

CIVIL PRACTICE AND REMEDIES CODE

TITLE 5. GOVERNMENTAL LIABILITY

CHAPTER 104. STATE LIABILITY FOR CONDUCT OF PUBLIC SERVANTS

Sec. 104.001. STATE LIABILITY; PERSONS COVERED. In a cause of action based on conduct described in Section 104.002, the state shall indemnify the following persons, without regard to whether the persons performed their services for compensation, for actual damages, court costs, and attorney's fees adjudged against:

(1) an employee, a member of the governing board, or any other officer of a state agency, institution, or department;

(2) a former employee, former member of the governing board, or any other former officer of a state agency, institution, or department who was an employee or officer when the act or omission on which the damages are based occurred;

(3) a physician or psychiatrist licensed in this state who was performing services under a contract with any state agency, institution, or department or a racing official performing services under a contract with the Texas Racing Commission when the act or omission on which the damages are based occurred;

(3-a) a phlebotomist licensed in this state who was performing services under a contract with the Texas Department of Criminal Justice when the act or omission on which the damages are based occurred;

(4) a chaplain or spiritual advisor who was performing services under contract with the Texas Department of Criminal Justice or the Texas Juvenile Justice Department when the act or omission on which the damages are based occurred;

(5) a person serving on the governing board of a foundation, corporation, or association at the request and on behalf of an institution of higher education, as that term is defined by Section 61.003(8), Education Code, not including a public junior college;

(6) a state contractor who signed a waste manifest as required by a state contract; or

(7) the estate of a person listed in this section.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended

by Acts 1987, 70th Leg., ch. 1099, Sec. 47, eff. Sept. 1, 1987; Acts 1987, 70th Leg., 1st C.S., ch. 2, Sec. 3.08, eff. Sept. 2, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 29, Sec. 1, eff. Oct. 20, 1987; Acts 1991, 72nd Leg., ch. 386, Sec. 72, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 139, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 883, Sec. 5, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 1082, Sec. 1, eff. June 15, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 292 (H.B. [1194](#)), Sec. 1, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. [1549](#)), Sec. 1, eff. September 1, 2015.

Sec. 104.002. STATE LIABILITY; CONDUCT COVERED. (a) Except as provided by Subsection (b), the state is liable for indemnification under this chapter only if the damages are based on an act or omission by the person in the course and scope of the person's office, employment, or contractual performance for or service on behalf of the agency, institution, or department and if:

(1) the damages arise out of a cause of action for negligence, except a wilful or wrongful act or an act of gross negligence; or

(2) the damages arise out of a cause of action for deprivation of a right, privilege, or immunity secured by the constitution or laws of this state or the United States, except when the court in its judgment or the jury in its verdict finds that the person acted in bad faith, with conscious indifference or reckless disregard; or

(3) indemnification is in the interest of the state as determined by the attorney general or his designee.

(b) The state is liable for indemnification under this chapter if:

(1) the person is liable for the damages solely because the person signed an industrial solid waste or hazardous waste manifest or other record required by Section [361.036](#), Health and Safety Code;

(2) the person signed the manifest or record in the

course and scope of the person's office, employment, or contractual performance or service on behalf of the agency, institution, or department; and

(3) the person or company who signed the manifest did not increase or aggravate circumstances of contamination by grossly negligent acts or wilful misconduct.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., ch. 2, Sec. 3.09, eff. Sept. 2, 1987; Acts 1991, 72nd Leg., ch. 702, Sec. 1, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 883, Sec. 6, eff. Aug. 28, 1995.

Sec. 104.003. LIMITS ON AMOUNT OF RECOVERABLE DAMAGES. (a) Except as provided by Subsection (c) or a specific appropriation, state liability for indemnification under this chapter may not exceed:

(1) \$100,000 to a single person indemnified and, if more than one person is indemnified, \$300,000 for a single occurrence in the case of personal injury, death, or deprivation of a right, privilege, or immunity; and

(2) \$10,000 for each single occurrence of damage to property.

(b) The state is not liable under this chapter to the extent that damages are recoverable under and are in excess of the deductible limits of:

(1) a contract of insurance; or

(2) a plan of self-insurance authorized by statute.

(c) The limits on state liability provided by Subsection (a) do not apply if the state liability is based on Section [104.002\(b\)](#).

(d) For the purposes of this section, a claim arises out of a single occurrence, if the claim arises from a common nucleus of operative facts, regardless of the number of claimants or the number of separate acts or omissions.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 1049, Sec. 59, eff. Sept. 1, 1987; Acts 1987, 70th Leg., 1st C.S., ch. 2, Sec. 3.10, eff. Sept. 2, 1987; Acts 1989, 71st Leg., ch. 785, Sec. 3.09, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 702, Sec. 2, eff. Aug. 26, 1991; Acts 1995,

74th Leg., ch. 139, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 468, Sec. 2, eff. May 30, 1997; Acts 2003, 78th Leg., ch. 531, Sec. 1, eff. June 20, 2003.

Sec. 104.0035. STATE LIABILITY; CRIMINAL PROSECUTION. (a) The state shall indemnify a person for reasonable attorney's fees incurred in defense of a criminal prosecution against the person if:

(1) the person is covered by Section 104.001;

(2) the attorney general determines that the conduct for which the person is criminally prosecuted could give rise to a civil cause of action covered by Section 104.002;

(3) the person is found not guilty after a trial or appeal or the complaint, information, or indictment is dismissed without a plea of guilty or nolo contendere being entered; and

(4) the attorney general determines that the complaint, information, or indictment presented against the person was dismissed because:

(A) the presentment was made on mistake, false information, or other similar basis, indicating absence of probable cause to believe, at the time of the dismissal, the person committed the offense; or

(B) the complaint, information, or indictment was void.

(b) State liability for indemnification under this section may not exceed \$10,000 for the prosecution of a criminal offense or the prosecution of two or more offenses prosecuted in a single criminal action.

(c) This section does not apply to a person who is criminally prosecuted for operating a motor vehicle while intoxicated under Section 49.04, Penal Code, for intoxication assault committed while operating a motor vehicle under Section 49.07, Penal Code, or for intoxication manslaughter under Section 49.08, Penal Code.

(d) An initial determination of the liability of the state for indemnification and the reasonableness of attorney's fees under this section shall be made by the attorney general upon application

by any person other than:

(1) an employee or former employee of the attorney general's office; or

(2) the attorney general or a former attorney general.

(e) If the attorney general determines under Subsection (d) that the state is liable for indemnification, the attorney general shall indemnify the person for reasonable attorney's fees as provided by this section from funds appropriated for that purpose. If the attorney general determines that the state is not liable for indemnification, the person may appeal to a district court in Travis County. A person who is not entitled to an initial determination under Subsection (d) may bring an action in a district court in Travis County.

(f) The district court in Travis County has jurisdiction to hear a suit under this section and may issue an order directing the attorney general's office to indemnify the person for reasonable attorney's fees as provided by this section. The judgment of the district court is final and is not subject to appeal.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 29, Sec. 2, eff. Oct. 20, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.02, eff. Sept. 1, 1995.

Sec. 104.004. DEFENSE BY ATTORNEY GENERAL. (a) The attorney general shall defend a public servant or estate listed in Section [104.001](#) in a cause of action covered by this chapter.

(b) The attorney general may settle or compromise the portion of a lawsuit that may result in state liability under this chapter.

(c) It is not a conflict of interest for the attorney general to defend a person under this chapter and also to prosecute a legal action against that person as required or authorized by law if different assistant attorneys general are assigned the responsibility for each action.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., ch. 2, Sec. 3.11, eff. Sept. 2, 1987.

Sec. 104.005. SERVICE OF PROCESS OR TIMELY NOTICE TO ATTORNEY GENERAL REQUIRED. Except as provided by Section 104.0035, the state is not liable for the defense of an action covered by this chapter or for damages, court costs, or attorney's fees unless:

(1) the attorney general has been served in the case and the state has been given an opportunity to defend the suit; or

(2) the person against whom the action is brought delivers to the attorney general all process served on the person not later than the 10th day after the date of service.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 29, Sec. 3, eff. Oct. 20, 1987.

Sec. 104.006. SECURITY OR BOND. In a cause of action defended by the attorney general under this chapter, the attorney general or the individual or estate represented may not be required to advance security for cost or to give bond on appeal or on review by writ of error.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 104.007. FUNDS FOR DEFENSE. (a) Only funds appropriated from the General Revenue Fund to the attorney general may be used to conduct the defense of an action that the attorney general is required to defend under this chapter.

(b) Conducting the defense of an action covered by this chapter includes investigating, taking depositions, making discovery, preparing for trial, preparing exhibits or other evidence, and participating in actual trial.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 104.008. NO WAIVER OF DEFENSES. This chapter does not waive a defense, immunity, or jurisdictional bar available to the state or its officers, employees, or contractors.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 104.009. DIRECTORS' AND OFFICERS' LIABILITY INSURANCE. (a) A state agency, institution, or department may purchase a

directors' and officers' liability insurance policy applicable to damages for conduct described under Section 104.002 and other conduct customarily covered under directors' and officers' liability insurance policies for the benefit of:

(1) a director or officer of the agency, institution, or department;

(2) a member of a governing board, commission, or council of the agency, institution, or department; or

(3) a member of the executive staff of the agency, institution, or department.

(b) An insurance policy purchased under this section must have a deductible applicable to the liability of the state agency, institution, or department in an amount equal to the amount of the limits of liability established under Section 104.003. The deductible applicable to an individual's liability may be set at a lower amount.

(c) The purchase of an insurance policy under this section does not waive a defense, immunity, or jurisdictional bar available to the state agency, institution, or department purchasing the insurance or to the insured.

Added by Acts 1997, 75th Leg., ch. 468, Sec. 1, eff. May 30, 1997.