

CHAPTER 39 - GOVERNMENTAL CLAIMS

1-39-101. Short title.

This act shall be known and cited as the "Wyoming Governmental Claims Act".

1-39-102. Purpose.

(a) The Wyoming legislature recognizes the inherently unfair and inequitable results which occur in the strict application of the doctrine of governmental immunity and is cognizant of the Wyoming Supreme Court decision of Oroz v. Board of County Commissioners 575 P. 2d 1155 (1978). It is further recognized that the state and its political subdivisions as trustees of public revenues are constituted to serve the inhabitants of the state of Wyoming and furnish certain services not available through private parties and, in the case of the state, state revenues may only be expended upon legislative appropriation. This act is adopted by the legislature to balance the respective equities between persons injured by governmental actions and the taxpayers of the state of Wyoming whose revenues are utilized by governmental entities on behalf of those taxpayers. This act is intended to retain any common law defenses which a defendant may have by virtue of decisions from this or other jurisdictions.

(b) In the case of the state, this act abolishes all judicially created categories such as "governmental" or "proprietary" functions and "discretionary" or "ministerial" acts previously used by the courts to determine immunity or liability. This act does not impose nor allow the imposition of strict liability for acts of governmental entities or public employees.

1-39-103. Definitions.

(a) As used in this act:

(i) "Governmental entity" means the state, University of Wyoming or any local government;

(ii) "Local government" means cities and towns, counties, school districts, joint powers boards, airport boards, public corporations, community college districts, special districts and their governing bodies, all political subdivisions of the state, and their agencies, instrumentalities and institutions, and governmental entities of another state but only while physically present in the state of Wyoming and while in the course of operating a cooperative public transportation program as defined by W.S. 16-1-104(f);

(iii) "Peace officer" means as defined by W.S. 7-2-101, but does not include those officers defined by W.S. 7-2-101(a)(iv)(K) or those officers defined by W.S. 7-2-101(a)(iv)(M) unless otherwise provided in the applicable mutual aid agreement;

(iv) "Public employee":

(A) Means any officer, employee or servant of a governmental entity, including elected or appointed officials, peace officers and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation;

(B) Does not include an independent contractor, except as provided in subparagraphs (C) and (F) of this paragraph, or a judicial officer exercising the authority vested in him;

(C) Includes contract physicians, physician assistants, nurses, optometrists and dentists in the course of providing contract services for state institutions or county jails;

(D) Includes individuals engaged in search and rescue operations under the coordination of a county sheriff pursuant to W.S. 18-3-609(a)(iii);

(E) Includes any volunteer physician providing medical services under W.S. 9-2-103(a)(i)(C);

(F) Includes contract attorneys in the course of providing contract services for the state public defenders office as provided in W.S. 7-6-103(k) or 14-12-104.

(v) "Scope of duties" means performing any duties which a governmental entity requests, requires or authorizes a public employee to perform regardless of the time and place of performance;

(vi) "State" or "state agency" means the state of Wyoming or any of its branches, agencies, departments, boards, instrumentalities or institutions;

(vii) Repealed by Laws 2017, ch. 41, § 2.

(viii) "Governmental entity of another state" means any state and its political subdivisions, agencies, instrumentalities and institutions and any local government entity within another state;

(ix) "This act" means W.S. 1-39-101 through 1-39-120.

1-39-104. Granting immunity from tort liability; liability on contracts; exceptions.

(a) A governmental entity and its public employees while acting within the scope of duties are granted immunity from liability for any tort except as provided by W.S. 1-39-105 through 1-39-112. Any immunity in actions based on a contract entered into by a governmental entity is waived except to the extent provided by the contract if the contract was within the powers granted to the entity and was properly executed and except as provided in W.S. 1-39-120(b). The claims procedures of W.S. 1-39-113 apply to contractual claims against governmental entities.

(b) When liability is alleged against any public employee, if the governmental entity determines he was acting within the scope of his duty, whether or not alleged to have been committed maliciously or fraudulently, the governmental entity shall provide a defense at its expense.

(c) A governmental entity shall assume and pay a judgment entered under this act against any of its public employees, provided:

(i) The act or omission upon which the claim is based has been determined by a court or jury to be within the public employee's scope of duties;

(ii) The payment for the judgment shall not exceed the limits provided by W.S. 1-39-118; and

(iii) All appropriate appeals from the judgment have been exhausted or the time has expired when appeals may be taken.

(d) A governmental entity shall assume and pay settlements of claims under this act against its public employees in accordance with W.S. 1-39-115, 1-41-106 or 1-42-204.

1-39-105. Liability; operation of motor vehicles, aircraft and watercraft.

A governmental entity is liable for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of any motor vehicle, aircraft or watercraft.

1-39-106. Liability; buildings, recreation areas and public parks.

A governmental entity is liable for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any building, recreation area or public park.

1-39-107. Liability; airports.

(a) A governmental entity is liable for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of airports.

(b) The liability imposed pursuant to subsection (a) of this section does not include liability for damages due to the existence of any condition arising out of compliance with any federal or state law or regulation governing the use and operation of airports.

1-39-108. Liability; public utilities.

(a) A governmental entity is liable for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of public utilities and services including gas, electricity, water, solid or liquid waste collection or disposal, heating and ground transportation.

(b) The liability imposed pursuant to subsection (a) of this section does not include liability for damages resulting from bodily injury, wrongful death or property damage caused by a failure to provide an adequate supply of gas, water, electricity or services as described in subsection (a) of this section.

1-39-109. Liability; medical facilities.

A governmental entity is liable for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of any public hospital or in providing public outpatient health care.

1-39-110. Liability; health care providers.

(a) A governmental entity is liable for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of health care providers who are employees of the

governmental entity, including contract physicians, physician assistants, nurses, optometrists and dentists who are providing a service for state institutions or county jails, while acting within the scope of their duties.

(b) Notwithstanding W.S. 1-39-118(a), for claims under this section against a physician, physician assistant, nurse, optometrist or dentist employed by a governmental entity based upon an act, error or omission occurring on or after May 1, 1988, the liability of a governmental entity shall not exceed the sum of one million dollars (\$1,000,000.00) to any claimant for any number of claims arising out of a single transaction or occurrence nor exceed the sum of one million dollars (\$1,000,000.00) for all claims of all claimants arising out of a single transaction or occurrence.

1-39-111. Repealed by Laws 1986, ch. 89, § 3.

1-39-112. Liability; peace officers.

A governmental entity is liable for damages resulting from tortious conduct of peace officers while acting within the scope of their duties.

1-39-113. Claims procedure.

(a) No action shall be brought under this act against a governmental entity unless the claim upon which the action is based is presented to the entity as an itemized statement in writing within two (2) years of the date of the alleged act, error or omission, except that a cause of action may be instituted not more than two (2) years after discovery of the alleged act, error or omission, if the claimant can establish that the alleged act, error or omission was:

(i) Not reasonably discoverable within a two (2) year period; or

(ii) The claimant failed to discover the alleged act, error or omission within the two (2) year period despite the exercise of due diligence.

(b) The claim shall state:

(i) The time, place and circumstances of the alleged loss or injury including the name of the public employee involved, if known;

(ii) The name, address and residence of the claimant and his representative or attorney, if any; and

(iii) The amount of compensation or other relief demanded.

(c) All claims against the state shall be presented to the general services division of the department of administration and information. Claims against any other governmental entity shall be filed at the business office of that entity. In the case of claims against local governments the claim submitted need not be acted upon by the entity prior to suit. For purposes of this section, "business office" means:

(i) The county clerk of a county, including its agencies, instrumentalities and institutions;

(ii) The city or town clerk of a city or town, including its agencies, instrumentalities and institutions;

(iii) The secretary of a joint powers board, airport board, public corporation, community college district board of trustees or special district;

(iv) The superintendent of a school district;

(v) The president of the University of Wyoming.

(d) In any action under this act, the complaint shall state:

(i) That the claim required under subsection (c) of this section was filed in accordance with this section;

(ii) The date the claim under subsection (c) of this section was filed;

(iii) That the claim was in compliance with the signature and certification requirements of article 16, section 7 of the Wyoming Constitution.

(e) In any claim filed with a governmental entity under this act, the claim shall be signed by the claimant under oath in substantially the following format:

I, _____, have read and understand the provisions of the false swearing statute. I hereby certify under penalty of false swearing that the foregoing claim, including all of its attachments, if any, is true and accurate.

(b) A claim shall be settled only if the damage claimed was caused by such negligence on the part of the state or its public employees as might entitle the claimant to a judgment.

(c) Any person whose claim is rejected or who is unsatisfied with the settlement offered may commence an action in the appropriate court.

(d) Claims under this act which are not covered by insurance may be settled as provided by W.S. 1-41-106 or 1-42-204.

1-39-116. Exclusiveness of remedy.

(a) The remedy against a governmental entity as provided by this act is exclusive, and no other claim, civil action or proceeding for damages, by reason of the same transaction or occurrence which was the subject matter of the original claim, civil action or proceeding may be brought against the governmental entity. No rights of a governmental entity to contribution, indemnity or subrogation shall be impaired by this section. Nothing in this section prohibits any proceedings for mandamus, prohibition, habeas corpus, injunction or quo warranto.

(b) The judgment in an action or a settlement under this act constitutes a complete bar to any action by the claimant, by reason of the same transaction or occurrence which was the subject matter of the original suit or claim, against the governmental entity or the public employee whose negligence gave rise to the claim.

1-39-117. Jurisdiction; appeals; venue; trial by jury; liability insurance.

(a) Original and exclusive jurisdiction for any claim filed in state court under this act shall be in the district courts of Wyoming. Appeals may be taken as provided by law.

(b) Venue for any claim against the state or its public employees pursuant to this act shall be in the county in which the public employee resides or the cause of action arose or in Laramie county. Venue for all other claims pursuant to this act shall be in the county in which the defendant resides or in which the principal office of the governmental entity is located.

(c) The right to a trial by jury is preserved.

(d) If a governmental entity has elected to purchase liability insurance under this act, the court, in a trial without a jury, may be advised of the insurance.

1-39-118. Maximum liability; insurance authorized.

(a) Except as provided in subsection (b) of this section, in any action under this act, the liability of the governmental entity, including a public employee while acting within the scope of his duties, shall not exceed:

(i) The sum of two hundred fifty thousand dollars (\$250,000.00) to any claimant for any number of claims arising out of a single transaction or occurrence; or

(ii) The sum of five hundred thousand dollars (\$500,000.00) for all claims of all claimants arising out of a single transaction or occurrence.

(b) A governmental entity is authorized to purchase liability insurance coverage covering any acts or risks including all or any portion of the risks provided under this act. Purchase of liability insurance coverage shall extend the governmental entity's liability as follows:

(i) If a governmental entity has insurance coverage either exceeding the limits of liability as stated in this section or covering liability which is not authorized by this act, the governmental entity's liability is extended to the coverage;

(ii) Notwithstanding paragraph (i) of this subsection, if a governmental entity acquires coverage in an amount greater than the limits specified in this section for the purpose of protecting itself against potential losses under a federal law and if the purpose of the coverage is stated as a part of or by an amendment to the insurance policy, the increased limits shall be applicable only to claims brought under the federal law.

(c) In addition to the procurement of insurance under subsection (b) of this section a local governmental entity may:

(i) Establish a self-insurance fund against the liability of the governmental entity and its officers and employees;

(ii) Join with other governmental entities, by joint powers agreements under W.S. 16-1-102 through 16-1-108, or otherwise, to pool funds and establish a self-insurance fund or jointly purchase insurance coverage. Pooled funds may be deposited with the state treasurer for disbursement as participating governmental entities direct or may be deposited as provided by the terms of the joint powers agreement;

(iii) Repealed by Laws 1981, ch. 142, § 2.

(iv) Pay the judgment or settlement, with interest thereon, in not to exceed ten (10) annual installments in cases of undue hardship and levy not to exceed one (1) mill per year on the assessed value of the governmental entity for such purpose;

(v) Enter into contracts with the general services division of the department of administration and information for the payment of assessments by the local government in such amounts as determined by the division to be sufficient, on an actuarially sound basis, to cover:

(A) The potential liability, or any portion of potential liability, of the local government and its public employees as provided by this act;

(B) Costs of administration;

(C) Payment by the division of claims against the local government and its public employees acting within the scope of their duties which have been settled or reduced to final judgment.

(d) No judgment against a governmental entity shall include an award for exemplary or punitive damages, for interest prior to judgments or for attorney's fees.

(e) Except as hereafter provided, no judgment authorized by this act may be enforced by execution or attachment of property of a governmental entity but shall be paid only as authorized by this section and W.S. 1-39-113. A judgment authorized by this act may be enforced by execution or attachment of the property of a governmental entity to the extent coverage of the liability has not been obtained under subsection (b) or (c) of this section or W.S. 1-39-115 unless the judgment is otherwise satisfied by the governmental entity.

(f) The liability imposed by W.S. 1-39-105 through 1-39-112 may include liability for property damage in an amount less than five hundred dollars (\$500.00) in cases in which no personal injury or death resulted, but only under the following conditions:

(i) A property damage claim may be paid at the discretion of the governmental entity:

(A) In the case of the state, the director of the department of administration and information or an employee

designated in writing by the director shall decide whether the claim will be paid;

(B) In the case of a local governmental entity, the local governmental entity shall appoint an official who shall decide whether the claim will be paid.

(ii) The decision of whether the property damage claim will be paid shall be based on finding that:

(A) The act was performed by an employee of the state or the local governmental entity;

(B) The act occurred while the employee was acting within the scope of his employment duties;

(C) The employee acted negligently by breaching a duty or by failing to act like a reasonable person; and

(D) The negligent act proximately caused the property damage at issue.

(iii) Property damage claims against the state shall be paid from the self-insurance account created by W.S. 1-41-103 except that claims against the department of transportation may be paid from nonrestricted highway funds. Property damage claims against a local governmental entity shall be paid only to the extent the local governing body has appropriated monies for that purpose. There is no obligation on the state legislature or the local governing body to make any appropriation for payment of property damage claims;

(iv) If the director of the department of administration and information or the local government official determines there may be insufficient monies to pay all of the claims made during the year, then the director or official may delay paying the claims until close of the year at which time available monies shall be prorated among those entitled to payment at an amount less than one hundred percent (100%);

(v) The decisions of the director of the department of administration and information or of the local government official are final and are not subject to administrative or judicial review.

1-39-119. Application of provisions.

The provisions of this act shall not affect any provision of law, regulation or agreement governing employer-employee relationships.

1-39-120. Exclusions from waiver of immunity.

(a) The liability imposed by W.S. 1-39-106 through 1-39-112 does not include liability for damages caused by:

(i) A defect in the plan or design of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area;

(ii) The failure to construct or reconstruct any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area; or

(iii) The maintenance, including maintenance to compensate for weather conditions, of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area.

(b) Notwithstanding the waiver of immunity for tort liability provided by W.S. 1-39-105 through 1-39-112 or the waiver of immunity in actions based on contract provided by W.S. 1-39-104, a governmental entity and its public employees while acting within the scope of duties are immune from a civil action in tort, contract or otherwise alleging, in whole or in part, the improper seizure of property pursuant to W.S. 35-7-1049.

1-39-121. Repealed by Laws 2017, ch. 41, § 2.