

**CHAPTER 741****TORT CLAIMS****§8101. Title**

This chapter shall be known and may be cited as the "Maine Tort Claims Act." [PL 1977, c. 2, §2 (NEW).]

**SECTION HISTORY**

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD).

**§8102. Definitions**

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings. [PL 1977, c. 2, §2 (NEW).]

**1. Employee.** "Employee" means a person acting on behalf of a governmental entity in any official capacity, whether temporarily or permanently, and whether with or without compensation from local, state or federal funds, including elected or appointed officials; volunteer firefighters as defined in Title 30-A, section 3151; emergency medical service personnel; members and staff of the Consumer Advisory Board pursuant to Title 34-B, section 1216; members of the Maine National Guard but only while performing state active service pursuant to Title 37-B; sheriffs' deputies as defined in Title 30-A, section 381 when they are serving orders pursuant to section 3135; and persons while performing a search and rescue activity when requested by a state, county or local governmental entity, but the term "employee" does not mean a person or other legal entity acting in the capacity of an independent contractor under contract to the governmental entity.

[PL 2003, c. 489, §1 (AMD).]

**1-A. Emergency medical service.** "Emergency medical service" means:

A. A nonprofit, incorporated ambulance service or nontransporting emergency medical service licensed under Title 32, chapter 2-B, receiving full or partial financial support from or officially recognized by the State, a municipality or county or an entity created under Title 30-A, chapter 115 or 119, except when the emergency medical service is acting outside the scope of activities expressly authorized by the State, municipality, county or entity created under Title 30-A, chapter 115 or 119; and [PL 2005, c. 398, §1 (NEW).]

B. A for-profit, incorporated ambulance service or nontransporting emergency medical service licensed under Title 32, chapter 2-B only when the emergency medical service is acting within the scope of emergency response activities expressly authorized by a contract between the emergency medical service and the State, municipality, county or entity created under Title 30-A, chapter 115 or 119. [PL 2005, c. 398, §1 (NEW).]

[PL 2005, c. 398, §1 (RPR).]

**2. Governmental entity.** "Governmental entity" means and includes the State and political subdivisions as defined in subsection 3.

[PL 1977, c. 2, §2 (NEW).]

**2-A. Permitted by this chapter or permitted under this chapter.** "Permitted by this chapter" or "permitted under this chapter," as applied to claims or actions against a governmental entity or its employees, shall be construed to include all claims or actions expressly authorized by this Act against a governmental entity and all common law claims or actions against employees for which immunity is not expressly provided by this Act.

[PL 1985, c. 599, §§1, 4 (NEW).]

**3. Political subdivision.** "Political subdivision" means any city, town, plantation, county, administrative entity or instrumentality created pursuant to Title 30-A, chapters 115 and 119, incorporated fire-fighting unit that is organized under Title 13-B and is officially recognized by any authority created by statute, quasi-municipal corporation and special purpose district, including, but not limited to, any water district, sanitary district, hospital district, school district of any type, an airport authority established pursuant to Title 6, chapter 10, any volunteer fire association as defined in Title 30-A, section 3151, a transit district as defined in Title 30-A, section 3501, subsection 1, a regional transportation corporation as defined in Title 30-A, section 3501, subsection 2, a transit district or regional transportation corporation formed under the laws of another state that would qualify as a transit district or regional transportation corporation under Title 30-A, chapter 163 if formed under the laws of this State and any emergency medical service.

[PL 2011, c. 520, §1 (AMD).]

**4. State.** "State" means the State of Maine or any office, department, agency, authority, commission, board, institution, hospital or other instrumentality of the State, including the Maine Turnpike Authority, the Maine Port Authority, the Northern New England Passenger Rail Authority, the Maine Community College System, the Maine Veterans' Homes, the Maine Public Employees Retirement System, the Maine Military Authority and all such other state entities.

[PL 2001, c. 374, §5 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF); PL 2007, c. 58, §3 (REV).]

#### SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1977, c. 696, §165 (AMD). PL 1979, c. 68, §5 (AMD). PL 1985, c. 599, §§1,4 (AMD). PL 1985, c. 695, §9 (AMD). PL 1985, c. 765, §3 (AMD). PL 1987, c. 11, §1 (AMD). PL 1987, c. 218, §1 (AMD). PL 1987, c. 386, §§1-3 (AMD). PL 1987, c. 737, §§C27,C28, C106 (AMD). PL 1987, c. 769, §A52 (AMD). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,C10 (AMD). PL 1989, c. 233 (AMD). PL 1989, c. 349, §1 (AMD). PL 1989, c. 443, §21 (AMD). PL 1989, c. 878, §A42 (AMD). PL 1993, c. 410, §L44 (AMD). PL 1995, c. 161, §1 (AMD). PL 1995, c. 196, §D1 (AMD). PL 1995, c. 543, §1 (AMD). PL 1997, c. 234, §1 (AMD). PL 2001, c. 374, §5 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF). PL 2003, c. 489, §1 (AMD). PL 2005, c. 398, §1 (AMD). PL 2005, c. 399, §1 (AMD). PL 2007, c. 58, §3 (REV). PL 2007, c. 563, §2 (AMD). PL 2011, c. 520, §1 (AMD).

#### §8103. Immunity from suit

**1. Immunity.** Except as otherwise expressly provided by statute, all governmental entities shall be immune from suit on any and all tort claims seeking recovery of damages. When immunity is removed by this chapter, any claim for damages shall be brought in accordance with the terms of this chapter.

[PL 1977, c. 578, §1 (RPR).]

#### **2. Examples.**

[PL 1987, c. 740, §1 (RP).]

#### **3. Personal liability; employee of a governmental entity.**

[PL 1987, c. 740, §2 (RP).]

#### SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 578, §1 (RPR). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD). PL 1985, c. 569, §§3,4 (AMD). PL 1985, c. 599, §2 (AMD). PL 1985, c. 758, §2 (AMD). PL 1987, c. 110 (AMD). PL 1987, c. 218, §2 (AMD). PL 1987, c. 402, §A103 (AMD). PL 1987, c. 740, §§1,2 (AMD).

**§8104. Exceptions to immunity****(REPEALED)**

## SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 578, §2 (RPR). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §§1,5 (AMD). PL 1979, c. 663, §§82,82-A (AMD). PL 1985, c. 569, §5 (AMD). PL 1987, c. 740, §3 (RP).

**§8104-A. Exceptions to immunity**

Except as specified in section 8104-B, a governmental entity is liable for property damage, bodily injury or death in the following instances. [PL 1987, c. 740, §4 (NEW).]

**1. Ownership; maintenance or use of vehicles, machinery and equipment.** A governmental entity is liable for its negligent acts or omissions in its ownership, maintenance or use of any:

- A. Motor vehicle, as defined in Title 29-A, section 101, subsection 42; [PL 1995, c. 65, Pt. A, §43 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]
- B. Special mobile equipment, as defined in Title 29-A, section 101, subsection 70; [PL 1995, c. 65, Pt. A, §43 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]
- C. Trailers, as defined in Title 29-A, section 101, subsection 86; [PL 1995, c. 65, Pt. A, §43 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]
- D. Aircraft, as defined in Title 6, section 3, subsection 5; [PL 1987, c. 740, §4 (NEW).]
- E. Watercraft, as defined in Title 12, section 1872, subsection 14; [PL 1997, c. 678, §18 (AMD).]
- F. Snowmobiles, as defined in Title 12, section 13001, subsection 25; and [PL 2003, c. 414, Pt. B, §27 (AMD); PL 2003, c. 614, §9 (AFF).]
- G. Other machinery or equipment, whether mobile or stationary. [PL 1987, c. 740, §4 (NEW).]

The provisions of this section do not apply to the sales of motor vehicles and equipment at auction by a governmental entity.

[PL 2003, c. 414, Pt. B, §27 (AMD); PL 2003, c. 614, §9 (AFF).]

**2. Public buildings.** A governmental entity is liable for its negligent acts or omissions in the construction, operation or maintenance of any public building or the appurtenances to any public building. Notwithstanding this subsection, a governmental entity is not liable for any claim which results from:

- A. The construction, ownership, maintenance or use of:
  - (1) Unimproved land;
  - (2) Historic sites, including, but not limited to, memorials, as defined in Title 12, section 1801, subsection 5;
  - (3) Land, buildings, structures, facilities or equipment designed for use primarily by the public in connection with public outdoor recreation; or
  - (4) Dams; [PL 1997, c. 678, §19 (AMD).]
- B. The ownership, maintenance or use of any building acquired by a governmental entity for reasons of tax delinquency, from the date of foreclosure and until actual possession by the delinquent taxpayer or the taxpayer's lessee or licensee has ceased for a period of 60 days; or [PL 1987, c. 740, §4 (NEW).]

C. The ownership, maintenance or use of any building acquired by a governmental entity by eminent domain or by condemnation until actual possession by the former owner or the owner's lessee or licensee has ceased for a period of 60 days; [PL 1987, c. 740, §4 (NEW).]  
[PL 1997, c. 678, §19 (AMD).]

**3. Discharge of pollutants.** A governmental entity is liable for its negligent acts or omissions in the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalines, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water, but only to the extent that the discharge, dispersal, release or escape complained of is sudden and accidental.  
[PL 1987, c. 740, §4 (NEW).]

**4. Road construction, street cleaning or repair.** A governmental entity is liable for its negligent acts or omissions arising out of and occurring during the performance of construction, street cleaning or repair operations on any highway, town way, sidewalk, parking area, causeway, bridge, airport runway or taxiway, including appurtenances necessary for the control of those ways including, but not limited to, street signs, traffic lights, parking meters and guardrails. A governmental entity is not liable for any defect, lack of repair or lack of sufficient railing in any highway, town way, sidewalk, parking area, causeway, bridge, airport runway or taxiway or in any appurtenance thereto.  
[PL 1987, c. 740, §4 (NEW).]

#### SECTION HISTORY

PL 1987, c. 740, §4 (NEW). PL 1995, c. 65, §A43 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 1995, c. 630, §1 (AMD). PL 1997, c. 678, §§18,19 (AMD). PL 2003, c. 414, §B27 (AMD). PL 2003, c. 414, §D7 (AFF). PL 2003, c. 614, §9 (AFF).

#### §8104-B. Immunity notwithstanding waiver

Notwithstanding section 8104-A, a governmental entity is not liable for any claim which results from: [PL 1987, c. 740, §4 (NEW).]

**1. Undertaking of legislative act.** Undertaking or failing to undertake any legislative or quasi-legislative act, including, but not limited to, the adoption or failure to adopt any statute, charter, ordinance, order, rule, policy, resolution or resolve;  
[PL 1987, c. 740, §4 (NEW).]

**2. Undertaking of judicial act.** Undertaking or failing to undertake any judicial or quasi-judicial act, including, but not limited to, the granting, granting with conditions, refusal to grant or revocation of any license, permit, order or other administrative approval or denial;  
[PL 1987, c. 740, §4 (NEW).]

**3. Performing discretionary function.** Performing or failing to perform a discretionary function or duty, whether or not the discretion is abused and whether or not any statute, charter, ordinance, order, resolution or policy under which the discretionary function or duty is performed is valid or invalid, except that if the discretionary function involves the operation of a motor vehicle, as defined in Title 29-A, section 101, subsection 42, this section does not provide immunity for the governmental entity for an employee's negligent operation of the motor vehicle resulting in a collision, regardless of whether the employee has immunity under this chapter;  
[PL 2005, c. 448, §1 (AMD).]

**4. Performing prosecutorial function.** Performing or failing to perform any prosecutorial function involving civil, criminal or administrative enforcement;  
[PL 1987, c. 740, §4 (NEW).]

**5. Activities of state military forces.** The activities of the state military forces when on duty pursuant to Title 37-B or 32 United States Code;

[PL 1995, c. 196, Pt. D, §2 (AMD).]

**6. Leasing of governmental property.** The leasing of governmental property, including buildings, to other organizations;  
[PL 1999, c. 456, §1 (AMD).]

**7. Certain services.** A decision not to provide communications, heat, light, water, electricity or solid or liquid waste collection, disposal or treatment services; and  
[PL 1999, c. 456, §1 (AMD).]

**8. Failure or malfunction of computer.** The direct or indirect failure or malfunction of computer hardware, computer software or any device containing a computer processor or chip that fails to accurately or properly recognize, calculate, display, sort or otherwise process dates or times as a result of the Year 2000 problem. This provision applies to failures or malfunctions occurring before January 2, 2001.

For purposes of this section, the "Year 2000 problem" means complications associated with using a 2-digit field to represent a year and its result on the year change from 1999 to 2000. These complications may include, but are not limited to:

- A. Erroneous date calculations; [PL 1999, c. 456, §2 (NEW).]
- B. An ambiguous interpretation of the term "00"; [PL 1999, c. 456, §2 (NEW).]
- C. The failure to recognize the year 2000 as a leap year; [PL 1999, c. 456, §2 (NEW).]
- D. The use of algorithms that use the term "99" or "00" as a flag for another function; [PL 1999, c. 456, §2 (NEW).]
- E. Problems arising from the use of applications, software or hardware that are date sensitive; and [PL 1999, c. 456, §2 (NEW).]
- F. The inability to distinguish between centuries. [PL 1999, c. 456, §2 (NEW).]

[PL 1999, c. 456, §2 (NEW).]

#### SECTION HISTORY

PL 1987, c. 740, §4 (NEW). PL 1995, c. 196, §D2 (AMD). PL 1999, c. 456, §§1,2 (AMD). PL 2005, c. 448, §1 (AMD).

#### §8104-C. Wrongful death action

Subject to any immunity provided by this chapter or otherwise provided by law, actions for the death of a person brought by the personal representatives of the deceased person against a governmental entity or employee must be brought in the same manner that is provided for similar actions in Title 18-C, section 2-807, and amounts recovered must be disposed of as required in that section, except that the limitations of sections 8104-D and 8105 apply. [PL 2017, c. 402, Pt. C, §30 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 1987, c. 740, §4 (NEW). PL 2017, c. 402, Pt. C, §30 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §8104-D. Personal liability of employees of a governmental entity

Except as otherwise expressly provided by section 8111 or by any other law, and notwithstanding the common law, the personal liability of an employee of a governmental entity for negligent acts or omissions within the course and scope of employment shall be subject to a limit of \$10,000 for any such claims arising out of a single occurrence and the employee is not liable for any amount in excess of that limit on any such claims. [PL 1987, c. 740, §4 (NEW).]

## SECTION HISTORY

PL 1987, c. 740, §4 (NEW).

**§8105. Limitation on damages**

**1. Limit established.** In any claim or cause of action permitted by this chapter, the award of damages, including costs, against either a governmental entity or its employees, or both, may not exceed \$400,000 for any and all claims arising out of a single occurrence.

[PL 1999, c. 460, §1 (AMD); PL 1999, c. 460, §2 (AFF).]

**1-A. Limit established for out-of-state transit district or regional transportation corporation.** [PL 2011, c. 520, §2 (NEW); MRSA T. 14 §8105, sub-§1-A (RP).]

**2. Costs.** Court costs, prejudgment interest and all other costs that a court may assess must be included within the damage limit specified by this section. Accrued post-judgment interest may not be included within the damage limit.

[PL 1995, c. 61, §1 (AMD).]

**3. Claims in excess of limit.** When a claimant or several claimants believe they may have a claim against the State in excess of the limit established in subsection 1, or for a claim for which the State is immune, they may apply to the Legislature for special authorization to proceed within another specified limit.

[PL 1977, c. 2, §2 (NEW).]

**4. Apportionment of claims.** When the amount awarded to or settled for multiple claimants exceeds the limit imposed by this section, any party may apply to the Superior Court for the county in which the governmental entity is located to allocate to each claimant his equitable share of the total, limited as required by this section.

A. Any award by the court in excess of the maximum liability limit specified by subsection 1 shall be automatically abated by operation of this section to the maximum limit of liability. [PL 1977, c. 2, §2 (NEW).]

[PL 1977, c. 2, §2 (NEW).]

**5. Exclusion from judgment or award.** No judgment or award against a governmental entity shall include punitive or exemplary damages.

[PL 1977, c. 2, §2 (NEW).]

## SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 78, §113 (AMD). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD). PL 1987, c. 740, §5 (AMD). PL 1995, c. 61, §1 (AMD). PL 1999, c. 460, §1 (AMD). PL 1999, c. 460, §2 (AFF). PL 2011, c. 520, §2 (AMD).

**§8106. Jurisdiction of the court**

**1. Original jurisdiction.** The Superior Court shall have original jurisdiction over all claims permitted under this chapter and not settled in accordance with section 8109.

[PL 1977, c. 78, §114 (AMD).]

**2. Appeals.**

A. Copies of each notice of appeal filed in an action arising under this chapter shall be served on the Attorney General at the same time as such notice is served upon the parties to the action. [PL 1977, c. 2, §2 (NEW).]

B. The Attorney General shall have the right to appear before the Supreme Judicial Court by brief and oral argument as a friend of the court in any appeal in an action arising under this chapter where

the Attorney General is not appearing representing a party to the action. [PL 1977, c. 2, §2 (NEW).]

[PL 1977, c. 2, §2 (NEW).]

## SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 78, §114 (AMD). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD).

### §8107. Notice to governmental entity

**1. Notice requirements for filing.** Within 365 days after any claim or cause of action permitted by this chapter accrues, or at a later time within the limits of section 8110, when a claimant shows good cause why notice could not have reasonably been filed within the 365-day limit, a claimant or a claimant's personal representative or attorney shall file a written notice containing:

A. The name and address of the claimant, and the name and address of the claimant's attorney or other representative, if any; [PL 1989, c. 327 (AMD).]

B. A concise statement of the basis of the claim, including the date, time, place and circumstances of the act, omission or occurrence complained of; [PL 1977, c. 2, §2 (NEW).]

C. The name and address of any governmental employee involved, if known; [PL 1977, c. 2, §2 (NEW).]

D. A concise statement of the nature and extent of the injury claimed to have been suffered; and [PL 1977, c. 2, §2 (NEW).]

E. A statement of the amount of monetary damages claimed. [PL 1977, c. 2, §2 (NEW).]  
[PL 2019, c. 214, §1 (AMD).]

**2. Incapacity.** If the claimant is incapacitated and thereby prevented from presenting and filing the claim within the time prescribed or if the claimant is a minor, the claim may be presented and filed on behalf of the claimant by any relative, attorney or agent representing the claimant. If the claimant is a minor when the cause of action accrues, the notice may be presented within 365 days of the minor's attaining 18 years of age.

[PL 2019, c. 214, §2 (AMD).]

### 3. Notices.

A. If the claim is against the State or an employee thereof, copies of the notice shall be addressed to and filed with the state department, board, agency, commission or authority whose act or omission is said to have caused the injury and the Attorney General. [PL 1977, c. 2, §2 (NEW).]

B. Notice of claims against any political subdivision or an employee thereof shall be addressed to and filed with one of the persons upon whom a summons and complaint could be served under the Maine Rules of Civil Procedure, Rule 4, in a civil action against a political subdivision. [PL 1977, c. 578, §3 (AMD).]

[PL 1979, c. 578, §3 (AMD).]

**4. Substantial notice compliance required.** No claim or action shall be commenced against a governmental entity or employee in the Superior Court unless the foregoing notice provisions are substantially complied with. A claim filed under this section shall not be held invalid or insufficient by reason of an inaccuracy in stating the time, place, nature or cause of the claim, or otherwise, unless it is shown that the governmental entity was in fact prejudiced thereby. A claim filed under this section shall not be held invalid solely because a claim based on the same facts was filed under a different statutory procedure and was disallowed.

[PL 1977, c. 591, §3 (AMD).]

**5. Definition of good cause.** "Good cause" as used in subsection 1 includes but is not limited to any cases in which any official of the governmental entity whose duties and authority include the settlement of tort claims or any tort liability insurer of the governmental entity makes direct oral or written contacts with the claimant or the claimant's personal representative or attorney, including payments to or on behalf of the claimant, that contain or imply a promise of coverage sufficient to cause a reasonable person to believe that the losses for which no timely notice claim is filed would be covered.

If oral or written contact is limited to coverage for specific injuries or damage, a claimant is not excused from filing the notice required by this section in relation to other claims or causes of action permitted by this chapter that arise out of the same incident or event.

Nothing in this subsection prevents the injured party and an agent or insurer of the governmental entity from entering into a consensual agreement pursuant to which the injured party releases the governmental entity from any further liability in exchange for an agreed upon consideration.

[PL 1991, c. 460 (NEW).]

This section shall not apply to such claims as may be asserted under the Rules of Civil Procedure by a 3rd party complaint, crossclaim or counterclaim. [PL 1977, c. 2, §2 (NEW).]

#### SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 578, §3 (AMD). PL 1977, c. 591, §§3,6 (AMD). PL 1979, c. 68, §5 (AMD). PL 1987, c. 740, §6 (AMD). PL 1989, c. 327 (AMD). PL 1991, c. 460 (AMD). PL 2001, c. 249, §1 (AMD). PL 2019, c. 214, §§1, 2 (AMD).

#### §8108. Time for allowance or denial of claims

Within 120 days after the filing of the claim with the governmental entity, the governmental entity shall act thereon and notify the claimant in writing of its approval or denial of the monetary damages claimed. A claim shall be deemed to have been denied if at the end of the 120-day period the governmental entity has failed to approve or deny the claim. [PL 1977, c. 2, §2 (NEW).]

#### SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD).

#### §8109. Compromise and settlement

**1. Procedures for State.** The State has authority to settle claims filed against it pursuant to sections 8104-A, 8104-B, 8104-C and 8104-D in accordance with the following procedures.

A. Any agency may settle any claim for an amount of \$1,500 or less when such settlement is approved by the appropriate department or agency head in accordance with rules adopted by the Commissioner of Administrative and Financial Services. [PL 1991, c. 780, Pt. Y, §114 (AMD).]

B. Any other claim may be settled when such settlement is approved by the head of the department or agency against which the claim is filed, the Commissioner of Administrative and Financial Services and the Attorney General. [PL 1991, c. 780, Pt. Y, §114 (AMD).]

[PL 2009, c. 652, Pt. B, §4 (AMD).]

**2. Procedures for political subdivisions.** Any political subdivision may settle claims filed against it pursuant to sections 8104-A, 8104-B, 8104-C and 8104-D in accordance with procedures duly promulgated by its governing body.

[PL 2009, c. 652, Pt. B, §5 (AMD).]

**3. Limitations on payment under settlement.** When the State or a political subdivision becomes obligated to pay a claim as a result of a settlement, the limitations on payment provided by sections 8105 and 8115 shall apply in the same manner as if the State or political subdivision in question became obligated to pay the funds as a result of a judgment of the court.

[PL 1977, c. 2, §2 (NEW).]



**4. Release.** The acceptance by a claimant of any settlement under this section shall be final and conclusive on the claimant and shall constitute a complete release of any further claims against the governmental entity and against any employees of the governmental entity whose acts or omissions gave rise to the claim.

[PL 1987, c. 740, §7 (NEW).]

**5. Settlement agreement public record.** Except for information that is designated confidential by statute or that is not a public record under Title 1, section 402, subsection 3, a settlement agreement entered into by a governmental entity under this section, including a payment by an insurer of the governmental entity, is a public record.

[PL 2019, c. 215, §1 (NEW).]

#### SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 78, §§115,116 (AMD). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD). PL 1985, c. 81 (AMD). PL 1985, c. 785, §§A88,89 (AMD). PL 1987, c. 402, §§A104,A105 (AMD). PL 1987, c. 740, §7 (AMD). PL 1991, c. 780, §Y114 (AMD). PL 2009, c. 652, Pt. B, §§4, 5 (AMD). PL 2019, c. 215, §1 (AMD).

#### §8110. Limitation of actions

Every claim against a governmental entity or its employees permitted under this chapter is forever barred from the courts of this State, unless an action therein is begun within 2 years after the cause of action accrues, except that, if the claimant is a minor when the cause of action accrues, the action may be brought within 2 years of the minor's attaining 18 years of age. [PL 2001, c. 249, §2 (AMD).]

#### SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD). PL 2001, c. 249, §2 (AMD).

#### §8111. Personal immunity for employees; procedure

**1. Immunity.** Notwithstanding any liability that may have existed at common law, employees of governmental entities shall be absolutely immune from personal civil liability for the following:

- A. Undertaking or failing to undertake any legislative or quasi-legislative act, including, but not limited to, the adoption or failure to adopt any statute, charter, ordinance, order, rule, policy, resolution or resolve; [PL 1987, c. 740, §8 (RPR).]
- B. Undertaking or failing to undertake any judicial or quasi-judicial act, including, but not limited to, the granting, granting with conditions, refusal to grant or revocation of any license, permit, order or other administrative approval or denial; [PL 1987, c. 740, §8 (RPR).]
- C. Performing or failing to perform any discretionary function or duty, whether or not the discretion is abused; and whether or not any statute, charter, ordinance, order, resolution, rule or resolve under which the discretionary function or duty is performed is valid; [PL 1987, c. 740, §8 (RPR).]
- D. Performing or failing to perform any prosecutorial function involving civil, criminal or administrative enforcement; [PL 2001, c. 662, §7 (AMD).]
- E. Any intentional act or omission within the course and scope of employment; provided that such immunity does not exist in any case in which an employee's actions are found to have been in bad faith; or [PL 2001, c. 662, §8 (AMD).]
- F. Any act by a member of the Maine National Guard within the course and scope of employment; except that immunity does not exist when an employee's actions are in bad faith or in violation of military orders while the employee is performing active state service pursuant to Title 37-B. [PL 2001, c. 662, §9 (NEW).]

The absolute immunity provided by paragraph C shall be applicable whenever a discretionary act is reasonably encompassed by the duties of the governmental employee in question, regardless of whether the exercise of discretion is specifically authorized by statute, charter, ordinance, order, resolution, rule or resolve and shall be available to all governmental employees, including police officers and governmental employees involved in child welfare cases, who are required to exercise judgment or discretion in performing their official duties.

[PL 2001, c. 662, §§7-9 (AMD).]

**2. Attachment and trustee process.** Attachment, pursuant to Rule 4A, Maine Rules of Civil Procedure, and trustee process, pursuant to Rule 4B, Maine Rules of Civil Procedure, shall not be used in connection with the commencement of a civil action against an employee of a governmental entity based on any act or omission of the employee in the course and scope of employment.

[PL 1987, c. 740, §9 (AMD).]

## SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD). PL 1987, c. 427, §§1,2 (AMD). PL 1987, c. 740, §§8,9 (AMD). PL 1989, c. 502, §A40 (AMD). PL 2001, c. 662, §§7-9 (AMD).

### §8112. Defense and indemnification of employees

**1. When a governmental entity is not liable.** A governmental entity, with the consent of the employee, shall assume the defense of and, in its discretion, may indemnify any employee against a claim which arises out of an act or omission occurring within the course and scope of employment and for which the governmental entity is not liable. Except as otherwise provided herein, in lieu of assuming the defense of an employee, a governmental entity may pay the reasonable attorneys' fees and court costs of the employee. If the defense of its employee creates a conflict of interest between the governmental entity and the employee, the governmental entity shall pay the reasonable attorneys' fees and court costs of the employee.

A governmental entity is not liable for the attorneys' fees and defense costs of its employee under this subsection in the event that the employee is determined to be criminally liable for the acts or omissions in question. In addition, after the litigation against the employee is concluded, a governmental entity may recoup any attorneys' fees and costs paid to outside counsel on behalf of the employee if the governmental entity proves that the employee acted in bad faith.

This subsection does not apply if the employee settles the claim without the consent of the governmental entity.

This subsection does not apply if notice is not required to have been filed as provided in section 8107 or if the employee does not notify the governmental entity within 30 days after receiving actual written notice of the claim or within 15 days after the service of a summons and complaint, if the governmental entity is prejudiced by the lack of such notice.

[PL 1987, c. 740, §10 (RPR).]

**2. When the governmental entity is liable.** A governmental entity shall, with the consent of the employee, assume the defense of and shall indemnify any employee against a claim which arises out of an act or omission occurring within the course and scope of employment and for which sovereign immunity has been waived under section 8104-A, under another law or by legislative authorization. Except as otherwise provided herein, in lieu of assuming the defense of an employee, the governmental entity may pay the reasonable attorneys' fees and court costs of the employee. If the defense of its employee creates a conflict of interest between the governmental entity and the employee, the governmental entity shall pay the reasonable attorneys' fees and court costs of the employee.

A governmental entity shall not be required to indemnify its employee and is not liable for the attorneys' fees and court costs of its employee under this subsection in the event that the employee is determined

to be criminally liable for the acts or omissions in question. In addition, after the litigation against the employee is concluded, a governmental entity shall be relieved of any obligation to indemnify the employee for punitive damages and may recoup any attorneys' fees and costs paid to outside counsel if the governmental entity proves that the employee acted in bad faith.

This subsection does not apply if the employee settles the claim without the consent of the governmental entity.

This subsection does not apply if notice is not required to have been filed as provided in section 8107 or if the employee does not notify the governmental entity within 30 days after receiving actual written notice of the claim or within 15 days after the service of a summons and complaint if the governmental entity is prejudiced by the lack of such notice.

[PL 1987, c. 740, §11 (RPR).]

**2-A. Suits against employees under federal law.** A governmental entity, with the consent of the employee, shall assume the defense of and, in its discretion, may indemnify any employee against any claim that is brought against the employee under any federal law and that arises out of an act or omission occurring within the course and scope of employment. Except as otherwise provided herein, in lieu of assuming the defense of an employee, the governmental entity may pay the reasonable attorneys' fees and court costs of the employee. If the defense of its employee creates a conflict of interest between the governmental entity and the employee, the governmental entity shall pay the reasonable attorneys' fees and court costs of the employee.

A governmental entity is not liable for the attorneys' fees and court costs of its employee under this subsection in the event that the employee is determined to be criminally liable for the acts or omission in question. In addition, after the litigation against the employee is concluded, a governmental entity may recoup any attorneys' fees and costs paid to outside counsel if the governmental entity proves the employee acted in bad faith.

This subsection does not apply if the employee settles the claim without the consent of the governmental entity.

This subsection does not apply if the employee does not notify the governmental entity within 15 days after the service of a summons and complaint if the governmental entity is prejudiced by the lack of such notice.

[PL 1987, c. 740, §12 (NEW).]

**3. Act or omission outside course or scope of employment.** In cases when a governmental entity is obligated to indemnify an employee under subsection 2, the governmental entity may refuse to indemnify its employee if a court determines that the act or omission of the employee occurred outside the course and scope of that employment.

[PL 1987, c. 740, §13 (AMD).]

**4. Conditions under which discontinuation prohibited.**

[PL 1987, c. 427, §5 (RP).]

**5. Consent to suit; limit on recovery from employee.** In any action on a claim against the State:

A. Which is in excess of the limit established in section 8105, subsection 1 and for which the Legislature has granted special authorization to proceed within a specified limit; or [PL 1977, c. 578, §4 (NEW).]

B. For which the State is immune and for which the Legislature has granted special authorization to proceed within a specified limit; [PL 1977, c. 578, §4 (NEW).]

the award of damages, including costs, against both the State and its employee shall not exceed the limit established by the Legislature. If, however, it is found that the act or omission occurred outside

the course or scope of employment, the award of damages against that employee may exceed the limit specified by the Legislature.

[PL 1977, c. 578, §4 (NEW).]

**6.** This action shall not in any way impair, limit or modify the rights and obligations of any insurer under any policy of insurance.

[PL 1977, c. 578, §4 (NEW).]

**7. Independent contractors; leases.** A governmental entity may, in its discretion, assume the defense of and may indemnify any person who is providing services to the governmental entity pursuant to a written contract or with whom the governmental entity has entered into an agreement for the lease of premises.

[PL 1977, c. 578, §4 (NEW).]

**8. Liability under section 8104-D.** A governmental entity shall purchase insurance or self-insure on behalf of its employees to insure them against their personal liability to the limit of their liability under section 8104-D and, to the extent that insurance coverage is not available, shall assume the defense of and indemnify those employees to the limit of their liability under section 8104-D.

[PL 1987, c. 740, §14 (NEW).]

**9. Certain suits arising out of use of motor vehicles.** A governmental entity is not required to assume the defense of or to indemnify an employee of that governmental entity who uses a privately owned vehicle, while acting in the course and scope of employment, to the extent that applicable liability insurance coverage exists other than that of the governmental entity. In such cases, the employee of the governmental entity and the owner of the privately owned vehicle may be held liable for the negligent operation or use of the vehicle but only to the extent of any applicable liability insurance, which constitutes the primary coverage of any liability of the employee and owner and of the governmental entity. To the extent that liability insurance other than that of the governmental entity does not provide coverage up to the limit contained in section 8105, the governmental entity remains responsible for any liability up to that limit.

[PL 1995, c. 462, Pt. C, §1 (REEN); PL 1995, c. 462, Pt. C, §§2,3 (AFF).]

#### SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 578, §4 (RPR). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD). PL 1987, c. 427, §§3-5 (AMD). PL 1987, c. 740, §§10-14 (AMD). PL 1993, c. 707, §§7,8 (AMD). PL 1993, c. 707, §9 (AFF). PL 1995, c. 462, §C1 (AMD). PL 1995, c. 462, §§C2,3 (AFF).

#### §8113. Liability not expanded, other remedies are exclusive

**1. Liability not expanded unless chapter expressly provides.** Except as expressly provided herein, nothing in this chapter shall enlarge or otherwise adversely affect the liability of an employee or a governmental entity. Any immunity or other bar to a civil lawsuit under Maine or federal law shall, where applicable, remain in effect.

[PL 1977, c. 2, §2 (NEW).]

**2. Effect of other statutes concerning immunity.** When any other statute expressly provides a waiver of governmental, sovereign or official immunity, the provisions of that statute shall be the exclusive method for any recovery of funds in any fact situation to which that statute applies.

[PL 1977, c. 2, §2 (NEW).]

#### SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD).

#### §8114. Judgment against governmental entity or employee; effect

**1. Separate action against governmental employee.** Any judgment against a governmental entity shall constitute a complete bar to a separate action for damages by the claimant, by reason of the same subject matter, against any public employee whose act or omission gave rise to the claim. [PL 1977, c. 2, §2 (NEW).]

**2. Separate action against governmental entity.** Any judgment against any public employee whose act or omission gave rise to the claim shall constitute a complete bar to a separate action for injury by the claimant, by reason of the same subject matter, against a governmental entity. [PL 1977, c. 2, §2 (NEW).]

**3. Joinder.** Nothing contained in this section shall be construed as preventing the joinder of any governmental entity or employee of such governmental entity in the same action. [PL 1977, c. 2, §2 (NEW).]

#### SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD).

#### §8115. Payment of claims or judgments when no insurance

**1. Payment from next appropriation.** In the event no insurance has been procured by the State to pay a claim or judgment arising under this chapter, and no appropriated funds are reasonably available, as determined by the Commissioner of Administrative and Financial Services, the claim or judgment must be paid from the next appropriation to the state instrumentality whose action or omission, or the action or omission of whose employee, gave rise to the claim. [PL 1991, c. 780, Pt. Y, §115 (AMD).]

**2. Subdivision's plan for payment.** In the event that a political subdivision has not procured insurance, the trial judge may accept a reasonable plan for the payment of the amount of the judgment. A payment plan may not exceed 5 years and may include interest at the rate provided in section 1602-C. [PL 2003, c. 460, §8 (AMD).]

#### SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD). PL 1985, c. 785, §A90 (AMD). PL 1987, c. 402, §A106 (AMD). PL 1991, c. 780, §Y115 (AMD). PL 2003, c. 460, §8 (AMD).

#### §8116. Liability insurance

The legislative or executive body or any department of the State or any political subdivision may procure insurance against liability for any claim against it or its employees for which immunity is waived under this chapter or under any other law. If the insurance provides protection in excess of the limit of liability imposed by section 8105, then the limits provided in the insurance policy shall replace the limit imposed by section 8105. If the insurance provides coverage in areas where the governmental entity is immune, the governmental entity shall be liable in those substantive areas but only to the limits of the insurance coverage. Reserve funds, excess insurance or reinsurance contracts maintained by a governmental entity, by an insurer providing liability insurance or by a public self-funded pool to meet obligations imposed by this Act shall not increase the limits of liability imposed by section 8105. [PL 1987, c. 740, §15 (AMD).]

A governmental entity or a public self-funded pool, which self-insures against the obligations and liabilities imposed by this Act, shall designate funds set aside to meet such obligations and liabilities as self-insurance funds. Any such governmental entity which self-insures under this Act or any entity that is a member of a public self-funded pool shall maintain as part of its public records a written statement which shall include a provision setting forth the financial limits of liability assumed by the governmental entity, those limits to be no less than the limits imposed in this Act, and a provision

setting forth the scope of the liability assumed by the governmental entity, or the pool, that scope to be no less than that imposed in this Act. [PL 1985, c. 713, §2 (AMD).]

A governmental entity may purchase insurance or may self-insure on behalf of its employees to insure them against any personal liability for which a governmental entity is obligated or entitled to provide defense or indemnity under section 8112. [PL 1987, c. 740, §16 (RPR).]

Any insurance purchased by the State under this section must be purchased through the Department of Administrative and Financial Services, Risk Management Division.

#### SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 578, §§5,5-A (AMD). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD). PL 1981, c. 602, §§1,2 (AMD). PL 1985, c. 599, §3 (AMD). PL 1985, c. 713, §§1,2 (AMD). PL 1987, c. 740, §§15,16,17 (AMD). PL 2007, c. 466, Pt. A, §37 (AMD).

#### §8117. Prior claims

This chapter does not apply to any claim against any governmental entity or employee arising before its effective date. Any such claim may be presented and enforced to the same extent and be subject to the same defenses and limitations on recovery as if this chapter had not been adopted and as though any statute repealed by this chapter had remained in effect, and as though the doctrines of sovereign, governmental and official immunity had remained in full force and effect. Nothing herein shall be construed as denying a governmental entity the right or authority to defend or settle any claim either against it or against any of its employees pending at the time of the effective date of this chapter. [PL 1977, c. 2, §2 (NEW).]

#### SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD).

#### §8118. Eleventh amendment

Nothing in this chapter or any other provision of state law shall be construed to waive the rights and protections of the State under the Eleventh Amendment of the United States Constitution, except where such waiver is explicitly stated by law and actions against the State for damages shall only be brought in the courts of the State in accordance with this chapter. [PL 1977, c. 2, §2 (NEW).]

#### SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD).

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