, whichever is sooner; provided the ability to plead setoff is not precluded by the delay. This setoff shall apply only against that part of the settlement or judgment payable to the claimant, minus claimant's reasonable attorney's fees and costs. Incomplete or inaccurate disclosure of unpaid adjudicated claims due the state, its agency, officer, or subdivision, may be excused by the court upon a showing by the preponderance of the evidence of the claimant's lack of knowledge of an adjudicated claim and reasonable inquiry by, or on behalf of, the claimant to obtain the information from public records. Unless the appropriate agency had actual notice of the information required to be disclosed by paragraph (c) in time to assert a setoff, an unexcused failure to disclose shall, upon hearing and order of court, cause the claimant to be liable for double the original undisclosed judgment and, upon further motion, the court shall enter judgment for the agency in that amount. The failure of the Department of Financial Services or the appropriate agency to make final disposition of a claim within 6 months after it is filed shall be deemed a final denial of the claim for purposes of this section. For purposes of this subsection, in medical malpractice actions, the failure of the Department of Financial Services or the appropriate agency to make final disposition of a claim within 90 days after it is filed shall be deemed a final denial of the claim. The provisions of this subsection do not apply to such claims as may be asserted by counterclaim pursuant to s. 768.14.

(7) In actions brought pursuant to this section, process shall be served upon the head of the agency concerned and also, except as to a defendant municipality or the Florida Space Authority, upon the Department of Financial Services; and the department or the agency concerned shall have 30 days within which to plead thereto.

(8) No attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement.

(9)(a) No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or

damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. However, such officer, employee, or agent shall be considered an adverse witness in a tort action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. The exclusive remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers shall be by action against the governmental entity, or the head of such entity in her or his official capacity, or the constitutional officer of which the officer, employee, or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The state or its subdivisions shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of her or his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(b) As used in this subsection, the term:

1. "Employee" includes any volunteer firefighter.

2. "Officer, employee, or agent" includes, but is not limited to, any health care provider when providing services pursuant to s. 766.1115, any member of the Florida Health Services Corps, as defined in s. 381.0302, who provides uncompensated care to medically indigent persons referred by the Department of Health, and any public defender or her or his employee or agent, including, among others, an assistant public defender and an investigator.

(c) For purposes of the waiver of sovereign immunity only, a member of the Florida National Guard is not acting within the scope of state employment when performing duty under the provisions of Title 10 or Title 32 of the United States Code or other applicable federal law; and neither the state nor any individual may be named in any action under this chapter arising from the performance of such federal duty.

(10)(a) Health care providers or vendors, or any of their employees or agents, that have contractually agreed to act as agents of the Department of Corrections to provide health care services to inmates of the state correctional system shall be considered agents of the State of Florida, Department of Corrections, for the purposes of this section, while acting within the scope of and pursuant to guidelines established in said contract or by rule. The contracts shall provide for the indemnification of the state by the agent for any liabilities incurred up to the limits set out in this chapter.

(b) This subsection shall not be construed as designating persons providing contracted health care services to inmates as employees or agents of the state for the purposes of chapter 440.

(c) For purposes of this section, regional poison control centers created in accordance with s. 395.1027 and coordinated and supervised under the Division of Children's Medical

Services Prevention and Intervention of the Department of Health, or any of their employees or agents, shall be considered agents of the State of Florida, Department of Health. Any contracts with poison control centers must provide, to the extent permitted by law, for the indemnification of the state by the agency for any liabilities incurred up to the limits set out in this chapter.

(d) For the purposes of this section, operators, dispatchers, and providers of security for rail services and rail facility maintenance providers in the South Florida Rail Corridor, or any of their employees or agents, performing such services under contract with and on behalf of the South Florida Regional Transportation Authority or the Department of Transportation shall be considered agents of the state while acting within the scope of and pursuant to guidelines established in said contract or by rule.

(e) For purposes of this section, a professional firm that provides monitoring and inspection services of the work required for state roadway, bridge, or other transportation facility construction projects, or any of the firm's employees performing such services, shall be considered agents of the Department of Transportation while acting within the scope of the firm's contract with the Department of Transportation to ensure that the project is constructed in conformity with the project's plans, specifications, and contract provisions. Any contract between the professional firm and the state, to the extent permitted by law, shall provide for the indemnification of the department for any liability, including reasonable attorney's fees, incurred up to the limits set out in this chapter to the extent caused by the negligence of the firm or its employees. This paragraph shall not be construed as designating persons who provide monitoring and inspection services as employees or agents of the state for purposes of chapter 440. This paragraph is not applicable to the professional firm or its employees if involved in an accident while operating a motor vehicle. This paragraph is not applicable to a firm engaged by the Department of Transportation for the design or construction of a state roadway, bridge, or other transportation facility construction project or to its employees, agents, or subcontractors.

(11)(a) Providers or vendors, or any of their employees or agents, that have contractually agreed to act on behalf of the state as agents of the Department of Juvenile Justice to provide services to children in need of services, families in need of services, or juvenile offenders are, solely with respect to such services, agents of the state for purposes of this section while acting within the scope of and pursuant to guidelines established in the contract or by rule. A contract must provide for the indemnification of the state by the agent for any liabilities incurred up to the limits set out in this chapter.

(b) This subsection does not designate a person who provides contracted services to juvenile offenders as an employee or agent of the state for purposes of chapter 440.

(12)(a) A health care practitioner, as defined in s. 456.001(4), who has contractually agreed to act as an agent of a state university board of trustees to provide medical services to a student athlete for participation in or as a result of intercollegiate athletics, to include team practices, training, and competitions, shall be considered an agent of the respective state university board of trustees, for the purposes of this section, while acting within the scope of and pursuant to guidelines established in that contract. The contracts shall provide for the indemnification of the state by the agent for any liabilities incurred up to the limits set out in this chapter.

(b) This subsection shall not be construed as designating persons providing contracted health care services to athletes as employees or agents of a state university board of trustees for the purposes of chapter 440.

(13) Laws allowing the state or its agencies or subdivisions to buy insurance are still in force and effect and are not restricted in any way by the terms of this act.

(14) Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after such claim accrues; except that an action for contribution must be commenced within the limitations provided in s. 768.31(4), and an action for damages arising from medical malpractice must be commenced within the limitations for such an action in s. 95.11(4).

(15) No action may be brought against the state or any of its agencies or subdivisions by anyone who unlawfully participates in a riot, unlawful assembly, public demonstration, mob violence, or civil disobedience if the claim arises out of such riot, unlawful assembly, public demonstration, mob violence, or civil disobedience. Nothing in this act shall abridge traditional immunities pertaining to statements made in court.

(16)(a) The state and its agencies and subdivisions are authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance for whatever coverage they may choose, or to have any combination thereof, in anticipation of any claim, judgment, and claims bill which they may be liable to pay pursuant to this section. Agencies or subdivisions, and sheriffs, that are subject to homogeneous risks may purchase insurance jointly or may join together as self-insurers to provide other means of protection against tort claims, any charter provisions or laws to the contrary notwithstanding.

(b) Claims files maintained by any risk management program administered by the state, its agencies, and its subdivisions are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Claims files records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided for in this paragraph.

(c) Portions of meetings and proceedings conducted pursuant to any risk management program administered by the state, its agencies, or its subdivisions, which relate solely to the evaluation of claims filed with the risk management program or which relate solely to offers of compromise of claims filed with the risk management program are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. Until termination of all litigation and settlement of all claims arising out of the same incident, persons privy to discussions pertinent to the evaluation of a filed claim shall not be subject to subpoena in any administrative or civil proceeding with regard to the content of those discussions.

(d) Minutes of the meetings and proceedings of any risk management program administered by the state, its agencies, or its subdivisions, which relate solely to the evaluation of claims filed with the risk management program or which relate solely to offers of compromise of claims filed with the risk management program are exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until termination of all litigation and settlement of all claims arising out of the same incident.

(17) This section, as amended by chapter 81-317, Laws of Florida, shall apply only to causes of actions which accrue on or after October 1, 1981.

(18) No provision of this section, or of any other section of the Florida Statutes, whether read separately or in conjunction with any other provision, shall be construed to waive the immunity of the state or any of its agencies from suit in federal court, as such immunity is guaranteed by the Eleventh Amendment to the Constitution of the United States, unless such waiver is explicitly and definitely stated to be a waiver of the immunity of the state and its agencies from suit in federal court. This subsection shall not be construed to mean that the state has at any time previously waived, by implication, its immunity, or that of any of its agencies, from suit in federal court through any statute in existence prior to June 24, 1984.

(19) Neither the state nor any agency or subdivision of the state waives any defense of sovereign immunity, or increases the limits of its liability, upon entering into a contractual relationship with another agency or subdivision of the state. Such a contract must not contain any provision that requires one party to indemnify or insure the other party for the other party's negligence or to assume any liability for the other party's negligence. This does not preclude a party from requiring a nongovernmental entity to provide such indemnification or insurance. The restrictions of this subsection do not prevent a regional water supply authority from indemnifying and assuming the liabilities of its member governments for obligations arising from past acts or omissions at or with property acquired from a member government by the authority and arising from the acts or omissions of the authority in performing activities contemplated by an interlocal agreement. Such indemnification may not be considered to increase or otherwise waive the limits of liability to third-party claimants established by this section.

(20) Every municipality, and any agency thereof, is authorized to undertake to indemnify those employees that are exposed to personal liability pursuant to the Clean Air Act Amendments of 1990, 42 U.S.C.A. ss. 7401 et seq., and all rules and regulations adopted to implement that act, for acts performed within the course and scope of their employment with the municipality or its agency, including but not limited to indemnification pertaining to the holding, transfer, or disposition of allowances allocated to the municipality's or its agency's electric generating units, and the monitoring, submission, certification, and compliance with permits, permit applications, records, compliance plans, and reports for those units, when such acts are performed within the course and scope of their employment with the municipality or its agency. The authority to indemnify under this section covers every act by an employee when such act is performed within the course and scope of her or his employment with the municipality or its agency, but does not cover any act of willful misconduct or any intentional or knowing violation of any law by the employee. The authority to indemnify under this section includes, but is not limited to, the authority to pay any fine and provide legal representation in any action.

West's F.S.A. § 766.1115

West's Florida Statutes Annotated Currentness
Title XLV. Torts (Chapters 766-774) (Refs & Annos)
Chapter 766. Medical Malpractice and Related Matters (Refs & Annos)
➡766.1115. Health care providers; creation of agency relationship with governmental contractors

(1) Short title.--This section may be cited as the "Access to Health Care Act."

(2) Findings and intent.--The Legislature finds that a significant proportion of the residents of this state who are uninsured or Medicaid recipients are unable to access needed health care because health care providers fear the increased risk of medical negligence liability. It is the intent of the Legislature that access to medical care for indigent residents be improved by providing governmental protection to health care providers who offer free quality medical services to underserved populations of the state. Therefore, it is the intent of the Legislature to ensure that health care professionals who contract to provide such services as agents of the state are provided sovereign immunity.

(3) Definitions.--As used in this section, the term:

(a) "Contract" means an agreement executed in compliance with this section between a health care provider and a governmental contractor. This contract shall allow the health care provider to deliver health care services to low-income recipients as an agent of the governmental contractor. The contract must be for volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services under this section, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient, or any public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract.

(b) "Department" means the Department of Health.

(c) "Governmental contractor" means the department, county health departments, a special taxing district with health care responsibilities, or a hospital owned and operated by a governmental entity.

(d) "Health care provider" or "provider" means:

1. A birth center licensed under chapter 383.

2. An ambulatory surgical center licensed under chapter 395.

3. A hospital licensed under chapter 395.

4. A physician or physician assistant licensed under chapter 458.

5. An osteopathic physician or osteopathic physician assistant licensed under chapter 459.

6. A chiropractic physician licensed under chapter 460.

7. A podiatric physician licensed under chapter 461.

8. A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of chapter 464 or any facility which employs nurses licensed or registered under part I of chapter 464 to supply all or part of the care delivered under this section.

9. A midwife licensed under chapter 467.

10. A health maintenance organization certificated under part I of chapter 641.

11. A health care professional association and its employees or a corporate medical group and its employees.

12. Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.

13. A dentist or dental hygienist licensed under chapter 466.

14. A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.

15. Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as any one of the professionals listed in subparagraphs 4.-9.

The term includes any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, [FN1] and described in s. 501(c) of the Internal Revenue Code, [FN2] which delivers health care services provided by licensed professionals listed in this paragraph, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers

health care services.

(e) "Low-income" means:

1. A person who is Medicaid-eligible under Florida law;

2. A person who is without health insurance and whose family income does not exceed 150 percent of the federal poverty level as defined annually by the federal Office of Management and Budget; or

3. Any client of the department who voluntarily chooses to participate in a program offered or approved by the department and meets the program eligibility guidelines of the department.

(4) Contract requirements.--A health care provider that executes a contract with a governmental contractor to deliver health care services on or after April 17, 1992, as an agent of the governmental contractor is an agent for purposes of s. 768.28(9), while acting within the scope of duties under the contract, if the contract complies with the requirements of this section and regardless of whether the individual treated is later found to be ineligible. A health care provider under contract with the state may not be named as a defendant in any action arising out of medical care or treatment provided on or after April 17, 1992, under contracts entered into under this section. The contract must provide that:

(a) The right of dismissal or termination of any health care provider delivering services under the contract is retained by the governmental contractor.

(b) The governmental contractor has access to the patient records of any health care provider delivering services under the contract.

(c) Adverse incidents and information on treatment outcomes must be reported by any health care provider to the governmental contractor if the incidents and information pertain to a patient treated under the contract. The health care provider shall submit the reports required by s. 395.0197. If an incident involves a professional licensed by the Department of Health or a facility licensed by the Agency for Health Care Administration, the governmental contractor shall submit such incident reports to the appropriate department or agency, which shall review each incident and determine whether it involves conduct by the licensee that is subject to disciplinary action. All patient medical records and any identifying information contained in adverse incident reports and treatment outcomes which are obtained by governmental entities under this paragraph are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d) Patient selection and initial referral must be made solely by the governmental contractor, and the provider must accept all referred patients. However, the number of patients that must be accepted may be limited by the contract, and patients may not be transferred to the provider based on a violation of the antidumping provisions of the

Omnibus Budget Reconciliation Act of 1989, the Omnibus Budget Reconciliation Act of 1990, or chapter 395.

(e) If emergency care is required, the patient need not be referred before receiving treatment, but must be referred within 48 hours after treatment is commenced or within 48 hours after the patient has the mental capacity to consent to treatment, whichever occurs later.

(f) Patient care, including any followup or hospital care, is subject to approval by the governmental contractor.

(g) The provider is subject to supervision and regular inspection by the governmental contractor.

A governmental contractor that is also a health care provider is not required to enter into a contract under this section with respect to the health care services delivered by its employees.

(5) Notice of agency relationship.--The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider or of any employee or agent thereof acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to the provisions of s. 768.28. With respect to any federally funded community health center, the notice requirements may be met by posting in a place conspicuous to all persons a notice that the federally funded community health center is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider or of any employee or agent thereof acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to the provisions of s. 768.28.

(6) Quality assurance program required.--The governmental contractor shall establish a quality assurance program to monitor services delivered under any contract between an agency and a health care provider pursuant to this section.

(7) Risk management report.--The Division of Risk Management of the Department of Financial Services shall annually compile a report of all claims statistics for all entities participating in the risk management program administered by the division, which shall include the number and total of all claims pending and paid, and defense and handling costs associated with all claims brought against contract providers under this section. This report shall be forwarded to the department and included in the annual report submitted to the Legislature pursuant to this section.

(8) Report to the legislature.--Annually, the department shall report to the President of the Senate, the Speaker of the House of Representatives, and the minority leaders and relevant substantive committee chairpersons of both houses, summarizing the efficacy of access and treatment outcomes with respect to providing health care services for low-

income persons pursuant to this section.

(9) Malpractice litigation costs.--Governmental contractors other than the department are responsible for their own costs and attorney's fees for malpractice litigation arising out of health care services delivered pursuant to this section.

(10) Rules.--The department shall adopt rules to administer this section in a manner consistent with its purpose to provide and facilitate access to appropriate, safe, and cost-effective health care services and to maintain health care quality. The rules may include services to be provided and authorized procedures. Notwithstanding the requirements of paragraph (4)(d), the department shall adopt rules that specify required methods for determination and approval of patient eligibility and referral and the contractual conditions under which a health care provider may perform the patient eligibility and referral process on behalf of the department. These rules shall include, but not be limited to, the following requirements:

(a) The provider must accept all patients referred by the department. However, the number of patients that must be accepted may be limited by the contract.

(b) The provider shall comply with departmental rules regarding the determination and approval of patient eligibility and referral.

(c) The provider shall complete training conducted by the department regarding compliance with the approved methods for determination and approval of patient eligibility and referral.

(d) The department shall retain review and oversight authority of the patient eligibility and referral determination.

(11) Applicability.--This section applies to incidents occurring on or after April 17, 1992. This section does not apply to any health care contract entered into by the Department of Corrections which is subject to s. 768.28(10)(a). Nothing in this section in any way reduces or limits the rights of the state or any of its agencies or subdivisions to any benefit currently provided under s. 768.28.

51 Okl.St.Ann. § 152.1

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)
Chapter 5. Governmental Tort Claims Act (Refs & Annos)
§ 152.1. Sovereign immunity

A. The State of Oklahoma does hereby adopt the doctrine of sovereign immunity. The state, its political subdivisions, and all of their employees acting within the scope of their employment, whether performing governmental or proprietary functions, shall be

immune from liability for torts.

B. The state, only to the extent and in the manner provided in this act, waives its immunity and that of its political subdivisions. In so waiving immunity, it is not the intent of the state to waive any rights under the Eleventh Amendment to the United States Constitution.

PENDING LEGISLAITON ON 154

51 Okl.St.Ann. § 154

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)
Chapter 5. Governmental Tort Claims Act (Refs & Annos)
§ 154. Extent of liability--Wrongful criminal felony convictions resulting in imprisonment--Punitive or exemplary damages--Joinder of parties--Several liability

A. The total liability of the state and its political subdivisions on claims within the scope of The Governmental Tort Claims Act, arising out of an accident or occurrence happening after the effective date of this act, [FN1] Section 151 et seq. of this title, shall not exceed:

1. Twenty-five Thousand Dollars ($25,000.00) for any claim or to any claimant who has more than one claim for loss of property arising out of a single act, accident, or occurrence;

2. Except as otherwise provided in this paragraph, One Hundred Twenty-five Thousand Dollars ($125,000.00) to any claimant for a claim for any other loss arising out of a single act, accident, or occurrence. The limit of liability for the state or any city or county with a population of three hundred thousand (300,000) or more according to the latest federal Decennial Census shall not exceed One Hundred Seventy-five Thousand Dollars ($175,000.00). Except however, the limits of said liability for the University Hospitals and State Mental Health Hospitals operated by the Department of Mental Health and Substance Abuse Services for claims arising from medical negligence shall be Two Hundred Thousand Dollars ($200,000.00). For claims arising from medical negligence by any licensed physician, osteopathic physician or certified nurse-midwife rendering prenatal, delivery or infant care services from September 1, 1991, through June 30, 1996, pursuant to a contract authorized by subsection B of Section 1-106 of Title 63 of the Oklahoma Statutes and in conformity with the requirements of Section 1-233 of Title 63 of the Oklahoma Statutes, the limits of said liability shall be Two Hundred Thousand Dollars ($200,000.00); or

3. One Million Dollars ($1,000,000.00) for any number of claims arising out of a single occurrence or accident.

B. 1. Beginning on the effective date of this act, [FN2] claims shall be allowed for wrongful criminal felony conviction resulting in imprisonment if the claimant has received a full pardon on the basis of a written finding by the Governor of actual innocence for the crime for which the claimant was sentenced or has been granted judicial relief absolving the claimant of guilt on the basis of actual innocence of the crime for which the claimant was sentenced. The Governor or the court shall specifically state, in the pardon or order, the evidence or basis on which the finding of actual innocence is based.

2. As used in paragraph 1 of this subsection, for a claimant to recover based on "actual innocence", the individual must meet the following criteria:

a. the individual was charged, by indictment or information, with the commission of a public offense classified as a felony,
b. the individual did not plead guilty to the offense charged, or to any lesser included offense, but was convicted of the offense,
c. the individual was sentenced to incarceration for a term of imprisonment as a result of the conviction,
d. the individual was imprisoned solely on the basis of the conviction for the offense, and
e. (1) in the case of a pardon, a determination was made by either the Pardon and Parole Board or the Governor that the offense for which the individual was convicted, sentenced and imprisoned, including any lesser offenses, was not committed by the individual, or
(2) in the case of judicial relief, a court of competent jurisdiction found by clear and convincing evidence that the offense for which the individual was convicted, sentenced and imprisoned, including any lesser included offenses, was not committed by the individual and issued an order vacating, dismissing or reversing the conviction and sentence and providing that no further proceedings can be or will be held against the individual on any facts and circumstances alleged in the proceedings which had resulted in the conviction.

3. A claimant shall not be entitled to compensation for any part of a sentence in prison during which the claimant was also serving a concurrent sentence for a crime not covered by this subsection.

4. The total liability of the state and its political subdivisions on any claim within the scope of The Governmental Tort Claims Act arising out of wrongful criminal felony conviction resulting in imprisonment shall not exceed One Hundred Seventy-five Thousand Dollars ($175,000.00).

5. The provisions of this subsection shall apply to convictions occurring on or before the effective date of this act as well as convictions occurring after the effective date of this act. If a court of competent jurisdiction finds that retroactive application of this subsection is unconstitutional, the prospective application of this subsection shall remain valid.

C. No award for damages in an action or any claim against the state or a political subdivision shall include punitive or exemplary damages.

D. When the amount awarded to or settled upon multiple claimants exceeds the limitations of this section, any party may apply to the district court which has jurisdiction

of the cause to apportion to each claimant the claimant's proper share of the total amount as limited herein. The share apportioned to each claimant shall be in the proportion that the ratio of the award or settlement made to him bears to the aggregate awards and settlements for all claims against the state or its political subdivisions arising out of the occurrence. When the amount of the aggregate losses presented by a single claimant exceeds the limits of paragraph 1 or 2 of subsection A of this section, each person suffering a loss shall be entitled to that person's proportionate share.

E. The total liability of resident physicians and interns while participating in a graduate medical education program of the University of Oklahoma College of Medicine, its affiliated institutions and the Oklahoma College of Osteopathic Medicine and Surgery shall not exceed One Hundred Thousand Dollars ($100,000.00).

F. The state or a political subdivision may petition the court that all parties and actions arising out of a single accident or occurrence shall be joined as provided by law, and upon order of the court the proceedings upon good cause shown shall be continued for a reasonable time or until such joinder has been completed. The state or political subdivision shall be allowed to interplead in any action which may impose on it any duty or liability pursuant to this act.

G. The liability of the state or political subdivision under The Governmental Tort Claims Act shall be several from that of any other person or entity, and the state or political subdivision shall only be liable for that percentage of total damages that corresponds to its percentage of total negligence. Nothing in this section shall be construed as increasing the liability limits imposed on the state or political subdivision under The Governmental Tort Claims Act.

51 Okl.St.Ann. § 156

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)
Chapter 5. Governmental Tort Claims Act (Refs & Annos)
➡§ 156. Presentation of claim--Limitation of actions--Filing--Notice-- Wrongful death

A. Any person having a claim against the state or a political subdivision within the scope of Section 151 et seq. of this title shall present a claim to the state or political subdivision for any appropriate relief including the award of money damages.

B. Except as provided in subsection H of this section, claims against the state or a political subdivision are to be presented within one (1) year of the date the loss occurs. A claim against the state or a political subdivision shall be forever barred unless notice thereof is presented within one (1) year after the loss occurs.

C. A claim against the state shall be in writing and filed with the Office of the Risk

Management Administrator of the Purchasing Division of the Office of Public Affairs who shall immediately notify the Attorney General and the agency concerned and conduct a diligent investigation of the validity of the claim within the time specified for approval or denial of claims by Section 157 of this title. A claim may be filed by certified mail with return receipt requested. A claim which is mailed shall be considered filed upon receipt by the Office of the Risk Management Administrator.

D. A claim against a political subdivision shall be in writing and filed with the office of the clerk of the governing body.

E. The written notice of claim to the state or a political subdivision shall state the date, time, place and circumstances of the claim, the identity of the state agency or agencies involved, the amount of compensation or other relief demanded, the name, address and telephone number of the claimant, and the name, address and telephone number of any agent authorized to settle the claim. Failure to state either the date, time, place and circumstances and amount of compensation demanded shall not invalidate the notice unless the claimant declines or refuses to furnish such information after demand by the state or political subdivision. The time for giving written notice of claim pursuant to the provisions of this section does not include the time during which the person injured is unable due to incapacitation from the injury to give such notice, not exceeding ninety (90) days of incapacity.

F. When the claim is one for death by wrongful act or omission, notice may be presented by the personal representative within one (1) year after the death occurs. If the person for whose death the claim is made has presented notice that would have been sufficient had he lived, an action for wrongful death may be brought without any additional notice.

G. Claims and suits against resident physicians or interns shall be made in accordance with the provisions of Titles 12 and 76 of the Oklahoma Statutes.

H. For purposes of claims based on wrongful felony conviction resulting in imprisonment provided for in Section 154 of this title, loss occurs on the date that the claimant receives a pardon based on actual innocence from the Governor or the date that the claimant receives judicial relief absolving the claimant of guilt based on actual innocence; provided, for persons whose basis for a claim occurred prior to the effective date of this act, [FN1] the claim must be submitted within one (1) year after the effective date of this act.

Section 9

Pre-judgment Interest Calculations

9) Prejudgment Interest Calculations: Washington and Massachusetts

SUMMARY:

Washington

Pre-judgment interest on liquidated damages may be awarded in negligence cases. *Walla Walla County Fire Protection District No. 5 v. Washington Auto Carriage, Inc.*, 50 Wash. App. 355, 745 P.2d 1332 (1987). A claim is liquidated when the evidence furnishes data which, if believed, makes possible the exact computation of the amount without having to resort to opinion or discretion. *Id.* Pre-judgment interest accrues from the time of the loss. *Id.* Due to the uncertain nature of damages for personal injuries, pre-judgment interest is ordinarily not awarded in

Massachusetts

In Massachusetts, medical malpractice claimants are afforded a right to pre-judgment interest which accrues at twelve percent per annum from the date upon which the action was commenced. This is added even if it causes the judgment to exceed the damage cap. Mass. Ann. Laws ch. 231, § 6B (Law. Co-op. 1986). Moreover, even though the jury is required to specify what part of its verdict is for future damages, Mass. Ann. Laws ch. 231, § 60F (Law. Co-op. Supp. 1997), pre-judgment interest must be paid on the entire verdict. *Kuppens v. Davies*, 38 Mass. App. Ct. 498, 649 N.E.2d 164, *cert. denied*, 420 Mass. 1105, 651 N.E.2d 410 (1995).

M.G.L.A. 231 § 6B

Massachusetts General Laws Annotated Currentness

Part III. Courts, Judicial Officers and Proceedings in Civil Cases
Title II. Actions and Proceedings Therein
Chapter 231. Pleading and Practice (Refs & Annos)
Pleading
Damages, Interest, Costs and Expenses (Refs & Annos)

+++ CURRENT VERSION +++
VIEW ALL VERSIONS
➡§ 6B. Interest added to damages in tort actions

In any action in which a verdict is rendered or a finding made or an order for judgment made for pecuniary damages for personal injuries to the plaintiff or for consequential damages, or for damage to property, there shall be added by the clerk of court to the amount of damages interest thereon at the rate of twelve per cent per annum from the date of commencement of the action even though such interest brings the amount of the

verdict or finding beyond the maximum liability imposed by law.

M.G.L.A. 231 § 60F

Massachusetts General Laws Annotated Currentness

Part III. Courts, Judicial Officers and Proceedings in Civil Cases
Title II. Actions and Proceedings Therein
Chapter 231. Pleading and Practice (Refs & Annos)
↖Practice
↖Malpractice Actions (Refs & Annos)

+++ CURRENT VERSION +++
VIEW ALL VERSIONS
➡§ 60F. Award of damages; elements and itemization of amounts

(a) In every action for malpractice, negligence, error, omission, mistake or the unauthorized rendering of professional services against a provider of health care which is tried to a jury, the court shall instruct the jury that if the jury awards damages to the plaintiff or plaintiffs it shall specify the total amount of damages, as well as the applicable elements of special and general damages upon which the award of damages is based and the amount of the total damages assigned to each element, including, but not limited to:

(1) Amounts intended to compensate the plaintiff for reasonable expenses which have been incurred, or which will be incurred, for necessary medical, surgical, X-ray, dental, or rehabilitative services, including prosthetic devices; necessary ambulance, hospital, and nursing services; drugs; and therapy;

(2) Amounts intended to compensate the plaintiff for lost wages or loss of earning capacity and other economic losses which have been incurred or will be incurred; and

(3) Amounts intended to compensate the plaintiff for pain and suffering, loss of companionship, embarrassment, and other items of general damages, which have been incurred or will be incurred in the future, and whether there is a substantial or permanent loss or impairment of a bodily function, or substantial disfigurement, or other special circumstances in the case which warrant a finding that imposition of the limitation specified in section sixty I would deprive the plaintiff of just compensation for the injuries sustained.

Each element shall be further itemized into amounts intended to compensate for damages which have been incurred prior to the verdict and amounts intended to compensate for damages to be incurred in the future. In itemizing amounts intended to compensate for future damages, the jury shall set forth the period of weeks, months or years over which such amounts are intended to provide compensation. The court shall apply to each element of past and future damages any rules of law applicable to the review of jury verdicts, including without limitation the sufficiency of the evidence to

support the verdict, any set-offs or credits, and appropriate additurs or remittiturs.

(b) In every action for malpractice, negligence, error, omission, mistake or the unauthorized rendering of professional services against a provider of health care which is tried without a jury, if the court awards damages to the plaintiff or plaintiffs, it shall find the total amount of damages, and specify the applicable elements of special and general damages upon which the award of damages is based and the amount of the total damages assigned to each element, including, but not limited to:

(1) Amounts intended to compensate the plaintiff for reasonable expenses which have been incurred, or which will be incurred, for necessary medical, surgical, X-ray, dental, or rehabilitative services, including prosthetic devices; necessary ambulance, hospital and nursing services; drugs; and therapy;

(2) Amounts intended to compensate the plaintiff for lost wages or loss of earning capacity and other economic losses which have been incurred or will be incurred; and

(3) Amounts intended to compensate the plaintiff for pain and suffering, loss of companionship, embarrassment, and other items of general damages, which have been incurred or will be incurred in the future, and whether there is a substantial or permanent impairment of a bodily function, or substantial disfigurement, or other special circumstances in the case which warrant a finding that imposition of the limitation specified in section sixty I would deprive the plaintiff of just compensation for the injuries sustained.

Each element shall be further itemized into amounts intended to compensate for damages which have been incurred prior to the verdict and amounts intended to compensate for damages to be incurred in the future. In itemizing amounts intended to compensate for future damages, the court shall set forth the period of weeks, months or years over which such amounts are intended to provide compensation

Section 10

Limit on Punitive Damage Awards

10) Limit on punitive damage awards from Texas and North Carolina

SUMMARY:

North Carolina
North Carolina generally does not limit the compensatory damages recoverable in medical malpractice actions. However, for actions filed on or after January 1, 1996, punitive damages limited to three times compensatory damages or $250,000, whichever is greater. N.C. Gen. Stat. § 1D-25 (1995).

Texas
Texas also limits punitive damages in cases arising after September 1, 1995, to (a) two times the amount of economic damages, plus (b) an amount equal to non-economic damages (not to exceed $750,000) or $200,000, whichever is greater. Tex. Civ. Prac. & Rem. Code Ann. § 41.008 (West 1997). This was formerly four times actual damages or $200,000, whichever is greater. Tex. Civ. Prac. & Rem. Code Ann. § 41.007 (West 1991) (repealed 1995). The cap on punitive damages does not apply in cases of certain felonies, including fraudulent destruction or concealment of written records. Tex. Civ. Prac. & Rem. Code Ann. § 41.008 (West 1997).

N.C.G.S.A. § 1D-25

West's North Carolina General Statutes Annotated Currentness

Chapter 1D. Punitive Damages (Refs & Annos)
➡§ 1D-25. Limitation of amount of recovery

(a) In all actions seeking an award of punitive damages, the trier of fact shall determine the amount of punitive damages separately from the amount of compensation for all other damages.

(b) Punitive damages awarded against a defendant shall not exceed three times the amount of compensatory damages or two hundred fifty thousand dollars ($250,000), whichever is greater. If a trier of fact returns a verdict for punitive damages in excess of the maximum amount specified under this subsection, the trial court shall reduce the award and enter judgment for punitive damages in the maximum amount.

(c) The provisions of subsection (b) of this section shall not be made known to the trier of fact through any means, including voir dire, the introduction into evidence, argument, or instructions to the jury.

V.T.C.A., Civil Practice & Remedies Code § 41.008

Vernon's Texas Statutes and Codes Annotated Currentness

Civil Practice and Remedies Code (Refs & Annos)
Title 2. Trial, Judgment, and Appeal
Subtitle C. Judgments
Chapter 41. Damages (Refs & Annos)
§ 41.008. Limitation on Amount of Recovery

(a) In an action in which a claimant seeks recovery of damages, the trier of fact shall determine the amount of economic damages separately from the amount of other compensatory damages.

(b) Exemplary damages awarded against a defendant may not exceed an amount equal to the greater of:

(1)(A) two times the amount of economic damages; plus
(B) an amount equal to any noneconomic damages found by the jury, not to exceed $750,000; or
(2) $200,000.

(c) This section does not apply to a cause of action against a defendant from whom a plaintiff seeks recovery of exemplary damages based on conduct described as a felony in the following sections of the Penal Code if, except for Sections 49.07 and 49.08, the conduct was committed knowingly or intentionally:

(1) Section 19.02 (murder);
(2) Section 19.03 (capital murder);
(3) Section 20.04 (aggravated kidnapping);
(4) Section 22.02 (aggravated assault);
(5) Section 22.011 (sexual assault);
(6) Section 22.021 (aggravated sexual assault);
(7) Section 22.04 (injury to a child, elderly individual, or disabled individual, but not if the conduct occurred while providing health care as defined by Section 74.001);
(8) Section 32.21 (forgery);
(9) Section 32.43 (commercial bribery);
(10) Section 32.45 (misapplication of fiduciary property or property of financial institution);
(11) Section 32.46 (securing execution of document by deception);
(12) Section 32.47 (fraudulent destruction, removal, or concealment of writing);
(13) Chapter 31 (theft) the punishment level for which is a felony of the third degree or higher;
(14) Section 49.07 (intoxication assault); or
(15) Section 49.08 (intoxication manslaughter).

(d) In this section, "intentionally" and "knowingly" have the same meanings assigned those terms in Sections 6.03(a) and (b), Penal Code.

(e) The provisions of this section may not be made known to a jury by any means, including voir dire, introduction into evidence, argument, or instruction.

(f) This section does not apply to a cause of action for damages arising from the manufacture of methamphetamine as described by Chapter 99.