

## Risk Management

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Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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## Risk Management

**Reference Number:** MTAS-216

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## Tort Liability Act

**Reference Number:** MTAS-262

### ***Tennessee Governmental Tort Liability Act***

In 1973, the Tennessee General Assembly enacted a comprehensive Tennessee Governmental Tort Liability Act. T.C.A. §§ 29-20-101, *et seq.* The act became effective January 1, 1974, and was made applicable only to claims or actions arising after that date. It applies to any political subdivision of the state, including any municipality or any instrumentality of government created by a municipality.

## Definitions

**Reference Number:** MTAS-263

1. "Employee" is "an official (whether elected or appointed), officer, employee or servant, or any member of any board, agency or commission (whether compensated or not) or any officer, employee or servant thereof ..."; and "regular members of voluntary and auxiliary firefighting, police, or emergency assistance programs". T.C.A. § 29-20-102.
2. "Government employee" is:
  - (1) "A regular member of a voluntary or auxiliary firefighting, police, or emergency assistance organization of a governmental entity ...;"
  - (2) "Persons who are employed in part-time, seasonal, or probationary positions ... if they receive the same benefits or are subject to the same job protection system and rules as other persons employed by that government in comparable part-time, seasonal, or probationary positions ...;"
  - (3) People upon whom has been conferred the status of employee under the Interlocal Cooperation Act (T.C.A. Title 12, Chapter 9) or as otherwise "duly authorized by law". T.C.A. § 29-20-107.
3. "Governmental entity" means any political subdivision of Tennessee, including, but not limited to, any municipality, metropolitan government, county, utility district, school district, nonprofit volunteer fire department receiving funds appropriated by a county legislative body or a legislative body of a municipality, human resource agency, community action agency or nonprofit corporation that administers the Head Start or Community Service Block Grant programs, public building authority, and development district created and existing pursuant to the constitution and laws of Tennessee, or any instrumentality of government created by any one (1) or more of the named local governmental entities or by an act of the general assembly. "Governmental entity" also means a nonprofit public benefit corporation or charitable entity, including any entity with tax exempt status under the Internal Revenue Code § 501(c)(3) (26 U.S.C. § 501(c)(3)), that is appointed by statute, ordinance, resolution, contract, or other governmental directive to develop, maintain, manage, and provide services and activities at government owned property that is a public park, including facilities located on park property. T.C.A. § 29-20-102.
4. "Injury" means death, injury to a person, damage to or loss of property, or any other injury to a person or estate that would be actionable if inflicted by a private person or his or her agent. T.C.A. § 29-20-102. Expressly not an employee under the Tennessee Governmental Tort Liability Act is "any person who is not an elected or appointed official or a member of a board, agency or commission ... unless the court specifically finds that all of the following elements exist:

- The governmental entity itself selected and engaged the person in question to perform services;
- The governmental entity is liable for, and the person receives from the entity's payroll department, all of his or her compensation;
- The person receives the same benefits, including retirement and insurance program eligibility, from the governmental entity;
- The person acts under the control and direction of the governmental entity as to both results and means and details by which the result is accomplished; and
- The person is entitled to the same job protection and grievance rules that apply to other employees.

## Determination of Liability

**Reference Number:** MTAS-264

The statute provides that governmental entities are not liable for their torts except as provided in the statute. The act states, "Except as may be otherwise provided in this chapter, all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities wherein such governmental entities are engaged in the exercise and discharge of any of their functions, governmental or proprietary. ... When immunity is removed by this chapter, any claim for damages must be brought in strict compliance with the terms of this chapter". T.C.A. § 29-20-201.

## Immunity

**Reference Number:** MTAS-276

### ***Waiver of Immunity***

A governmental entity may waive its immunity from suit only by express provisions or endorsement of a policy or contract of insurance authorized by this law to cover its liabilities. The law also provides that any contract of insurance to cover liabilities under federal law shall not be construed or deemed to be a waiver of such immunity. T.C.A. § 29-20-404.

### ***Situations Where Immunity is Removed***

Governmental entities are not immune from suit for injuries resulting from an employee's negligent operation of a motor vehicle or other equipment while in the scope of his or her employment. However, this provision does not repeal T.C.A. § 55-8-101, T.C.A. § 55-8-108, or T.C.A. § 55-8-132, which relate to operating authorized emergency vehicles. The immunities provided by these sections are expressly continued. T.C.A. § 29-20-202.

Governmental entities are not immune from suit for any injury caused by a defective, unsafe, or dangerous condition of any street, alley, sidewalk, or highway owned and controlled by the governmental entity, including any traffic-control devices. This provision does not apply unless constructive or actual notice to the governmental entity of the condition is alleged and proved. T.C.A. § 29-20-203.

Governmental entities are not immune from suit for any injury caused by the dangerous or defective condition of any public building, structure, dam, reservoir, or other public improvement owned and controlled by the governmental entity. Immunity is not removed for latent defective conditions, nor shall this section apply unless constructive or actual notice to the governmental entity of the condition is alleged and proved. T.C.A. § 29-20-204.

Governmental entities may be sued for injury proximately caused by a negligent act or omission of an employee within the scope of his employment, unless the injury arises or results from:

- riots, unlawful assemblies, public demonstrations, mob violence, or civil disturbances; assessing, levying, or collecting taxes.
- exercising or performing or failing to exercise or perform a discretionary function, or whether or not the discretion is abused;

- false imprisonment pursuant to a *mittimus* from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interfering with contract rights, inflicting mental anguish, or invading right of privacy or civil rights;
- issuing, denying, suspending, or revoking or failing or refusing to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization;
- failing to make an inspection or making an inadequate or negligent inspection of any property.
- instituting or prosecuting any judicial or administrative proceeding, even if malicious or without probable cause;
- misrepresentation by an employee, whether or not such is negligent or intentional; or
- Y2K-related computer failures occurring before January 1, 2005. T.C.A. § 29-20-205.

The nine exceptions listed above are categories in which governmental entities may not be sued for the negligent acts of their employees. Except for these listed categories, governmental entities are liable for any injury proximately caused by a negligent act or omission of any employee within the scope of his or her employment.

T.C.A. § 29-20-201 grants immunity from suit to all members of boards, commissions, agencies, authorities, or other governing bodies of governmental entities arising from their affairs except for willful, wanton, or grossly negligent acts.

## Procedures Under the Act

**Reference Number:** MTAS-273

The remainder of the act provides the procedures for making claims against governmental entities and for determining liability, limitations on liability, and the means of satisfying claims or judgments. An important provision relates to employee liability.

A governmental entity or employee is given 60 days to answer or otherwise respond to a claim, action, or suit. If the claim is denied, the claimant may institute an action in the circuit court. This action must commence within 12 months after the cause of action arises. A significant provision gives circuit courts exclusive original jurisdiction over any action brought under the act (except in Shelby County where General Sessions Court has concurrent jurisdiction up to jurisdictional limits), and the action is heard and decided without jury intervention, unless a non-governmental defendant also is sued. In these cases, any party may request a jury.

Suits filed under the act must be brought in the county where the governmental entity is located or in the county in which the incident occurred from which the cause of action arises. A governmental entity operating in more than one county shall be deemed to be located in the county where its principal office is located.

An officer or body appointed by the governing body of any governmental entity may, subject to such regulations and procedures as may be prescribed by the governing body, compromise and settle any action for damages or relief sought under the act. If no such appointment has been made, the chief administrative officer of the governmental entity shall be deemed to have been appointed and to have such power. T.C.A. § 29-20-309.

Before holding a governmental entity liable for damages, the court must first determine that:

- the employee act (s) was (were) negligent and the proximate cause of the plaintiff's injury;
- the employee(s) acted within the scope of his (their) employment; and
- none of the exceptions is applicable. T.C.A. §§ 29-20-301–313.

Several sections of the act deal with paying claims or judgments against governmental entities. Any claims approved for payment by a governmental entity or any final judgment obtained against a governmental entity shall be paid from funds appropriated or reserved for that purpose. At the governmental entity's discretion, claims may be paid in not more than 10 equal, annual installments commencing the next fiscal year or in such other manner agreed upon by the claimant and governmental entity. Installment payments shall bear interest at 6 percent per annum on the unpaid balance. If the judgment is less than \$5,000, a lump sum payment must be made. T.C.A. § 29-20-312.

## Protection for Employees

**Reference Number:** MTAS-274

No claim may be brought or judgment entered against an employee for damages for which the governmental entity is liable under the act, except in alleged medical malpractice cases. No claim for medical malpractice may be brought or judgment entered against a health care practitioner for damages unless the amount sought or judgment entered exceeds either the minimum limits set in the act or the insurance coverage actually carried by the governmental entity, whichever is greater, and the governmental entity also is made a party defendant.

No claim may be brought or judgment entered against an employee for injury proximately caused by an act or omission of the employee within the scope of his employment for which the governmental entity is immune in amounts exceeding those established for governmental entities (see Governmental Liability Caps) unless the act or omission was willful, malicious, criminal, for personal financial gain, or medical malpractice committed by a health care practitioner and the claim is brought against the health care practitioner. Only doctors and nurses are considered health care practitioners under the act. T.C.A. § 29-20-310 (b) and (c).

Local governmental entities may insure any or all employees against all or any part of their liability for injury or damage resulting from a negligent act or omission, or they may indemnify their employees for claims for which the governmental entity is immune upon such terms and conditions as the local government may deem appropriate. Cities also may insure or indemnify volunteers working under the direction of an employee from claims for which the governmental entity is immune. The indemnification amount may not exceed the liability limits established for governmental entities, except for claims for which there is no liability cap (see Governmental Liability Caps). T.C.A. § 29-20-310, T.C.A. § 29-20-406.

## Governmental Liability Caps

**Reference Number:** MTAS-275

The act caps at specified dollar amounts the liability exposure of local governments for tort claims. Every policy or insurance contract purchased by a governmental entity must provide these minimum coverage amounts. The caps (or minimum coverage amounts) in the chart below apply in each accident.

Governmental vehicles may be considered uninsured motor vehicles. However, the applicable limits of liability for cities for claims arising out of the operation of a government vehicle are equal only to the limits of T.C.A. § 29-20-311, T.C.A. § 56-7-1201(d), and T.C.A. § 56-7-1202(b).

The law is comprehensive, but it does not affect certain statutes. Any action in eminent domain initiated by a landowner (inverse condemnation) under T.C.A. § 29-16-123 and T.C.A. § 29-16-124 is explicitly exempted from the caps. T.C.A. § 29-20-105. Similarly, the caps do not apply to any action brought by an employee under Tennessee's workers' compensation laws. T.C.A. § 29-20-106.

<b>Date Cause of Action Arose</b>	<b>Liability cap for Death or Injury to One Person</b>	<b>Liability Cap for Death or Injury to All Persons</b>	<b>Liability Cap for Property Damage</b>
On or after July 1, 1987, but before July 1, 2002.	\$130,000	\$350,000	\$50,000 ( <i>applies to causes of action arising on or after July 1, 1992</i> )
On or after July 1, 2002, but before July 1, 2007.	\$250,000	\$600,000	\$85,000
On or after July 1, 2007	\$300,000	\$700,000	\$100,000

## TML Insurance Pool

**Reference Number:** MTAS-1155

### ***Joint Reserve Funds Allowed***

The Tennessee Municipal League (TML) has established a liability insurance pool to serve member cities with low-cost, reliable liability coverage. The insurance pool was previously known as the TML Risk Management Pool, and the current name of the entity is Public Entity Partners. Detailed information about the pool is available from TML.

Any governmental entity is entitled to create and maintain a reserve or special fund or, with one or more other local governmental entities, contribute to a joint reserve or special fund to pay claims against the cooperating governmental entities pursuant to the act, or to purchase liability insurance to protect the cooperating governmental entities from any or all risks created by the act. T.C.A. § 29-20-401.

## Community Service

**Reference Number:** MTAS-1156

### ***Criminal and Juvenile Offenders***

A municipality, its officers, and its employees will not be liable to the offender, his family, or other persons for acts of a state criminal law offender or a municipal ordinance offender performing public service work if the municipality exercised due care in supervising the offender (T.C.A. § 41-3-107).

If a municipality or other organization exercised due care in supervising a juvenile performing community service work, immunity is granted to such entities for:

- any injuries sustained by the juvenile;
- injuries to others caused by the juvenile;
- any act of the juvenile; and
- liability for the juvenile or his or her family for death or injuries caused by the juvenile. T.C.A. § 37-1-131(a)(7).

Inmates housed in county and municipal workhouses may volunteer to work for the municipality or other governmental entity. T.C.A. § 41-3-106(b)(2).

## Drug Task Force Members

**Reference Number:** MTAS-1157

A limited number of drug task force members are volunteer employees of the state for tort liability purposes. T.C.A. § 8-42-101(3)(C). T.C.A. § 8-7-110 affirms the rights, powers, duties and immunities of these task force officers throughout the judicial district.

## Emergency Communications District Boards

**Reference Number:** MTAS-1159

Emergency communications district boards organized under T.C.A. § 7-86-105 are expressly declared immune from any claim, complaint or suit that relates to or arises from any conduct of the affairs of the board, except in cases of gross negligence of the board or its members. Immunity also extends to any employee of the district provided that the employees "shall attain and maintain training requirements as may be required by law." T.C.A. § 29-20-108.

## Mutual Aid Liability

**Reference Number:**

MTAS-1904

T.C.A. § 29-20-207 allows any party benefitting from a response under a written mutual aid, automatic response, operational agreement, or other intergovernmental agreement to pay the judgment against the provider up to the tort liability limits unless otherwise provided in the agreement.

## Municipal and Personal Liability

**Reference Number:** MTAS-1151

The Tennessee Governmental Tort Liability Act (TGTLA) passed in 1973 (T.C.A. Title 29, Chapter 20) stripped municipalities and counties of their sovereign immunity in several areas. That act, as amended several times, provides that municipalities can be sued for injuries caused by their employees only in a limited number of areas and immunizes municipal employees or limits their liability for injuries they cause in certain cases.

## Municipal Employee and Boards Immunity/Liability

**Reference Number:** MTAS-1152

### ***Employees***

If the injury in question is one for which the municipality is liable under the TGTLA, the employee who caused the injury is totally relieved of liability (unless the employee is a “health care practitioner” sued for malpractice). Generally, the municipality is liable under the TGTLA for injuries arising from:

- Negligent operation of a motor vehicle;
- Defective, unsafe or dangerous streets, etc.;
- Dangerous or defective public building or other structure; and
- Employee negligence where the negligence does not involve discretion.

If the injury in question is one for which the municipality is immune from suit under the TGTLA, the employee who caused the injury may be personally liable for it, but only to the limits of liability provided for in the act. However, the liability limits do not apply if the employee's actions were willful, malicious, criminal, performed for personal gain or constituted medical malpractice by a health care practitioner.

### ***Employee Indemnification***

Municipalities can insure or indemnify their employees for claims for which the employee is liable but for which the municipality is immune. However, indemnification generally cannot exceed the tort liability limits.

### ***Boards and Commissions***

The provisions immunizing boards, commissions and committees are broad. T.C.A. § 29-20-201(b) (2), declares that

All members of boards, commissions, agencies, authorities, and other governing bodies of any governmental entity, created by public or private act, whether compensated or not, shall be immune from suit arising from the conduct of the affairs of such board, commission, agency, authority, or other governing body. Such immunity from suit shall be removed when such conduct amounts to willful, wanton, or gross negligence.

### ***Tort Liability Limits***

Chapter 424 of Public Acts of 2001 increased the limits for municipalities for actions arising on or after July 1, 2002, and July 1, 2007. The limits and the effective dates are as follows:

T.C.A. § 29-20-403.

Injury	Limit	Limit	Limit
Date Cause of Action Arose	July 1, 1987 – June 30, 2002	July 1, 2002 – June 30, 2007	On or after July 1, 2007

One Person	\$130,000	\$250,000	\$300,000
Multiple Persons	\$350,000	\$600,000	\$700,000
Property Damage	\$50,000	\$85,000	\$100,000

## Grounds for a Suit Against a Municipality

**Reference Number:** MTAS-1154

### ***Injuries Caused by Its Employees***

- The negligent operation of motor vehicles or other equipment by municipal employees in the scope of their employment. T.C.A. § 29-20-202.
- Defective, unsafe or dangerous streets, alleys, sidewalks, or highways, including traffic control devices (provided the municipality has notice of the unsafe or dangerous condition). T.C.A. § 29-20-203.
- Dangerous or defective public buildings and structures of various kinds (provided the municipality has notice of the danger or defect). T.C.A. § 29-20-204.
- Failure to create safeguards and procedures for ensuring that confidential information regarding citizens is securely protected on all laptop computers and other removable storage devices used by a municipality. A citizen of this state must prove by clear and convincing evidence that the citizen was a victim of identity theft due to a failure to provide safeguards and procedures regarding that citizen's confidential information. T.C.A. § 47-18-2901.

- The negligent acts or omissions of their employees. Exceptions to this include injuries arising from what the employee did or did not do in the following areas. (In other words, municipalities, counties and other local governmental entities would still be immune from suit for these acts of their employees.)
    - Discretionary functions, whether or not the discretion is abused. What is a discretionary function? In *Bowers v. City of Chattanooga*, 826 S.W.2d 427 (Tenn. 1992), the Tennessee Supreme Court adopted the “planning-operational” test for determining what constitutes a discretionary function. Under that test, said the court:
      - Decisions that rise to the level of planning or policy-making are considered discretionary acts which do not give rise to tort liability, while decisions that are merely operational are not considered discretionary acts and, therefore, do not give rise to immunity.
      - The planning-operational test focuses on the type of decision rather than on the decision maker. It is not always clear which decisions of municipal employees are planning functions and which are operations decisions.
    - False imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of privacy, or civil rights.
    - 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.
    - Failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property.
    - Institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause.
    - Misrepresentation by an employee whether or not such is negligent or intentional.
    - Riots, unlawful assemblies, public demonstrations, mob violence, and civil disturbances.
    - Assessment, levy, or collection of taxes.
    - Failure of computer software occurring before January 1, 2005, which is caused directly or indirectly by Y2K-type computer problems. T.C.A. § 29-20-205.
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