

T.C.A. 9-8-307. Jurisdiction — Claims — Waiver of actions — Standard for tort liability — Damages — Immunities — Definitions — Transfer of claims. —

(a) (1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of “state employees,” as defined in § 8-42-101(3), falling within one (1) or more of the following categories:

(A) The negligent operation or maintenance of any motor vehicle or any other land, air, or sea conveyance. In addition, the state may be held liable pursuant to this subdivision for the negligent operation of state-owned motor vehicles or other conveyances by persons who are not state employees; provided, that such persons operated the vehicle or other conveyance with the permission of a state employee;

(B) Nuisances created or maintained;

(C) Negligently created or maintained dangerous conditions on state controlled real property. The claimant under this subdivision (a)(1)(C) must establish the foreseeability of the risks and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures;

(D) Legal or medical malpractice by a state employee; provided, that the state employee has a professional/client relationship with the claimant;

(E) Negligent care, custody and control of persons;

(F) Negligent care, custody or control of personal property;

(G) Negligent care, custody or control of animals. Damages are not recoverable under this section for damages caused by wild animals;

(H) Negligent construction of state sidewalks and buildings;

(I) Negligence in planning and programming for, inspection of, design of, preparation of plans for, approval of plans for, and construction of, public roads, streets, highways, or bridges and similar structures, and negligence in maintenance of highways, and bridges and similar structures, designated by the department of transportation as being on the state system of highways or the state system of interstate highways;

(J) Dangerous conditions on state maintained highways. The claimant under this subdivision (a)(1)(J) must establish the foreseeability of the risk and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures;

(K) Workers' compensation claims by state employees, including injuries incurred by national guard members, Tennessee state guard members, civil air patrol members, civil defense agency personnel and emergency forest firefighters while on active duty and in the course of that duty;

(i) The commission's payment of these claims shall be in such amount and subject to such limitations as set forth in title 50, chapter 6, except the following provisions shall have no application to workers' compensation claims filed against the state: §§ 50-6-103, 50-6-104, 50-6-106(5), 50-6-117, 50-6-118, 50-6-128, 50-6-203(a)-(e) and (g)-(h), 50-6-205(b)(2), (b)(3), (c)

and (d), 50-6-206(a)(1), 50-6-208, 50-6-211, 50-6-213, 50-6-222, 50-6-224(2), 50-6-225(a)-(d), (g) and (k), 50-6-227, 50-6-228, 50-6-229(b), 50-6-233, 50-6-236(a), (b), (e) and (h), 50-6-237(c), 50-6-238, 50-6-244, 50-6-306, 50-6-307, and title 50, chapter 6, part 4. Section 50-6-114 shall apply to workers' compensation claims against the state, except that the state is authorized to give an employee the option to use accrued sick and annual leave in lieu of receiving temporary total disability benefits. In no event shall an employee receive both accrued sick and annual leave and temporary total disability benefits for the period of temporary total disability. Where appropriate, the claims commission shall be considered the court or tribunal to determine claims within the provisions of title 50, chapter 6. Payments shall be made and accepted without regard to fault as a cause of the injury or death;

(ii) The second injury fund shall have no application to workers' compensation claims against the state of Tennessee. Payment of compensation shall not be considered a binding determination of the obligations of the employer as to future compensation payments. Likewise, the acceptance of compensation by the officer or employee is not considered a binding determination of the obligations of the employer as to future compensation payments; nor shall the acceptance of compensation by the officer or employee be considered a binding determination of the employer's rights;

(iii) The interested parties have the right to settle all matters of compensation between themselves, but all settlements, before the settlements are binding on either party, shall be reduced to writing and shall be approved by the claims commissioner before whom the claim for compensation is entitled to be heard, or by the commissioner of labor and workforce development or the commissioner's designee, pursuant to § 50-6-206(c). Any proposed settlement presented to a claims commissioner for approval pursuant to this subdivision (a)(1)(K)(iii) shall be examined by the claims commissioner to determine whether the officer or employee is receiving, substantially, the benefits provided by the Workers' Compensation Law, compiled in title 50, chapter 6. To this end, the commissioner may call and examine witnesses. Upon such settlement being approved, an order shall be rendered by the commissioner and duly entered by the clerk;

(iv) In case any officer or employee of the state of Tennessee for whose injury or death compensation is payable under the Workers' Compensation Law shall at the time of injury be employed or paid jointly by two (2) or more employers subject to such law, such employers shall contribute to payment of such compensation in a proportion of their several wage liability to such officer or employee. The state of Tennessee is considered the primary employer and the determination of workers' compensation paid shall be pursuant to the procedures provided for state officers and employees. If one (1) or more, but not all, of such officers and employees are subject to the Workers' Compensation Law and otherwise subject to liability for compensation hereunder, then the liability of such of them as are so subject shall be to pay the proportion of the entire compensation which their portion of the wage liability bears to the wages of the officer or employee; provided, that nothing in this section shall prevent any agreement between the different employers between themselves as to the distribution of the ultimate burden of such compensation. The state of Tennessee shall pay the officer or employee under the Workers' Compensation Law and seek contribution from other contributing employers. The state of Tennessee has a right of action in the courts against the joint employers;

(v) Notwithstanding any provision of § 9-8-402(d) or any other law to the contrary, upon motion of the employee, the claims commission may, prior to the benefits review

conference or any final hearing on the claim, order the state to initiate, continue or reinstate temporary disability benefits or to provide medical benefits to the employee pending a final decision in the case, if the claims commission determines that such an order would be appropriate in light of available information. If the commission determines it appropriate to order the state to provide medical benefits pursuant to this subdivision (a)(1)(K)(v), the commission's authority shall include, but not be limited to, the authority to order specific medical treatment recommended by the treating physician, and the authority to require the state to provide the appropriate panel of physicians to the employee, including a panel of appropriate specialists. With respect to the determination of whether to order the payment of temporary disability or medical benefits, the claims commission shall decide such issues solely on the basis of the information available to the commission, without favor or presumption for or against either party.

(L) Actions for breach of a written contract between the claimant and the state which was executed by one (1) or more state officers or employees with authority to execute the contract; provided, that the group insurance agreements created pursuant to §§ 8-27-201 and 8-27-302 shall be considered contracts for purposes of this subsection in order for the commission to determine insurance claims which have been previously rejected by the state insurance committee or the local education insurance committee;

(M) Negligent operation of machinery or equipment;

(N) Negligent deprivation of statutory rights created under Tennessee law, except for actions arising out of claims over which the civil service commission has jurisdiction. The claimant must prove under this subdivision (a)(1)(N) that the general assembly expressly conferred a private right of action in favor of the claimant against the state for the state's violation of the particular statute's provisions;

(O) Claims for the recovery of taxes collected or administered by the state, except any tax collected or administered by the commissioner of revenue and any unemployment insurance tax collected or administered by the commissioner of labor and workforce development;

(P) Claims for the loss, damage or destruction of the personal property of state employees based on § 9-8-111;

(Q) **(i)** Claims for injuries incurred by persons where such injury occurred while the person was a passenger in a motor vehicle operated by a state employee while such employee was acting within the scope of employment. The claimant has the burden of proving the following:

(a) The injuries suffered by the claimant occurred as a result of an accident involving a motor vehicle operated by a non-state employee and a motor vehicle operated by a state employee who, at the time of the accident, was acting within the scope of employment;

(b) The proximate cause of the accident was the negligent operation of the motor vehicle operated by the non-state employee;

(c) The claimant has been unable to recover any damages from the negligent party because the negligent party was uninsured or underinsured at the time of the accident and is otherwise financially incapable of fully compensating the claimant;

(d) The claimant has been unable to recover sufficient amounts under the Workers'

Compensation Law or from any other public or private source, including the claimant's uninsured motorist's insurance policy, to fully compensate for the injuries suffered; and

(e) The claimant's presence in the motor vehicle operated by the state employee was for the benefit of the state, except that this requirement shall be waived for persons who are injured while a passenger in a state-owned motor vehicle used in the state employee van pool program authorized in § 4-3-1105(23).

(ii) Notwithstanding the provisions of subsection (e), awards under this subdivision (a)(1)(Q) are limited to amounts recoverable under subdivision (a)(1)(K). Awards under this subdivision (a)(1)(Q) shall not be considered payments under an uninsured motorists insurance policy as provided for in title 56, chapter 7, part 12;

(R) Claims for libel and/or slander where a state employee is determined to be acting within the scope of employment;

(S) (i) Claims for compensation filed under the Criminal Injuries Compensation Act, compiled in title 29, chapter 13, and § 40-24-107. Claims filed pursuant to this subdivision (a)(1)(S) shall be determined in accordance with the provisions of title 29, chapter 13.

(ii) Notwithstanding the provisions of title 29, chapter 13, to the contrary, the claims commission has exclusive jurisdiction to determine all claims filed for compensation under the Criminal Injuries Compensation Act in accordance with the provisions of title 29, chapter 13; provided, that this exclusive jurisdiction shall apply only to claims for compensation filed on or after January 1, 1987. At the request of the claimant and with the consent of the court, any claim filed prior to January 1, 1987, may be transferred to the claims commission for determination of the claim;

(T) Actions based on § 69-1-201;

(U) Actions based on violations of the requirements of procurement of commodities or services under title 71, chapter 4, part 7; and

(V) Unconstitutional taking of private property, as defined in § 12-1-202, including intentional state governmental action resulting in a taking other than the taking of real property and real property rights for the state's system of highways or the state's system of interstate highways;

(2) No item enumerated in this subsection (a) shall be interpreted to allow any claim against the state on account of the acts or omissions of persons, partnerships, corporations or other entities licensed or regulated by agencies of the state, notwithstanding any negligence committed by the state in the course of performing licensing or regulatory activities. No item enumerated in this subsection (a) shall be interpreted to allow any claims against the state arising out of or resulting from:

(A) The issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization, except as provided for in subdivision (a)(1)(V);

(B) An inspection, or by reason of making an inadequate or negligent inspection of any property, except as provided for in subdivision (a)(1)(I);

(C) Riots, unlawful assemblies, public demonstrations, mob violence and civil

disturbances; except that the claims commission shall have jurisdiction over riots and disturbances occurring on or after January 1, 1985, by persons who are in the care, custody and control of the state where the state's negligence is the proximate cause of the riot or disturbance which, in turn, is the proximate cause of the injury to the claimant or damage to the claimant's personal property;

(D) Acts of a defendant serving a sentence under probation coupled with periodic confinement pursuant to § 40-35-307; work release pursuant to § 40-35-315; on furlough pursuant to § 40-35-316; a community-based alternative to confinement pursuant to title 40, chapter 36; or parole pursuant to § 40-35-504, unless the defendant is in the custody of or under the control or supervision of a jailer, corrections officer, law enforcement officer, or other agent of the state, or unless the state was negligent in its release of the defendant; provided, that the state is liable for reasonable medical care for inmates under work release, furlough, or community-based alternatives to confinement, although the inmates are not physically in the custody and control of and under the direct personal control of a jailer, corrections officer or other law enforcement officer. The state, county, municipality or political subdivision which may employ the inmate but does not have direct supervision and control of the inmate's work release, confinement or community-based alternative to confinement is not liable for the inmate's reasonable medical treatment for injuries incurred while on such work release, community-based alternative, or other work detail. Nothing in this subdivision (a)(2)(D) shall be construed as changing the general law of comparative fault. Nothing in this subdivision (a)(2)(D) shall be construed as changing the liability for injuries caused by a person or agency due to that person's or agency's own negligence. Nothing in this subdivision (a)(2)(D) shall be construed as changing the general law on liability in subdivision (a)(1)(E); or

(E) Any failure or malfunction occurring before January 1, 2005, which is caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times, if, and only if, the failure or malfunction causing the loss was unforeseeable or if the failure or malfunction causing the loss was foreseeable but a reasonable plan or design or both for identifying and preventing the failure or malfunction was adopted and reasonably implemented complying with generally accepted computer and information system design standards. Notwithstanding any other provision of the law, nothing in this subdivision (a)(2)(E) shall in any way limit the liability of a third party, direct or indirect, who is negligent. Further, a person who is injured by the negligence of a third party contractor, direct or indirect, shall have a cause of action against the contractor.

(3) It is the intent of the general assembly that the claims commission shall only hear claims arising on or after January 1, 1985. All claims arising prior to January 1, 1985, are to be governed by the law as it was prior to that date. For purposes of jurisdiction, a claim for recovery of taxes is deemed to arise on the date of the payment under protest. However, for any claim falling within the jurisdiction of the claims commission as determined by this subdivision (a)(3) and arising before January 1, 1985, the board of claims may authorize the chair of the board to transfer any claim or classes of claims to the claims commission. No claims shall be transferred where the claimant objects. Transferred claims are subject to the same requirements and procedures as claims originally filed with the claims commission. It is the intent of the general assembly that the jurisdiction of the claims commission be liberally construed to implement the remedial purposes of this legislation. It is the intent of the general assembly that no distinctions

be made between officers and employees of the state under this legislation. The availability of state records and documents concerning claims is subject to the same discovery defenses as are available to other parties. The portion of the records in possession of the division of claims administration containing the amount of funds reserved for each claim for the risk management fund is confidential and not subject to the provisions of § 10-7-503, until the final adjudication of the claim.

(b) Claims against the state filed pursuant to subsection (a) shall operate as a waiver of any cause of action, based on the same act or omission, which the claimant has against any state officer or employee. The waiver is void if the commission determines that the act or omission was not within the scope of the officer's or employee's office or employment.

(c) The determination of the state's liability in tort shall be based on the traditional tort concepts of duty and the reasonably prudent person's standard of care.

(d) The state will be liable for actual damages only. No award shall be made unless the facts found by the commission would entitle the claimant to a judgment in an action at law if the state had been a private individual. The state will not be liable for punitive damages and the costs of litigation other than court costs. The state will not be liable for willful, malicious, or criminal acts by state employees, or for acts on the part of state employees done for personal gain. The state may assert any and all defenses, including common law defenses, which would have been available to the officer or employee in an action against such an individual based upon the same occurrence. The state may assert any absolute common law immunities available to the officer or employee, however, good faith common law immunity may not be asserted. If the claimant is successful with any claim filed with the claims commission after January 1, 1985, the state shall pay such interest as the commissioner may determine to be proper, not exceeding the legal rate as provided in § 47-14-121. In contract actions, interest may be awarded, but if the rate of interest is provided in the contract, the award of interest shall be at that rate.

(e) For causes of action arising in tort, the state shall only be liable for damages up to the sum of three hundred thousand dollars (\$300,000) per claimant and one million dollars (\$1,000,000) per occurrence. The board of claims is authorized to purchase insurance, on a per claimant or per occurrence basis, for any class of claim. Any recovery covered by such a policy may exceed the monetary limits of this subsection, but only up to the policy limit.

(f) No language contained in this chapter is intended to be construed as a waiver of the immunity of the state of Tennessee from suit in federal courts guaranteed by the eleventh amendment to the Constitution of the United States.

(g) No language contained in this chapter is intended to be construed to abridge the common law immunities of state officials and employees.

(h) State officers and employees are absolutely immune from liability for acts or omissions within the scope of the officer's or employee's office or employment, except for willful, malicious, or criminal acts or omissions or for acts or omissions done for personal gain. For purposes of this chapter, "state officer" or "employee" has the meaning set forth in § 8-42-101(3).

(i) (1) Claims that were timely filed against a state employee with a court of competent jurisdiction and that fall within the jurisdiction of the claims commission found in subdivision (a)(1)(A) shall be dismissed as to the state employee and transferred to the division of claims

administration to proceed as a claim against the state; provided, that the state employee alleged to have acted negligently was, at the time of the incident giving rise to the claim, operating a private motor vehicle within the scope of the employee's office or employment, and the employee's action or inaction was not willful, malicious, criminal or done for personal gain. When a motion for transfer is made, the court shall require that notice be given the attorney general and reporter and the state shall be permitted to intervene and respond to the motion. Upon such transfer, the claim shall be considered timely filed with the division of claims administration and the claims commission. Such transfer shall be effected upon an order of dismissal and transfer from the court. Any such transfer must be made within one (1) year of the filing of the original complaint with the court or on or after April 22, 1998, whichever is later. Such claims shall be considered by the division of claims administration and the claims commission, as provided by law. This subsection (i) shall be effective for causes of action arising on or after July 1, 1995, pending on or after April 22, 1998, and causes of action arising on or after April 22, 1998.

(2) Claims which are transferred to the division of claims administration pursuant to this subsection (i) shall be investigated by the division of claims administration, acted upon or transferred by the division, and acted upon by the claims commission pursuant to the same statutory requirements and procedures as apply to claims originally filed with the division of claims administration.

[Acts 1984, ch. 972, § 8; 1985, ch. 36, § 12; 1985, ch. 105, §§ 1, 4-7, 16; 1985, ch. 322, § 3; 1986, ch. 626, §§ 1-3; 1986, ch. 749, § 1; 1986, ch. 911, §§ 1, 2, 4; 1988, ch. 890, § 1; 1989, ch. 28, § 2; 1989, ch. 491, §§ 1, 2, 5; 1991, ch. 133, § 3; 1991, ch. 499, § 2; 1993, ch. 494, § 2; 1996, ch. 698, § 1; 1996, ch. 1036, § 1; 1998, ch. 785, §§ 2-7, 18, 31, 32; 1999, ch. 458, §§ 1, 4; 2000, ch. 573, § 1; 2003, ch. 212, § 8; 2004, ch. 699, § 1; 2005, ch. 384, §§ 1-3.]