

# Legal Research Digest 24

## SOVEREIGN IMMUNITY FOR PUBLIC AIRPORT OPERATORS

This report was prepared under ACRP Project 11-01, "Legal Aspects of Airport Programs," for which the Transportation Research Board (TRB) is the agency coordinating the research. The report was prepared by Seay Law International.

### Background

There are over 4,000 airports in the country and most of these airports are owned by governments. A 2003 survey conducted by Airports Council International–North America concluded that city ownership accounts for 38 percent, followed by regional airports at 25 percent, single county at 17 percent, and multi-jurisdictional at 9 percent. Primary legal services to these airports are, in most cases, provided by municipal, county, and state attorneys.

Reports and summaries produced by the Airport Continuing Legal Studies Project and published as ACRP Legal Research Digests are developed to assist these attorneys seeking to deal with the myriad of legal problems encountered during airport development and operations. Such substantive areas as eminent domain, environmental concerns, leasing, contracting, security, insurance, civil rights, and tort liability present cutting-edge legal issues where research is useful and indeed needed. Airport legal research, when conducted through the TRB's legal studies process, either collects primary data that usually are not available elsewhere or performs analysis of existing literature.

### Applications

The legal principle of sovereign immunity has its origins in the common law concept that, as ruler of the country, the sovereign (government) cannot be sued unless it consents. The Eleventh Amendment to the United States Constitution codified this protection for states, protecting them from being sued in federal courts. While the basic principle remains today, it has been the subject of legislative enactments at the federal and state levels that circumscribe, limit, or otherwise waive sovereign immunity. Since local governmental entities are not recognized as sovereigns in their own right, they derive their sovereign immunity from state legislation and exercise only those sovereign powers delegated to them by the states. Most public airports are owned and operated by units of local government or regional governmental authorities. Therefore, the extent of sovereign immunity granted to airports varies from state to state.

This digest provides an overview of sovereign immunity as it applies to airports and provides a state-by-state summary of each state's statutory authority and relevant case law. Appendix A provides a table of cases, and Appendix B contains a chart of authorities.

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## SOVEREIGN IMMUNITY FOR PUBLIC AIRPORT OPERATORS

By Seay Law International

### I. AIRPORT SOVEREIGN AND GOVERNMENTAL IMMUNITY

#### A. Introduction

Sovereign immunity is the historic common law concept that a sovereign cannot be sued since the sovereign can do no wrong. This British common law principle was incorporated and firmly enshrined in U.S. law through the 11th Amendment, which the U.S. Supreme Court has consistently interpreted to “[prevent] a private party from suing a state without the state’s consent.”<sup>1</sup> It is this fundamental sovereign immunity that limits states’ liability when confronted with lawsuits.

This survey addresses the applicability of sovereign immunity to airports that are owned and operated by a governmental entity. While this survey provides a summary of the law relating to sovereign immunity and airports, it is not intended to give specific legal advice to the public. Since treatment varies widely by jurisdiction, the authors recommend that any user of this digest needing legal advice seek the advice and counsel of a lawyer who is knowledgeable on the subject in the specific jurisdiction where such advice is sought and licensed in that jurisdiction.

Throughout this survey, it should be noted that some jurisdictions are strictly legislated while others are heavily litigated. Still others have little of either. Clarity also varies widely in both legislation and judicial opinion. There are, however, certain commonalities that apply across jurisdictions.

As Justice Holmes stated in *Kawananakoa v. Polybank*, “[a] sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.”<sup>2</sup> This principle has evolved to prevent recovery of damages from a government or its agencies by a harmed individual or entity unless the government chooses to waive or abrogate that immunity. The original blanket sovereign immu-

nity no longer applies in most or all jurisdictions. Over time the principle has become less rigid, allowing suits for certain types of injury while limiting recovery to a maximum compensatory amount.

This survey addresses the applicability of sovereign immunity to airports that are owned and operated by a governmental entity.

An example of the fundamental purpose behind sovereign immunity is summarized in the Georgia Tort Claims Act when it states,

[W]hile private entrepreneurs voluntarily choose the ambit of their activity and can thereby exert some control over their exposure to liability, state government does not have the same flexibility. In acting for the public good and in responding to public need, state government must provide a broad range of services and perform a broad range of functions throughout the entire state, regardless of how much exposure to liability may be involved. The exposure of the state treasury to tort liability must therefore be limited.<sup>3</sup>

Sovereign immunity applies to states. When dealing with political subdivisions of a state, however, sovereign immunity does not necessarily apply and may be supplanted by the related theory of governmental immunity.

Since municipalities, agencies, and other similar entities are created by a state or sovereign, their powers are derived from that sovereign. As a derivative entity, they do not enjoy the same specific sovereign immunity as understood to apply to states. These entities’ immunity is generally found statutorily, as an extension from the State to those entities, and is often distinguished by courts.<sup>4</sup> This immunity is considered to be governmental immunity and not sovereign immunity, since it is not the sovereign who is immune but another entity. Courts, however, have not always been so clear in their pronouncements.

Most airports throughout the United States are operated under the authorization or approval of the local, state, or, in some circumstances, federal government. Civil airports in the United States can be divided up into those that are designated as public use and private airports. Public use airports are open to the public for flight operations without prior permission and without restrictions

<sup>1</sup> Adam D. Chandler, Comment, *Puerto Rico’s Eleventh Amendment Status Anxiety*, 120 YALE L.J. 2183, 2184 (2011).

<sup>2</sup> 205 U.S. 349, 353 (1907).

<sup>3</sup> GA. CODE ANN. § 50-21-21(a) (2013).

<sup>4</sup> See, e.g., *Martinez v. Dep’t. of Pub. Safety*, 263 Conn. 74, 87 (Conn. 2003).

within the physical capabilities of the facility. While most public use airports are publically owned, there are also some privately owned public use airports. Private airports may be restricted to an owner and its invitees or guests. The majority of civil airports in the United States are private airports and landing facilities.

In general, most public use airports are owned and operated by local governments such as counties and municipalities. The governance of the airport is derived from local ordinances and regulations. Many larger airports, including air carrier airports, are owned and operated by a governmental authority that is duly constituted under state law as a political subdivision or public service district. These airports may have powers such as a statutory right of eminent domain and the power to assess taxes and fees, issue regulations, and address land use in the vicinity of their facilities. They often have a governing board that is comprised of members from the surrounding area. The Federal Aviation Administration (FAA) also licenses airports that provide air carrier service as Part 139 facilities.<sup>5</sup>

Generally speaking, these government-owned and -operated airports have often been afforded the same protections as the authorizing state jurisdiction, meaning that they are protected by governmental immunity. Adoptions of various state tort claims acts have altered the application of immunity among jurisdictions and, in turn, how the principle is applied to public operators of airports.

## B. Summary of Findings

According to the 2011–2015 National Plan of Integrated Airport Systems (NPIAS), there are over 19,700 airports in the United States. Of these, 5,170 airports are open to the general public, with 503 airports offering commercial service. The majority of public airports, currently numbering 2,829, are designated as reliever or general aviation airports versus commercial service.<sup>6</sup> Due to the variations of applicable statutes, rules, and regulations that apply to the different types of

airports, this report focuses primarily on airports offering commercial service, though it is largely applicable to general aviation airports as well.

As expected, most if not all of the states have waived sovereign immunity in some way or form. In most instances, immunity extends to counties, cities, municipalities, and agencies. One question is whether or not an airport authority qualifies as an agency under the definitions of the statutes. In nearly all instances, they clearly do. The classification of an airport by a state is generally made through general statute or special law. When it has not been classified, the analysis applied by the courts revolves around the applicable discretionary or governmental function of the act involved. So, for example, when an act on the part of an airport authority or its personnel is of a discretionary nature, the tendency is to treat the airport the same as if it were a state or governmental entity.

The vast majority of states that have abrogated immunity have placed caps on awards. A good portion of the states set caps around \$200,000 for individual claims with varying cumulative caps. The caps, however, range from a low of \$25,000 to highs in the multi-millions, so a generalization of limitations on liability is not possible. Some states have statutes that extend the cap to any insurance policy limits that apply to a claim. There are, however, many states that have no applicable caps for claims against airports.

Quite a few of the states require compliance with specific procedural hurdles to bring a claim. These procedural hurdles typically involve providing notice to particular parties, such as a state or county official, in a specified form. In addition, some states include a notice of claim that mandates shorter time frames than typically found in standard statutes of limitation. Failure to meet this shorter time frame can bar a claimant's cause of action. For example, a claimant may have to file a notice of claim with the secretary of state within 14 or 30 or 90 days after the date of occurrence. Unless notice is provided within the time limit, the claimant can be barred from filing suit.

State tort claims acts generally have certain distinct commonalities, with the following being the most often incorporated aspects:

- Retaining immunity for governmental, or essentially governmental, functions. These are often designated as discretionary functions.
- Waiving immunity for negligence by governmental officers or employees when acting within the scope of employment.

<sup>5</sup> Some airports that lost air carrier service have elected to continue to meet FAA Part 139 standards. Part 139 airports are typically referred to as air carrier airports, but there are a few that do not have air carrier service.

<sup>6</sup> FEDERAL AVIATION ADMINISTRATION, 2011–2015 FAA NATIONAL PLAN OF INTEGRATED AIRPORT SYSTEMS REPORT TO CONGRESS, ch. 1, at 1, [http://www.faa.gov/airports/planning\\_capacity/npias/reports/historical/media/2011/npias\\_2011\\_narrative.pdf](http://www.faa.gov/airports/planning_capacity/npias/reports/historical/media/2011/npias_2011_narrative.pdf).

- Establishing procedures for filing of claims.
- Limiting damages by placing a cap on recovery.
- Authorizing governmental entities to purchase liability insurance.

In reviewing the diversity of methods and waivers of sovereign immunity that relate to airports under statutory and case law, each state's laws have evolved in analogous fashion to the ecology of neighboring islands. On these islands there are common traits with localized diversity that reflect changing conditions. In similar fashion, different jurisdictions have evolved based on the diversity and conditions of the locale and the decisions of legislatures and judges over time. As an example, most state laws provide statutory limits to the amount of claims; however, some tie those limits to the amount of insurance coverage that is available to the governmental entity. The trend has been to expand waivers of sovereign or governmental immunity for proprietary functions where the entity is performing actions that are similar to that of a private entity. However, governmental immunities still exist in most jurisdictions, subject to limits, where governments and their employees are acting within the scope of their duties and performing discretionary duties that are clearly governmental functions.

### C. Governmental or Discretionary Functions

A fair amount of existing case law deals with the proprietary–governmental function analysis that is also laid out in some statutes and is a fairly common distinction. Discretionary or governmental functions, occasionally called public duties, are generally protected from liability. The U.S. Supreme Court has devised a two-part test to determine if an action is discretionary and stated that the discretionary function rule “insulates from liability only those governmental actions and decisions that [1] *involve an element of judgment or choice* and that [2] *are based on public policy considerations* (emphasis added).”<sup>7</sup> This test has been the basis of analysis for most, if not all, discussions of discretionary functions in each of the states and territories.

A discretionary or governmental function is one that ordinarily only the government would do. These functions would include such things as taxation, road building, issuing licenses or permits, and, in many instances, providing airports.

<sup>7</sup> Berkovitz v. United States, 486 U.S. 531, 536–37 (1988).

The distinction is usually based on whether or not the function is for a service that only a government would provide. The Mississippi Supreme Court provided a succinct definition when it stated that “a duty or an activity is discretionary if it is not imposed by law and depends on the judgment or choice of the government entity or its employee.”<sup>8</sup>

A proprietary function is ordinarily considered to be one that a private entity could perform and is not solely or uniquely for the good of the general public. At airports, these functions might include leases of commercial property, sale of commercial advertising space, and similar activities. Michigan provides a statutory definition of a proprietary function as “any activity which is conducted primarily for the purpose of producing a pecuniary profit for the governmental agency, excluding, however, any activity normally supported by taxes or fees.”<sup>9</sup>

The public duty doctrine is a distinct concept that has not always been distinguished from discretionary and governmental functions in either case law or statutes. Despite this apparent confusion, there are sufficient jurisdictions that acknowledge the distinction. The Florida Supreme Court, for example, defined the public duty doctrine when it stated that “a governmental entity is not liable in tort for breaching a duty which the government owes to the public generally, as opposed to a special tort duty owed to a particular individual.”<sup>10</sup>

Because of their purpose and involvement in economic development, airports often perform proprietary functions that include commercial activity, as opposed to strictly governmental functions such as those involving health and safety or other traditional governmental activities. Distinctions made by the courts have sometimes drawn a fine line between the two, since airport activities are closely aligned with economic activity. For example, the Atlanta Airport has been deemed a commercial activity and is therefore not immune from suit.<sup>11</sup>

In many states, statutes will provide for a clear distinction between liability or waiver of immunity for discretionary or governmental functions

<sup>8</sup> Pratt v. Gulfport-Biloxi Reg'l Airport Auth., 97 So. 3d 68, 72 (Miss. 2012) (quoting Miss. Transp. Comm'n v. Montgomery, 80 So. 3d 789, 795 (Miss. 2012)).

<sup>9</sup> MICH. COMP. LAWS § 691.1413 (2014).

<sup>10</sup> Seguire v. City of Miami, 627 So. 2d 14, 17 (Fla. Ct. App. 3d Dist. 1993).

<sup>11</sup> Stryker v. City of Atlanta, 738 F. Supp. 1423, 1427 (N.D. Ga. 1990).

versus proprietary functions. For example, the State of Ohio's code is a typical example in which a statute specifically delineates between the two, allowing recovery for injury related to proprietary functions but placing further limits on recovery for injuries related to governmental functions.<sup>12</sup>

Since the applicable grants or waivers of immunity are primarily statutory in nature, it is important to cite to the specific relevant provisions. Key cases that explain, limit, or interpret these statutes often provide a brief summary of implications for airports. These statutes and cases provide an overview of the scope of sovereign immunity for airports in each individual jurisdiction.

#### D. Tort Liability

Issues that have arisen in the cases usually involve tortious behavior on the part of the airport operator or its employees. Subject matter has included such tort claims as failure to warn of dangerous conditions, simple accidents on airport property, noise and nuisance, inverse condemnation or takings, environmental contamination, discrimination, and inadequate supervision. Generally, if the harm was the result of a discretionary or governmental action, such action has been immune from liability or that liability is limited in awardable damages. These claims may have included land use or zoning violations, aviation easements, runway safety zone issues, and other actions directly connected with the provision of airport functions and operations. If a jurisdiction treats these causes of action differently, this is noted in the individual state summaries. These distinctions have been made through categorization as discretionary governmental functions or as proprietary functions. Cases and statutes are referenced where the states have identified or addressed these distinctions.

The most significant distinctions or variations include:

- To what extent airports are subject to immunity in each jurisdiction;
- The types of claims to which sovereign immunity exceptions are extended;
- The various functions of airports and the differing application of immunity to each;
- What limits or caps on awards apply under such claims; and
- The procedural steps required for pursuing a claim.

#### E. Statutes of Limitations

In most instances, state tort claims acts or relevant state statutes have included specific limitations applicable to claims. These statutes of limitations and statutes of repose apply to actions against governmental entities, including airports, and provide closure to an otherwise open-ended liability. This is a positive development for the governmental entities since it establishes a time frame beyond which liability may not be anticipated. However, if those statutes fail to specifically abrogate the common law concept of *nullum tempus occurrit regi*, then the time limit may not run as expected.

*Nullum tempus occurrit regi*, loosely translated, means that time does not run against the king, or in other words a claim made by the sovereign may be brought at any time. Noticeably, the State of North Carolina is an adherent to the *nullum tempus* concept, leaving the question of limits on actions by the State, and, as a result, airports, an open one with the opportunity for extended, or perhaps unending, liability on the part of those against whom an airport may make a claim.<sup>13</sup>

In the case of *Rowan County Board of Education v. U.S. Gypsum Co.*, the North Carolina Supreme Court declared, “[w]e now clarify the status of this doctrine in this jurisdiction: *nullum tempus* survives in North Carolina and applies to exempt the State and its political subdivisions from the running of time limitations unless the pertinent statute expressly includes the State.”<sup>14</sup> In *Rowan*, the court looked to the function of the State in the matter. If the State, or its instrumentality, were performing a governmental function, then *nullum tempus* prevents the application of any statute of limitations to the State, allowing it to maintain suit against otherwise unsuspecting defendants.

Courts have made a distinction between the abrogation of sovereign immunity and that of *nullum tempus*, and have indicated that the concept remains a potential pitfall in many states. In essence, “[s]overeign immunity provides protection against liability for tortious actions arising out of the conduct of governmental workers, while *nullum tempus* merely provides a safeguard against the government's failure to take action prior to the onset of a statute of limitations.”<sup>15</sup> Assuming

<sup>13</sup> Thomas R. Young, *A Morass of Confusion and Inconsistency: The Application of the Doctrine of Nullum Tempus Occurrit Regi in North Carolina*, 28 CAMPBELL L. REV. 251 (2006).

<sup>14</sup> *Rowan Cnty. Bd. of Educ. v. U.S. Gypsum Co.*, 418 S.E.2d 648, 653 (N.C. 1992).

<sup>15</sup> Young, *supra* note 13, at 250, 254 (2006).

<sup>12</sup> OHIO REV. CODE ANN. § 2744.02 (LexisNexis 2014).

this to be the case, there are a number of states in which the statute of limitations may not necessarily apply to the state, its subsidiaries, and subsequently to airports.<sup>16</sup>

## F. Trends

Throughout the country and territories, the predominant trend is to abrogate or waive immunity, at least to some extent. Discretionary or governmental functions still retain immunity in most jurisdictions, while proprietary functions undertaken by airports are almost universally subject to liability.

Because of the significant commercial activity associated with airports, without specific waivers of liability by statute, courts have been more inclined to consider their actions as compensable on a par with a business of a like nature. This erosion of immunity for airports is consistent across most jurisdictions, though adoption of the concept may be slower in some than others. The key to liability is the extent to which the activity is proprietary, or in other words whether it is designed more to make money than to simply provide a governmental service to the general public.

Though many states still follow a regulatory or statutory scheme applying some form of sovereign or governmental immunity, the concept continues to erode. In some states, either the courts or the legislatures have chosen to abrogate it completely. For example, the North Dakota Supreme Court declared as long ago as 1974 that “[t]here is near unanimity of opinion among respected legal scholars and recent judicial opinions that the doctrine of governmental immunity has outlived its usefulness as a just instrument of governmental policy.”<sup>17</sup> Over the years, when it comes to the proprietary functions of a governmental body, both courts and legislatures have carved out significant exceptions to the rule, if not eliminating it entirely.

Limitations or caps on damages continue to vary widely among the different jurisdictions. Examples of low caps begin at \$5,000 and \$10,000 in American Samoa and Maine respectively. Limitations rise as high as \$4,000,000 in Oregon and \$5,000,000 in Nebraska for aggregate claims. Nearly a third of jurisdictions apply a cap between \$200,000 and \$500,000 for a single claim.

<sup>16</sup> States that have addressed this issue have, fairly consistently, retained the protection for public functions, public duties, and other discretionary or governmental functions.

<sup>17</sup> *Kitto v. Minot Park Dist.*, 224 N.W.2d 795, 797–98 (N.D. 1974).

Aggregate claim caps are most commonly between \$500,000 to \$5 million, with fully one-third of the jurisdictions in this range.

An interesting twist to caps on damages is the applicability of insurance policies to claims. In as many as 14 jurisdictions, legislation allows governmental entities, including airports, to purchase insurance to cover losses to which they may become liable.<sup>18</sup> Generally, the authorizing legislation limits damages to the maximum amount available under the insurance policy. Purchase of the insurance will ordinarily not constitute a waiver of immunity. A typical provision can be found in the Ohio Statutes, which state, in part:

(B) The purchase of liability insurance, or the establishment and maintenance of a self-insurance program, by a political subdivision does not constitute a waiver of any immunity or defense of the political subdivision or its employees, except that the political subdivision may specifically waive any immunity or defense to which it or its employees may be entitled if a provision to that effect is specifically included in the policy of insurance or in a written plan of operation of the self-insurance program, or, if any, the legislative enactment of the political subdivision authorizing the purchase of the insurance or the establishment and maintenance of the self-insurance program. Such a specific waiver shall be only to the extent of the insurance or self-insurance program coverage.<sup>19</sup>

Insurance and self-insurance programs have expanded the availability of damages, answering legislatures’ apparent desire to balance the need to make whole a harmed person and the need to protect public assets.

In Puerto Rico, for example, a grand experiment is underway with the privatizing of San Juan’s Luis Munoz Marin International Airport (SJU). Aerostar Airport Holdings, a subsidiary of the Mexican corporation Aeropuertos del Sureste (ASUR) and High Star Capital, has entered into a lease agreement to operate the airport.<sup>20</sup> The lease extends for 40 years and allows Aerostar to collect the airport’s revenues as profit. In exchange, Aerostar will pay the Puerto Rico Port Authority up to \$1.75 billion and has promised an additional \$1.4 billion of investments in the airport’s basic infrastructure. The project was made possible through the FAA Airport Privatization

<sup>18</sup> These jurisdictions include Arkansas, Delaware, Florida, Idaho, Kansas, Mississippi, New Hampshire, North Dakota, Ohio, South Dakota, Tennessee, Texas, Virginia, and Guam.

<sup>19</sup> OHIO REV. CODE ANN. § 2744.08(B) (LexisNexis 2014).

<sup>20</sup> The FAA approved the final application to privatize Luis Muñoz Marín International Airport on Feb. 25, 2013.

Plan.<sup>21</sup> As this plan moves forward, the extension of sovereign immunity to a private entity providing a traditionally governmental function will certainly be tested. Those results could have interesting and perhaps important implications for other airports that may enter into public–private partnerships for airport or aviation services.

Notice requirements and statutes of limitations also vary widely among the different jurisdictions. The shortest statutes of limitations are found in Pennsylvania, Texas, and Wisconsin, with limits of only 6 months or 120 days. The most common limits are 1-year<sup>22</sup> and 2-year<sup>23</sup> statutes of limitations. Several have established 3-year statutes of limitations.<sup>24</sup> Florida stands alone with a 4-year statute and Vermont with a 6-year statute. A small number of states do not have a separate statute of limitations for claims against a state or political subdivision but instead rely on general limitations that apply to the actions and not to a specific party.<sup>25</sup>

In addition to the statutes of limitations, a large number of jurisdictions have also established a much shorter notice requirement. In those jurisdictions, the claimant is required to file a notice of the claim with a statutorily specified board or office before being permitted to file suit. In some of those jurisdictions, there is a claims board with authority to settle the claim up to any applicable monetary cap. Failure to comply with notice requirements is often a complete bar to any claim. Therefore, it is incumbent on the claimant to assure that the notice requirement is met. For example, the notice requirement for some claims in Kentucky is only 7 days. Notice requirements in other jurisdictions range from 30 days to 2 years. A majority of jurisdictions, however, do not require advance notice of a claim.

## G. Summary

Each jurisdiction across the United States and its territories has opted for its own unique blend

of criteria and principles to deal with sovereign and governmental immunity, ranging from full absolutism to full liability. The information that follows should not be considered a complete analysis of every aspect of each jurisdiction, nor should it be relied upon as private legal advice. Rather, it is an attempt to summarize the countless constitutional provisions, statutes, and cases of each of those jurisdictions into a reasonably concise compendium for ready reference. Noticeably, some jurisdictions exert vastly more control over the issue than others. Others have opted for a less hands-on approach. Regardless of the methods chosen, the distinctions can be the difference between success and failure for a claim against an airport or the defense of its governing body.

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<sup>21</sup> 49 U.S.C. § 47134 (2006).

<sup>22</sup> These include Alabama, Alaska, Arizona, Connecticut, Indiana, Louisiana, Mississippi, New York, Oregon, South Dakota, Utah, Virginia, and Wyoming.

<sup>23</sup> These include California, Georgia, Hawaii, Illinois, Iowa, Maine, Missouri, Nebraska, Nevada, New Mexico, Ohio, Oklahoma, South Carolina, American Samoa, Northern Mariana Islands, and the U.S. Virgin Islands.

<sup>24</sup> These include Maryland, Massachusetts, New Hampshire, North Carolina, North Dakota, Rhode Island, and the District of Columbia.

<sup>25</sup> These include Arkansas, Kansas, Michigan, Minnesota, Montana, New Jersey, Washington, West Virginia, and Puerto Rico.

## II. PART A: STATES

### ALABAMA

#### Summary:

The State of Alabama has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$100,000 or \$300,000 in the aggregate for multiple claims out of the same occurrence. Claims must be presented within 1 year to the Board of Adjustment; however, for injury resulting in death, the time limit is 2 years.

#### o **Statutory Authority:**

- ALA. CONST. art. I, § 14. “That the State of Alabama shall never be made a defendant in any court of law or equity.”
- ALA. CODE § 4-3-7 (2014). Authority and directors are immune from liability for negligence.
- ALA. CODE § 4-4-4 (2014). Construction, maintenance, and operation of municipal airports are public governmental functions.
- ALA. CODE § 4-3-11 (2014). Authorities have the right to sue and be sued except for actions in tort against the authority.
- ALA. CODE § 41-9-65 (2014). Claims must be presented to the Board of Adjustment within 1 year after accrual of cause of action.
- ALA. CODE § 41-9-60 (2014). Purpose of Board of Adjustment is to “provide a method of payment by the State of Alabama or any of its agencies, commissions, boards, institutions or departments to persons for injuries to person or property or for death occasioned by the State of Alabama or any of its agencies, commissions, boards, institutions or departments where in law, justice or good morals the same should be paid.”

#### o **Relevant Case Law:**

- *Scotti v. Birmingham*, 337 So. 2d 350 (Ala. 1976). Making the distinction between governmental functions and corporate or proprietary functions, and granting immunity in connection with the operation of airports.
- *Gaines v. Huntsville-Madison Cnty. Airport Auth.*, 581 So. 2d 444 (Ala. 1991). “Airports organized under Article 1 of Chapter 2 and under Chapter 4 are immune only from negligence actions, but airports organized under Act No. 780 as amended by Act No. 1219, are immune from all actions in tort.” *Id.* at 448.
- *Drummond Co. v. Ala. Dep’t. of Transp.*, 937 So. 2d 56 (Ala. 2006). “There are four general categories of actions which in *Aland v. Graham*, 250 So. 2d 677 (1971), we stated do not come within the prohibition of § 14....” *Id.* at 58. *But see Ex Parte Moulton*, 116 So. 3d 1119 (Ala. 2013).

- **Monetary Limits and Caps:**
  - ALA. CODE § 11-93-2 (2014). Maximum amount of damages recoverable against governmental entities not to exceed \$100,000 for bodily injury or death for one person in any single occurrence, or \$300,000 in the aggregate where more than two persons have claims of bodily injury or death arising out of any single occurrence. Recovery for damage or loss of property arising out of a single occurrence is limited to \$100,000. Claims may not be settled for an amount in excess of these caps.
- **Waiver of Immunity:**
  - "There are four general categories of actions which in *Aland v. Graham*, 250 So. 2d 677 (1971), we stated do not come within the prohibition of § 14: (1) actions brought to compel State officials to perform their legal duties; (2) actions brought to enjoin State officials from enforcing an unconstitutional law; (3) actions to compel State officials to perform ministerial acts; and (4) actions brought under the Declaratory Judgments Act, Tit. 7, § 156, et seq., seeking construction of a statute and its application in a given situation. (citation omitted). Other actions which are not prohibited by § 14 are: (5) valid inverse condemnation actions brought against State officials in their representative capacity; and (6) actions for injunction or damages brought against State officials in their representative capacity and individually where it was alleged that they had acted fraudulently, in bad faith, beyond their authority or in a mistaken interpretation of law. (citations omitted)." *Drummond Co. v. Ala. Dept. of Transp.*, 937 So. 2d 56, 58 (Ala. 2006).
- **Process:**
  - ALA. CODE § 41-9-65 (2014). Limitation Periods for Presentation of Claims. Claims must be presented to the Board of Adjustment within 1 year after the cause of action accrues. For injury resulting in death, the time is 2 years after the cause of action accrues.

## ALASKA

### Summary:

The State of Alaska has partially abrogated sovereign immunity for airports, though it tends towards liability as the rule and immunity as the exception. When performing discretionary functions, such as making policy decisions, airports are generally immune. When performing proprietary functions, such as business-related leases or commercial activities, airports generally do not have immunity. There is no express dollar cap on damages; however, no punitive damages are permitted against the State. Suits against airports owned by the State must be brought within 1 year after notice of the claim is presented to the Department of Administration. Suits against other airports are subject to a 2-year statute of limitations.

- **Statutory Authority:**
  - ALASKA CONST. art. II, § 21. Suits Against the State. The legislature shall establish procedures for suits against the State.
  - ALASKA STAT. §§ 09.50.250 to 09.50.300 (2013). Claims Against the State or State Employees.

- ALASKA STAT. § 09.50.250 (2013). Actionable Claims Against the State.
  - People having contract, quasi-contract, or tort claims against the State may sue the State for damages.
  - But not if the claim arose from a discretionary function or from an intentional tort.
- ALASKA STAT. § 09.50.253 (2013). Actionable Claims against State Employees.
  - This statute is the only avenue for filing such claims against the State. Once a remedy has been rendered to a plaintiff, no other relief is available.
- ALASKA STAT. § 09.50.280 (2013). Judgment for Plaintiff; Punitive Damages.
  - Damages are limited to compensation; no punitive damages are allowed
- ALASKA STAT. § 09.65.070 (2013). Suits Against Incorporated Units of Local Government. *But see Adams v. Alaska, 555 P.2d 235 (Alaska 1976).*
  - People having claims against units of local government may sue for compensation.
  - No claim is allowed if they arise from performance of discretionary function.
- ALASKA STAT. § 02.10.010 (2013). Supervision over Aeronautics and Communication; Regulations.
  - The Department of Transportation and Public Facilities has supervisory power over aeronautics operations in the State. The Department is directly responsible for the establishment, maintenance, and operation of airports in the State.
- ALASKA STAT. §§ 02.15.010. Alaska Aeronautics Act of 1949.
  - ALASKA STAT. § 02.15.060 (2013). Establishment, Operation, and Maintenance.
    - The Department may take necessary actions to establish, maintain, operate, etc., airports in Alaska.
  - ALASKA STAT. § 02.15.080 (2013). Joint Operations.
    - The Department may join with other units of government to operate airports.
  - ALASKA STAT. § 02.15.260 (2013). Definitions.
    - Department means the Department of Transportation and Public Facilities.
    - International airport means an international airport owned and operated by the State.
- **Relevant Case Law:**
  - *Adams v. Alaska, 555 P.2d 235 (Alaska 1976).* *But see ALASKA STAT. § 09.65.070 (2013).*
    - “§ 09.50.250 in establishing a procedure for suits against the state in tort, represented the adoption in Alaska of the policy of risk-spreading, the policy that society, rather than the injured individual, should bear the cost of the state's negligence.” *Adams, 555 P.2d at 244.*

- “Where there is no immunity, the state is to be treated like a private litigant.” *Id.* at 242.
- “Secondly, tort suits must not hinder the state in its process of governing. However, § 09.50.25018 and the analytical framework laid out in past decisions of this court dealing with that statute provide protection for the state from undue interference.” *Id.* at 242.
- *Sea Hawk Seafoods, Inc. v. Alaska*, 215 P.3d 333 (Alaska 2009).
  - “Presently, the general rule in Alaska is that the government is liable for its wrongs.” *Sea Hawk Seafoods*, 215 P.3d at 337.
  - “[T]he State's claim of sovereign immunity is properly characterized as an affirmative defense because it is ‘an avoidance’ under Civil Rule 8(c).” *Id.* at 339.
  - “The State can waive its claim of sovereign immunity by failing to raise the affirmative defense in a timely manner. Whether the State waived the defense turns on whether the plaintiff is prejudiced by the State's late assertion of the defense. To make a determination on the prejudice issue, a court must consider factors including added expense and delay, a longer or more burdensome trial, and if the issues being raised in the amendment are remote from the scope of the original case, as well as whether additional time or money can remedy the prejudicial effect of the State's delay in raising the defense.” *Id.* at 341.
- *Alpine Indus. Inc. v. Feyk*, 22 P.3d 445 (Alaska 2001).
  - “Under Alaska law, public officials in the executive departments of government have either absolute or qualified immunity from tort suits for discretionary acts committed within the scope of their authority. (citation omitted). In *Aspen Exploration v. Sheffield*, we announced a three-step process for determining the existence and scope of official immunity. First, does the doctrine of official immunity apply to the state official's conduct? Second, if it does apply, is the immunity absolute or qualified? And third, if it is only a qualified immunity, did the state official act corruptly, maliciously, or in bad faith?” *Alpine Indus.*, 22 P.3d at 447–48.
- *Japan Air Lines Co. v. Alaska*, 628 P.2d 934 (Alaska 1981).
  - “The purpose of the discretionary function exception is to preserve the separation of powers inherent to our form of government by recognizing that it is the function of the state, and not the courts or private citizens, to govern. Essentially, it seeks to ensure that private citizens do not interfere with or inhibit the governing process by challenging through private tort actions basic governmental policy decisions. (citation omitted). It is well-settled, however, that not all decisions or acts of state employees fall within the exception. Rather, the exception applies, and immunity therefore attaches, only ‘where there is room for *policy* judgment and decision...’ (citation omitted). Under the ‘planning-operational’ test adopted by this court, and applied by the superior court, decisions that rise to the level of planning or policy formulation will be considered discretionary acts which are immune from tort liability, whereas decisions that are



**ARIZONA****Summary:**

The State of Arizona has not abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. Airports are immune from liability for discretionary functions. For employees acting within the scope of their authority, qualified immunity attaches unless acts are intentional or grossly negligent. Even if subject to liability, there are no punitive damages. There is a 1-year statute of limitations and a notice requirement of 180 days from date of occurrence.

- **Statutory Authority:**

- ARIZ. CONST. art. IV, pt. 2, § 18. Suits against the State. “The legislature shall direct by law in what manner and in what courts suits may be brought against the state.”
- ARIZ. REV. STAT. ANN. §§ 12-820 to 12-826 (2014). Actions Against Public Entities or Public Employees.
- ARIZ. REV. STAT. ANN. § 12-820.01(A)(1) (2014). The exercise of a judicial or legislative function.
- ARIZ. REV. STAT. ANN. § 12-820.01(A)(2) (2014). The exercise of an administrative function involving the determination of fundamental governmental policy.
- ARIZ. REV. STAT. ANN. § 12-820.01(B) (2014). A fundamental governmental policy involves the exercise of discretion and shall include, but is not limited to:
  - (1) a determination of whether to seek or provide the resources necessary for: (a) the purchase of equipment; (b) construction or maintenance of facilities; (c) hiring of personnel; (d) the provision of governmental services.
  - (2) whether and how to spend existing resources.
- ARIZ. REV. STAT. ANN. § 12-820.02 (2014). Qualified Immunity statute, which holds a public entity liable if public employees acting within the scope of their employment either intended to cause injury or were grossly negligent.
- ARIZ. REV. STAT. ANN. § 28-8428 (2014). The governing body of each airport appointing an airport officer or airport police aide is liable for any and all acts of the airport police officer or airport aide that are within the scope of the officer’s or aide’s employment.

- **Relevant Case Law:**

- *Shaner v. Tucson Airport Auth.*, 573 P.2d 518 (Ariz. Ct. App. 1977).
  - Husband’s failure to show that airline owned, occupied, managed, or had any right of control over the airport parking lot from which his wife was allegedly abducted precluded airline’s liability for the kidnapping and death of his wife on the theory of negligence based on premises liability and status of his wife as invitee.

- **Monetary Limits and Caps**

- ARIZ. REV. STAT. ANN. § 12-820.04 (2014). No punitive or exemplary damages.

- ARIZ. REV. STAT. ANN. § 12-823 (2014). If judgment is rendered for the plaintiff, it shall be for the amount actually due from the public entity to the plaintiff, with legal interest thereon from the time the obligation accrued and with court costs.
- **State-Specific Aspects:**
  - ARIZ. REV. STAT. ANN. § 28-8411 (2014). The governing body of a city or town or board of supervisors of a county may own, lease, maintain, regulate, etc., airports.
  - ARIZ. REV. STAT. ANN. § 28-8421 (2014). Allows for joint exercise of powers.
  - ARIZ. REV. STAT. ANN. § 28-8415 (2014). Real property and any interest in the property held by the department in the operation and maintenance of the Grand Canyon national park airport shall be held in the name of the State.
  - ARIZ. REV. STAT. ANN. § 28-8428 (2014). The governing body of each airport appointing an airport officer or airport police aide is liable for any and all acts of the airport police officer or airport aide that are within the scope of the officer's or aide's employment.
- **Process:**
  - ARIZ. REV. STAT. ANN. § 12-821 (2014). Actions against any public entity or public employee must be brought within 1 year after the cause of action accrues.
  - ARIZ. REV. STAT. ANN. § 12-821.01(A) (2014). Notice of a claim against a public entity or public employee must be filed with the appropriate agency within 180 days after accrual.

## ARKANSAS

### Summary:

The State of Arkansas has not abrogated sovereign immunity for airports. Immunity ends where insurance coverage begins, and damages will be limited to the extent that the airport or its officers/employees are covered by insurance. No punitive damages may be awarded. Statutes of limitations will vary and are the same as found in general provisions of Arkansas law and claims must be brought to the Claims Commission.

- **Statutory Authority:**
  - ARK. CONST. art. V, § 20. Sovereign Immunity of the State of Arkansas. "The State of Arkansas shall never be made defendant in any of her courts."
  - ARK. CODE ANN. §§ 21-9-201 to 21-9-303 (2014). Liability of State and Local Governments.
    - ARK. CODE ANN. § 21-9-201 (2014). Definition
      - Elected and appointed officials are officers of the State of Arkansas.
    - ARK. CODE ANN. § 21-9-202 (2014). Jurisdiction of Arkansas State Claims Commission.

- The Arkansas State Claims Commission has jurisdiction for indemnification claims based on § 21-9-203.
- ARK. CODE ANN. § 21-9-203 (2014). Authority to Pay Damages.
  - Arkansas will pay compensatory but not punitive damages based on claims against officers or employees of the State for their liability in the scope of employment.
- ARK. CODE ANN. § 21-9-204 (2014). Effect of Employee Insurance.
  - Damages will be limited to the extent such officers/employees are covered by insurance.
- ARK. CODE ANN. § 21-9-205 (2014). Procedure for Making Claims.
  - Any party claiming indemnification must notify the Attorney General and comply with all statutory requirements.
- ARK. CODE ANN. § 21-9-301 (2014). Tort liability—Immunity Declared
  - Political subdivisions of the State are immune from suit and liability, except to the extent that they may be covered by liability insurance.
  - No tort actions against any subdivision based on acts of its agents and employees.
- ARK. CODE ANN. § 21-9-302 (2014). Tort liability—Settlement of Claims.
  - Subdivisions are permitted to hear and settle claims against them outside of court.
- ARK. CODE ANN. § 21-9-303 (2014). Motor Vehicle Liability Insurance Required.
  - All subdivisions must carry motor vehicle liability insurance.
  - Any person injured by a motor vehicle operated by a subdivision employee operating a vehicle in the scope of employment has a direct action against the insurer if insured, or the government entity if uninsured.
- ARK. CODE ANN. §§ 14-357 to 362 (2014). Airport Facilities Generally.
  - ARK. CODE ANN. § 14-357 (2014). County Airport Commissions.
    - Authorizes the creation of County Airport Commissions to operate their airports.
  - ARK. CODE ANN. § 14-358 (2014). County Airports.
    - Counties may acquire and operate airports.
  - ARK. CODE ANN. § 14-359 (2014). Municipal Airport Commissions.
    - Municipalities/cities may create Airport Commissions to operate their airports.
  - ARK. CODE ANN. § 14-360 (2014). Municipal Airports Generally.
    - Municipalities/cities may acquire and operate airports.
  - ARK. CODE ANN. § 14-362 (2014). Regional Airports.
    - Several contiguous subdivisions may own and operate airports and create commissions to operate them.
- **Relevant Case Law:**
  - *Fuqua v. Flowers*, 20 S.W.3d 388 (Ark. 2000).

- “[S]overeign immunity presents a complete bar to suits against the State.” *Id.* at 390. “More particularly, this court has held that such officers and employees acting without malice within the course and scope of their employment are immune from an award of damages in litigation.” *Id.*
  - *Loge v. United States*, 494 F. Supp. 883 (W.D. Ark. 1980) *aff’d in part & rev’d in part*, 662 F.2d 1268 (8th Cir. 1981) (holding concerning Arkansas law left untouched by 8th Circuit).
    - “Under Arkansas law, all political subdivisions of the state are immune from tort liability and therefore there are no Arkansas cases dealing with tort liability for regulatory acts and omissions.” *Loge*, 494 F. Supp. at 889.
  - *White v. City of Newport*, 933 S.W. 2d 800 (Ark. 1996).
    - “[W]e recognized that the municipal tort immunity statute works in such a way that it makes city governments bear some responsibility for their negligence, by allowing recovery to the extent of insurance coverage, but prevents the cities from being exposed to high judgments that would destroy them.” *Id.* at 803.
  - *City of Caddo Valley v. George*, 9 S.W. 3d 481 (Ark. 2000).
    - “Thus, a municipal corporation's immunity for negligent acts only begins where its insurance coverage leaves off.” *Id.* at 484.
  - *L. C. Eddy, Inc. v. City of Arkadelphia, Ark.*, 303 F.2d 473 (8th Cir. 1962) (lack of case law involving tort claims suggests this applies only to claims based on contract law).
    - “However, from our analysis of the pertinent provisions of the Act and controlling principles of law, we find no basis for holding that the Act was designed to relieve the city from liability in a [case for breach of contract].” *Id.* at 474.
- **Monetary Limits and Caps:**
  - ARK. CODE ANN. § 21-9-304 (2014). Indemnification by State for Certain Actions.
    - No punitive damages.
    - The State will indemnify its subdivisions only to the extent they are not covered by insurance.
  - There are no enumerated caps on liability, but liability is generally limited to the extent of insurance coverage.
- **State-Specific Aspects:**
  - Arkansas has one of the strongest sovereign immunity schemes. The Constitution bars all suits against the State in state court. However, the Claims Commission was created to deal with the claims themselves. As well, Arkansas statutes extend immunity to subdivisions except in narrow circumstances.
- **Waiver of Immunity:**
  - For political subdivisions (the owners of airports in Arkansas), immunity is waived to the extent the subdivision carries liability insurance. All subdivisions must carry auto insurance. Thus, they may be sued for auto accidents at the

least. If the subdivision chooses to purchase other insurance, then the coverage in the policy determines the scope of liability.

- **Process:**
  - ARK. CODE ANN. §§ 19-10-101 to 19-10-302 (2014). Claims Against the State.
    - ARK. CODE ANN. § 19-10-201(a)(1) (2014). Creation.
      - There is created a commission to be known as the “Arkansas State Claims Commission.”
    - ARK. CODE ANN. § 19-10-204 (2014). Jurisdiction.
      - Claims Commission shall have exclusive jurisdiction over all claims against the State of Arkansas and its several agencies, departments, and institutions, but shall have no jurisdiction of claims against municipalities, counties, school districts, or any other political subdivisions of the State.
      - The commission shall have jurisdiction only over those claims that are barred by the doctrine of sovereign immunity from being litigated in a court of general jurisdiction.
      - No award for any claim which, as a matter of law, would be dismissed from a court of law or equity for reasons other than sovereign immunity.
    - ARK. CODE ANN. § 19-10-208 (2014). Complaints.
      - All proceedings to enforce claims under this subchapter shall be commenced by a verified complaint.
      - Must comply with the strict filing requirements.
    - ARK. CODE ANN. § 19-10-209 (2014). Permissible Filing Period.
      - Plaintiffs must comply with the statute of limitations relevant to their claim, as found elsewhere in Arkansas law.
    - ARK. CODE ANN. § 19-10-301 (2014). Definitions.
      - (1) “Insurer” means every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance; and
      - (2) “Subrogation claim” means any claim filed with the Arkansas State Claims Commission by an insurer or its insured, or both, to recover money paid or owed by an insurer to any individual under a contract of insurance.
    - ARK. CODE ANN. § 19-10-302 (2014). Exhaustion of Remedies Against Insurer.

## CALIFORNIA

### Summary:

The State of California has not abrogated sovereign immunity for airports that are treated similarly to other governmental entities. Immunity is the rule, except for specific acts identified by statute. If liability is permitted, there is no cap on damages except that no punitive damages may be awarded. There is a 2-year statute of limitations, subject to a 6-month limit after filing of a written notice. However, a 1-year limit applies to actions involving death, personal injury, and certain other claims.

- **Statutory Authority:**
  - CAL. CONST. art. III, § 5 Suits Against the State.
  - CAL. GOV'T CODE §§ 815 to 818.9 (2014). Liability of Public Entities.
    - CAL. GOV'T CODE § 815(a) (2014). Except as otherwise provided by statute a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.
      - CAL. GOV'T CODE § 815.2(a), (b) (2014). Liable for injuries proximately caused by an act or omission of an employee acting within the scope of employment.
      - CAL. GOV'T CODE § 815 (2014). Liable for injuries proximately caused by a tortious act or omission of their independent contractors.
      - CAL. GOV'T CODE § 815.6 (2014). Liable if fails to discharge a mandatory duty imposed by enactment that is designed to prevent against the risk of the particular kind of injury incurred.
    - CAL. GOV'T CODE § 818.2 (2014). A public entity is not liable for injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.
    - CAL. GOV'T CODE § 818.6 (2014). A public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than its property, for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.
- **Relevant Case Law:**
  - *Davis v. City of Pasadena*, 42 Cal. App. 4th 701 (Cal. App. 2d Dist. 1996).
    - "The general rule in California is sovereign immunity. Public entities have liability for injury only when that liability has been assumed by statute." *Id.* at 703.
- **Monetary Limits and Caps:**
  - CAL. GOV'T. CODE § 818 (2014). No award for exemplary or punitive damages.
- **State-Specific Aspects:**
  - The acquisition and operation of an airport are "public and governmental functions, exercised for a public purpose, and are matters of public necessity."
    - CAL. PUB. UTIL. CODE § 21004, Public and governmental function, public necessity.
  - The Department of Transportation (defined in Cal. Pub. Util. Code § 21006.5):
    - CAL. PUB. UTIL. CODE § 21204 (2014). May adopt, administer, and enforce rules and regulations.
    - CAL. PUB. UTIL. CODE § 21242 (2014). May participate as plaintiff or defendant on behalf of the State or political subdivision.

- CAL. PUB. UTIL. CODE §§ 21004, 21690.5(e) (2014). Maintenance and operation of the airports are public and governmental functions.
- **Waiver of Immunity:**
  - CAL. GOV'T CODE §§ 815.2(a), (b) (2014). A public entity is liable for injuries proximately caused by an act or omission of an employee acting within the scope of employment.
  - CAL. GOV'T CODE § 815.4 (2014). A public entity is liable for injuries proximately caused by a tortious act or omission of their independent contractors.
  - CAL. GOV'T CODE § 815.6 (2014). "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty."
- **Process:**
  - CAL. GOV'T CODE § 945.6(a)(2) (2014). Suit against a public entity must be filed within 2 years from the date of accrual, if written notice is not provided.
  - CAL. GOV'T CODE § 945.6(a)(1) (2014). If written notice is provided, then suit must be filed within 6 months after the notice.
  - CAL. GOV'T CODE § 911.2 (2014). A claim for death, personal injury, or injury to personal property or growing crops must be presented within 6 months after the accrual of the cause of action. Other claims must be presented within 1 year after accrual.

## COLORADO

### Summary:

The State of Colorado has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. An individual governmental entity, including an airport, is immune from tort liability; however, the airport may waive immunity in whole or in part. Even if subject to liability, there is a cap of \$350,000, or \$999,000 for multiple claims arising in the same occurrence. Claims must be noticed within 182 days or forever barred.

- **Statutory Authority:**
  - COLO. REV. STAT. §§ 24-10-101 to 24-10-120 (2014). Colorado Governmental Immunity Act.
    - Colo. Rev. Stat. § 24-10-104 (2014). Waiver of Sovereign Immunity. Notwithstanding any provision of law to the contrary, the governing body of a public entity, by resolution, may waive the immunity granted in § 24-10-106 for the types of injuries described in the resolution. Any such waiver may be withdrawn by the governing body by resolution. A resolution adopted pursuant to this section shall apply only to injuries occurring subsequent to the adoption of such resolution.

- COLO. REV. STAT. § 24-10-106 (2014). Immunity and Partial Waiver. (1) A public entity shall be immune from liability in all claims for injury which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant except as provided otherwise in this section.
  - COLO. REV. STAT. § 24-10-106 (1.5)(c) (2014). Sovereign immunity is waived by a public entity in an action for injuries resulting from: The waiver of sovereign immunity created in paragraph (e) of subsection (1) of this section does not apply to any backcountry landing facility located in whole or in part within any park or recreation area maintained by a public entity. For purposes of this paragraph (c), "backcountry landing facility" means any area of land or water that is unpaved, unlighted, and in a primitive condition and is used or intended for the landing and takeoff of aircraft, and includes any land or water appurtenant to such area.
- COLO. REV. STAT. § 24-10-108 (2014). Sovereign Immunity a Bar. Except as provided in §§ 24-10-104 to 24-10-106, sovereign immunity shall be a bar to any action against a public entity for injury which lies in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant.
- COLO. REV. STAT. § 24-10-114(4)(a) (2014). Limitations on Judgment. A public entity shall not be liable either directly or by indemnification for punitive or exemplary damages or for damages for outrageous conduct, except as otherwise determined by a public entity pursuant to § 24-10-118 (5).
- COLO. REV. STAT. § 24-10-114.5 (2014). Limitation on Attorney Fees in Class Action litigation. Caps attorneys' fees at \$250,000 and mandates that attorney fees are to be set by the court.
- COLO. REV. STAT. § 41-3-106 (2014). Powers of an Authority. Including power of an airport authority to sue and be sued.
- **Relevant Case Law:**
  - City and County of Denver v. Crandall, 161 P.3d 627 (Colo. 2007).
    - Notice period does not begin to run until claimant actually discovers or should have discovered the injury. *Id.* at 634.
  - Robinson v. Colo. State Lottery Div., 179 P.3d 998 (Colo. 2008).
    - Colorado Governmental Immunity Act (CGIA) does not apply to actions that could lie in contract despite pleadings in tort. *Id.* at 1003.
  - Shootman v. Colo. Dep't of Transp., 926 P.2d 1200 (Colo. 1996).
    - "The doctrine of *nullum tempus* no longer applies to the State [of Colorado]." *Id.* at 1206. "In abrogating sovereign and governmental immunity, we specifically noted that the legislature has the authority to restore sovereign and governmental immunity in whole or in part." *Id.* at 1207.

- **Monetary Limits and Caps:**
  - COLO. REV. STAT. § 24-10-109 (2014). Sets cap at \$350,000 for injury to a single person in a single occurrence, and sets cap at \$999,000 for an injury to two or more persons in any single occurrence.
  - COLO. REV. STAT. § 24-10-114(4) (2014). Punitive damages prohibited.
- **Waiver of Immunity:**
  - COLO. REV. STAT. § 24-10-104 (2014). Waiver of Sovereign Immunity.
  - COLO. REV. STAT. § 24-10-106 (2014). Immunity and Partial Waiver.
- **Process:**
  - COLO. REV. STAT. § 24-10-109 (2014). Notice required—Contents—To whom given—Limitations. (1) Any person claiming to have suffered an injury by a public entity or by an employee thereof while in the course of such employment, whether or not by a willful and wanton act or omission, shall file a written notice as provided in this section within one hundred eighty-two days after the date of the discovery of the injury. Compliance is a jurisdictional requirement and failure to comply is a complete bar to recovery.

## CONNECTICUT

### Summary:

The State of Connecticut has abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. However, state officers and employees are relieved from personal liability for actions within the scope of employment. Any action against an officer or employee is against the State. There is no cap on damages. Claims must be submitted to the Claims Commissioner, after which a 1-year statute of limitations applies.

- **Statutory Authority:**
  - CONN. GEN. STAT. §§ 4-141 to 4-165c (2014). Claims Against the State.
    - CONN. GEN. STAT. § 4-160 (2014). Authorization of Actions Against the State. Authorizes the Claims Commissioner to determine when claims against the State can go forward. Establishes 1-year statute of limitations for claims from the date such authorization to sue is granted by the Commissioner. Applicable statute of limitations is tolled during pendency of authorization.
    - CONN. GEN. STAT. § 4-165 (2014). Immunity of State officers and Employees from Personal Liability. Relieves state officers and employees from personal liability for actions within the scope of employment. Any action against an officer or employee is against the State.
    - CONN. GEN. STAT. § 4-165c (2014). Establishes immunity of the State and its officials, employees, and agents from certain actions.
  - CONN. GEN. STAT. § 52-64 (2014). Service in Action against State. Service must be made to the Attorney General.

- **Relevant Case Law:**
  - *Fidelity Bank v Connecticut*, 348 A.2d 633 (Conn. 1974).
    - Claims must be submitted to the Claims Commissioner or are otherwise barred by the principles of governmental immunity.
  - *Columbia Air Servs. Inc. v Dep’t of Transp.*, 977 A.2d 636 (Conn. 2009).
    - “In the absence of a statutory waiver of sovereign immunity, the plaintiff may not bring an action against the state for monetary damages without authorization from the claim commissioner to do so.” *Id.* at 644. “[T]he doctrine of sovereign immunity implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss.” *Id.* at 641 (citation omitted).
  - *DiMartino v. Richens*, 822 A.2d 205 (Conn. 2003).
    - “It is well settled that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Id.* at 227 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).
  - *Miller v. Egan*, 828 A.2d 549 (Conn. 2003).
    - “We have also recognized that because the state can act only through its officers and agents, a suit against a state officer concerning a matter in which the officer represents the state is, in effect, against the state.” *Id.* at 558 (quoting *Fetterman vs. University of Connecticut*, 473 A.2d 1176, 1182 (Conn. 1984)).
- **Monetary Limits and Caps:**
  - No cap.
- **Waiver of Immunity:**
  - CONN. GEN. STAT. § 4-160(c) (2014). Authorization of Actions Against the State. “The state waives its immunity from liability and from suit in each such action and waives all defenses which might arise from the eleemosynary or governmental nature of the activity complained of. The rights and liability of the state in each such action shall be coextensive with and shall equal the rights and liability of private persons in like circumstances.”
- **Process:**
  - CONN. GEN. STAT. § 52-64 (2014). Service in Action Against State. Service must be on the Attorney General in Hartford, Connecticut.
  - CONN. GEN. STAT. § 4-160 (2014). Service will toll the statute of limitations until the Claims Commissioner makes its determination of authorization to sue.

## DELAWARE

### Summary:

The State of Delaware has partially abrogated sovereign immunity for airports, which are treated differently from other governmental entities. Airports are immune from

liability for the construction, maintenance, operation, or management of any airport. Even if subject to liability, there is a cap of \$300,000 from a single occurrence. If a governmental entity purchases insurance, the cap can rise to the level of that insurance. Notice must be given within 1-year of occurrence.

○ **Statutory Authority:**

- DEL. CONST. art. I, § 9. Courts shall be open; Remedy for injury; Suits against State. “All courts shall be open; and every person for an injury done him or her in his or her reputation, person, movable or immovable possessions, shall have remedy by the due course of law, and justice administered according to the very right of the cause and the law of the land, without sale, denial, or unreasonable delay or expense. Suits may be brought against the State, according to such regulations as shall be made by law.”
- DEL. CODE ANN. tit. 2, § 708 (2014). Tort Liability. “No action or suit sounding in tort shall be brought or maintained against the State or any political subdivision, or the officers, agents, servants or employees of the State or any political subdivision, on account of any act done in or about the construction, maintenance, enlargement, operation, superintendence or management of any airport or other air navigation facility.”
- DEL. CODE ANN. tit. 10, §§ 4001–4005 (2014). Tort Claims Act: State Tort Claims.
- DEL. CODE ANN. tit. 10, §§ 4010–4013 (2014). Tort Claims Act: County and Municipal Tort Claims.
  - DEL. CODE ANN. tit. 10, § 4011 (2014). Immunity from Suit. “Except as otherwise expressly provided by statute, all governmental entities and their employees shall be immune from suit on any and all tort claims seeking recovery of damages. That a governmental entity has the power to sue or be sued, whether appearing in its charter or statutory enablement, shall not create or be interpreted as a waiver of the immunity granted in this subchapter.”

○ **Relevant Case Law:**

- *Roberts v. Delmarva Power & Light Co.*, 2 A.3d 131 (Del. Super. Ct. 2009).
  - Delaware River and Bay Authority, which operated an airpark, had state tort immunity from wrongful death and negligence action arising out of a fatal accident; an aircraft collided with utility pole near airpark. The court determined Delaware River and Bay Authority was an agency of the State, and their motion for summary judgment was granted. *Id.* at 146.

○ **Monetary Limits and Caps:**

- DEL. CODE ANN. tit. 10, § 4013 (2014). Under the Tort Claims Act, there is a \$300,000 limitation for all claims arising out of a single occurrence. If a political subdivision elects to purchase liability insurance, the recovery shall not exceed the amount of insurance coverage.

○ **State-Specific Aspects:**

- DEL. CODE ANN. tit. 2, § 708 (2014). No action may be brought against the State or any political subdivision on account of construction, maintenance,

operation, or management of any airport.

- **Waiver of Immunity:**
  - DEL. CONST. art. I, § 9.
- **Process:**
  - DEL. CODE ANN. tit. 10, § 4013(3) (2014). Counties and municipalities can enact their own notice requirements by ordinance, but suit cannot be barred so long as notice is given within 1 year of the occurrence.

## FLORIDA

### Summary:

The State of Florida has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities and which may be held liable for damages resulting from negligent or wrongful action of public employees in the scope of their employment if a private person would be liable in similar circumstances. However, a governmental entity is not liable in tort when the governmental act being sued upon is “discretionary,” as opposed to “operational,” in nature. Even if subject to liability, there is a cap of \$200,000 and aggregate claims at \$300,000. In addition, airports may purchase additional insurance beyond the cap. There is a 4-year statute of limitations.

- **Statutory Authority:**
  - FLA. CONST. art. X, § 13. Suits Against the State. Provision may be made by general law for bringing suit against the State as to all liabilities now existing or hereafter originating.
  - FLA. STAT. § 768.28 (2014). Waiver of Sovereign Immunity in Tort Actions; Recovery limits; Limitation on Attorney Fees; Statute of Limitations; Exclusions; Indemnification; Risk Management programs.
    - This law was passed pursuant to Article 10, Section 13 of the Florida Constitution concerning the Legislature’s power to make general laws regarding sovereign immunity. The State, its agencies, and subdivisions waive sovereign immunity to the extent specified in this act. Government entities may be held liable for damages resulting from negligent or wrongful action of public employees in the scope of their employment, if a private person would be liable in similar circumstances.
    - This act encompasses the State, its agencies, subdivisions, executive departments, the Legislature, the judicial branch, independent state bodies, counties, municipalities, and corporations primarily acting as instrumentalities of the State, counties, or municipalities.
    - Government entities are liable for tort claims in the same manner and to the same extent as a private person under similar circumstances, but are not liable for punitive damages. Individual claims are capped at \$200,000 and aggregate claims at \$300,000.
  - FLA. STAT. §§ 125.011–125.59 (2014). County Commissioners: Powers and Duties.
    - Counties, as defined in the statute, may establish and operate airports.

- FLA. STAT. § 180.01–180.301 (2014).
    - Municipalities, as defined in the statute, may establish and operate airports.
  - FLA. STAT. § 284.38 (2014). Waiver of Sovereign Immunity; Effect.
    - The State Risk Management Fund may provide funds to claims as limited in Section 768.28.
  - FLA. STAT. § 331.328 (2014). Sovereign Immunity.
    - Space Florida, as a special district, has the same extent of sovereign immunity as under the constitution and laws of Florida. The State waives and grants immunity as much as waived and granted by law.
  - FLA. STAT. § 332.08 (2014). Additional Powers.
    - Municipalities may establish airport authorities to operate airports under their jurisdiction.
  - FLA. STAT. § 379.2293 (2014). Airport Activities Within the Scope of a Federally Approved Wildlife Hazard Management Plan or a Federal or State Permit or Other Authorization for Depredation or Harassment.
    - Airport activities in furtherance of conservation laws are immune from liability.
- **Relevant Case Law:**
- *Interair Servs., Inc. v. Ins. Co. of N. Am.*, 375 So. 2d 317 (Fla. Ct. App. 2d Dist. 1979). Sovereign Immunity doctrine will not bar claims based on breach of express contract. *Id.* at 318.
  - *Collazos v. City of W. Miami*, 683 So. 2d 1161 (Fla. Ct. App. 3d Dist. 1996). “[T]he sole purpose of the statute waiving sovereign immunity, section 768.28 of the Florida Statutes, was to waive that immunity which prevented recovery for breaches of existing common law duties of care in the same manner as a private individual under like circumstances....” *Id.* at 1163.
  - *City of Fort Lauderdale v. Todaro*, 632 So. 2d 655 (Fla. Dist. Ct. App. 4th Dist. 1994). “Initially, we note this section [§ 768.28] was not invoked by the City in its pleadings, in its pretrial statement, or even at trial until after the close of the evidence. Ordinarily, since this section permits an employer to avoid liability for its employee's actions, it should be pleaded as an affirmative defense.” *Id.* at 657.
  - *Zamora v. Florida Atl. Univ. Bd. of Trus.*, 969 So. 2d 1108 (Fla. Ct. App. 4th Dist. 2007). [The Florida Supreme Court previously concluded] that the meaning of recovery is clear and unambiguous and includes all amounts recovered, including attorneys' fees. *Id.* at 1111.
  - *Seguine v. City of Miami*, 627 So. 2d 14 (Fla. Ct. App. 3d Dist. 1993).
    - “First, as to the discretionary function exception, it has been held that a governmental entity is not liable in tort when the governmental act being sued upon is ‘discretionary,’ as opposed to ‘operational,’ in nature. This exception is based on the separation of powers doctrine and recognizes that there are certain policy-making, planning, or judgmental governmental functions which are inherent in the act of governing and therefore ought not be subjected to scrutiny by judge or jury as to the wisdom of their performance because it would inappropriately entangle the courts in fundamental questions of planning and policy. On the other hand, governmental acts which

attempt to implement policy at the operational level do not fall within this discretionary act exception.” *Id.* at 16–17.

- “Second, as to the public duty doctrine exception, it has been held that a governmental entity is not liable in tort for breaching a duty which the government owes to the public generally, as opposed to a special tort duty owed to a particular individual. A plaintiff suing a governmental entity in tort must allege and prove that the defendant breached a common law or statutory tort duty owed to the plaintiff individually and not a tort duty owed to the public generally.” *Id.* at 17.
- *Rodriguez v. Miami-Dade Cnty.*, 117 So. 3d 400 (Fla. 2013).
  - The court noted a four-part test from a previous case:
    - “(1) Does the challenged act, omission, or decision necessarily involve a basic governmental policy, program, or objective? (2) Is the questioned act, omission, or decision essential to the realization or accomplishment of that policy, program, or objective as opposed to one which would not change the course or direction of the policy, program, or objective? (3) Does the act, omission, or decision require the exercise of basic policy evaluation, judgment, and expertise on the part of the governmental agency involved? (4) Does the governmental agency involved possess the requisite constitutional, statutory, or lawful authority and duty to do or make the challenged act, omission, or decision? If these preliminary questions can be clearly and unequivocally answered in the affirmative, then the challenged act, omission, or decision can, with a reasonable degree of assurance, be classified as a discretionary governmental process and nontortious, regardless of its un wisdom.” *Id.* at 407 n.4.
- *Am. Home Assurance Co. v. Nat’l R.R. Passenger Corp.*, 908 So. 2d 459 (Fla. 2005).
  - Sovereign immunity cannot be abrogated by the purchase of insurance but only by legislation. *Id.* at 471.
- *Pollock v. Fla. Dep’t of Highway Patrol*, 882 So. 2d 928 (Fla. 2004).
  - “[B]asic judgmental or discretionary governmental functions are immune from legal action, whereas operational acts are not protected by sovereign immunity.” *Id.* at 933.
  - Restating the public duty doctrine, the court declared that “[t]here can be no governmental liability unless a common law or statutory duty of care existed that would have been applicable to an individual under similar circumstances.” *Id.* at 932 (quoting *Henderson v. Bowden*, 737 So. 2d 532, 534–35 (Fla. 1999)).
- Fla. Op. Att’y Gen. 96-69 (1996).
  - Subject: Sovereign Immunity, Applicability to Airport Authority; Date: September 11, 1996.
  - “The Sebring Airport Authority is a ‘state agency or subdivision’ for purposes of section 768.28, Florida Statutes (1996).”

- “State agencies or subdivisions within the scope of section 768.28, Florida Statutes, are defined to include ‘independent establishments of the state; ...and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities....’”
  - “Thus, in light of the creation of the Sebring Airport Authority as a public instrumentality and the legislative determination that it exercises an essential governmental function and in consideration of the powers and duties of the authority, it is my opinion that the Sebring Airport Authority is a state agency or subdivision within the scope of section 768.28(2), Florida Statutes (1996).”
- **Monetary Limits and Caps:**
  - FLA. STAT. § 768.28(5) (2014). “The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment.” Sets cap at \$200,000 per occurrence per person, or up to a maximum of \$300,000 for multiple claimants in one occurrence. An injured party may seek to have a claims bill introduced in the state legislature to award damages above the amount of the cap.
  - *O'Donnell v. Broward Cnty.*, 417 So. 2d 1043 (Fla. Ct. App. 4th Dist. 1982).
    - Claimants must comply with time requirements for bringing claims as found in subsection (6) and may not claim for punitive damages against the State, per subsection (5).
    - These are conditions precedent to the sustaining of any action against the State. If they are not met, then the claim remains barred.
  - *City of Miami v. Valdez*, 847 So. 2d 1005 (Fla. Ct. App. 3d Dist. 2003). Even if a claimant exhausts the statutory caps, he may procure a claims bill from the Legislature to cover judgments in excess of the cap. *Id.* at 1006–08.
  - *Comer v. City of Palm Bay*, 147 F. Supp. 2d 1292 (M.D. Fla. 2001). “This [\$100,000] per plaintiff limit is not affected by the presence of more than one underlying claim, and is not affected by the plaintiff's decision to consolidate multiple claims into a single action and to proceed to a single judgment.” *Id.* at 1297–98.
  - Fla. Op. Att'y Gen. 175 (1989). “A state agency or subdivision which obtains insurance coverage in excess of the statutory limits of \$100,000 or \$200,000 in anticipation of any claims bill which it may be liable to pay does not, by obtaining such coverage, waive its defense of sovereign immunity or increase its limits of liability.” See *also* *Am. Home Assurance Co. v. Nat'l R.R. Passenger Corp.*, 908 So. 2d 459 (Fla. 2005).
- **State-Specific Aspects:**
  - Airports in Florida are controlled by local governments—counties, cities, or their airport authorities. These entities are included in the State's immunity waiver law.
- **Waiver of Immunity:**
  - Like a noticeable number of other states, Florida has chosen the vicarious liability model for its waiver of sovereign immunity. The state, county, or

municipality becomes liable for the negligence of its public employees. Equally, the government entity is liable only if and to the extent a private person would be under the circumstances; the immunity waiver does not create any new causes of action.

- Just about every public use airport in Florida is owned/operated by some level of local government, be it a county or municipality. A large number are controlled by airport/aviation authorities that are created by the local government. All these levels and parts of the government are included under Section 768.28 of the Florida Statutes, as noted by the Attorney General's Opinion cited above. Thus, relevant government entities (actual governments or their public bodies) would become liable for the negligent torts of their employees in the operation of airports in Florida.
  - There is still an active discretionary function exception in Florida that has been heavily litigated. Essentially, and like most other states, policy decisions or judgments are still shielded from litigation.
- **Process:**
    - Fla. Stat. § 768.28 (2014).
      - Claimants may not file suit until they have notified the relevant entity or, except for municipalities and the Florida Space Authority, present the claim to the Department of Financial Services within 3 years of the accrual of the claim. Notice and denial of the claim are conditions precedent to filing a lawsuit in court.
      - Public employees cannot be sued individually, unless they acted in bad faith, with malicious purpose, or with wanton and willful disregard for human beings, or if an employee's actions giving rise to a claim fall outside the scope of employment.
      - There is a 4-year statute of limitations on claims against the State.
      - This act does not affect laws allowing the government to purchase insurance. As well, government entities may participate in self-insurance programs. Purchase of such insurance does not waive immunity.

## GEORGIA

### Summary:

The State of Georgia has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$1 million for a single occurrence and \$3 million for multiple entities injured in a single occurrence; however, punitive damages are not permitted. Service of process must be made on the CEO of the agency as well as the director of the Risk Management Division of the Department of Administrative Services who has the authority to settle the claim. The notice of claim must be made within 1 year of occurrence and there is a 2-year statute of repose.

- **Statutory Authority:**
  - GA. CONST. art. I, § 2, para. 9, Sovereign Immunity and Waiver Thereof, Claims Against the State and its Departments, Agencies, Officers, and Employees.

- GA. CODE ANN. §§ 50-21-20 to 50-21-37 (2014). Georgia Tort Claims Act.
    - GA. CODE ANN. § 50-21-23 (2014). Immunity is waived for both tort and contract actions.
    - GA. CODE ANN. § 50-21-24(2) (2014). Immunity for discretionary functions.
  - GA. CODE ANN. § 6-3-1 (2014). The Department of Transportation is authorized and empowered to construct and maintain airports and to contract with counties and municipalities of the State to construct and maintain airports.
  - GA. CODE ANN. § 6-3-20 (2014). Counties, municipalities, and other political subdivisions are authorized, separately or jointly, to establish, construct, maintain, operate, etc., airports.
  - GA. CODE ANN. § 6-3-21 (2014). Operation of airports under Section 6-3-20 of the Georgia Code is deemed to be used for governmental and public purposes.
  - GA. CODE ANN. § 36-33-(a) (2014). There is no waiver of sovereign immunity for municipal corporations.
  - GA. CODE ANN. § 36-33-1(b) (2014). Municipal corporations are not liable for legislative or judicial functions but are liable for negligent performance of ministerial duties.
- **Relevant Case Law:**
- *S. Airways Co. v. De Kalb Cnty.*, 118 S.E.2d 234 (Ga. Ct. App. 1960).
    - County operating an airport and entering into a contract on behalf of that airport performs a proprietary function. “In the absence of express statute, it appears that the general rule in the United States is that political subdivisions operating airports are engaged in a business or proprietary function and not performing an act of government and, therefore, there is no governmental immunity. 66 A.L.R. 2d 636.” *Id.* at 239.
  - *Stryker v. City of Atlanta*, 738 F. Supp. 1423 (N.D. Ga. 1990).
    - The plaintiff was assaulted at an airport owned and operated by the City. The central issue was whether the airport was operated as a governmental function (for public benefit) or a ministerial function (to generate revenue). In this case, the City leased the entire terminal building area to contracting airlines and outside concessions. The existence of such commercial leases led courts to conclude that the municipality was engaged in a ministerial function. The City was found negligent for failure to keep invitees safe. *See also Taylor v. King*, 122 S.E.2d 265 (Ga. Ct. App. 1961) (holding that the operation of a municipal airport when leased for substantial revenue becomes a ministerial/proprietary function of the City).
  - *Wootton v. City of Atlanta*, 115 S.E.2d 396 (Ga. Ct. App. 1960).
    - A woman slipped and fell at a municipal airport maintained by the city. She sued for negligence but failed to establish breach of duty. Workers need only exercise ordinary care to maintain reasonably safe condition. There were no facts or circumstances shown that the workers had any knowledge of the liquid substance on the ground. Case dismissed; judgment affirmed.

- **Monetary Limits and Caps:**
  - GA. CODE ANN. § 50-21-29 (2014). Monetary cap is set at \$1 million for loss from a single occurrence or \$3 million in the aggregate for multiple entities' injuries in a single occurrence.
  - GA. CODE ANN. § 50-21-30 (2014). Bars punitive or exemplary damages and prejudgment interest.
  - GA. CODE ANN. § 50-21-31 (2014). Judgments bear 7 percent interest from date entered.
- **Process:**
  - GA. CODE ANN. § 50-21-25 (2014). Georgia Tort Claims Act is the exclusive remedy.
  - GA. CODE ANN. § 50-21-26 (2014). Notice of claim must be given within 1 year of the loss or its discovery.
  - GA. CODE ANN. § 50-21-27 (2014). Creates a 2-year statute of repose for tort claims against governmental entity.
  - GA. CODE ANN. § 50-21-28 (2014). Establishing court of jurisdiction for claims.
  - GA. CODE ANN. § 50-21-35 (2014). Service of process must be made on the Chief Executive Officer (CEO) of the agency as well as the director of the Risk Management Division of the Department of Administrative Services.
  - GA. CODE ANN. § 50-21-36 (2014). Commissioner of the Department of Administrative Services has power to settle within limits of the Tort Claims Act.

## HAWAII

### Summary:

The State of Hawaii has abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. When subject to liability, there is no cap on damages and attorneys' fees may be awarded up to 25 percent of the amount recovered. There is a 2-year statute of limitations.

- **Statutory Authority:**
  - HAW. REV. STAT. §§ 662-1 to 662-19 (2014). State Tort Liability Act.
    - HAW. REV. STAT. § 662-1 (2014). Definitions.
    - HAW. REV. STAT. § 662-2. Waiver and Liability of State. The State waives its immunity for torts of its employees and is held liable in the same manner and extent as a private individual except for pre-judgment interest or punitive damages.
    - HAW. REV. STAT. § 662-15 (2014). Exceptions.
  - HAW. REV. STAT. § 261-1 to 261-27 (2014).
    - HAW. REV. STAT. § 261-1 (2014). Definitions.

- HAW. REV. STAT. § 261-2 (2014). Development of Aeronautics, General.
  - HAW. REV. STAT. § 261-4 (2014). Airports, General.
- **Relevant Case Law:**
- Julius Rothschild & Co. v. Hawaii, 655 P.2d 877 (Haw. 1982).
    - “Under the State Tort Liability Act, the State is liable for the torts of its employees to the same extent as a private individual, HRS § 662–2, except, *inter alia*, for ‘[a]ny [tort] claim based upon...the exercise or performance or the failure to exercise or perform a *discretionary function or duty* on the part of a state officer or employee....’” *Id.* at 880 (quoting HAW. REV. STAT. § 662-15 (2014)).
    - “[We] emphasized that the primary factor in determining whether a state activity is or is not a discretionary function is whether the decision to act or not to act involves the evaluation of broad policy factors. Such an evaluation would include a consideration of the financial, political, economic, and social effects of a given plan or policy.” *Id.* at 880–81 (citation omitted).
  - Cootey v. Sun Inv., Inc., 718 P.2d 1086 (Haw. 1986).
    - “The State Tort Liability Act...did not create any cause of action where none existed before. The effect of the Act is to waive immunity from traditionally recognized common law causes of action in tort, other than those expressly excluded. It was not intended to visit the sovereign with novel liabilities.” *Id.* at 1089 (citations omitted).
  - Awakuni v. Awana, 165 P.3d 1027 (Haw. 2007).
    - “Our precedent makes clear that, in deciding whether actions of State officials fall within the discretionary function exception, we must ‘determine whether the challenged action involves the effectuation of a “broad public policy[,]” on the one hand, or routine, “operational level activity[,]” on the other.’” *Id.* at 1044 (citation omitted).
- **Monetary Limits and Caps:**
- HAW. REV. STAT. § 662-2 (2014). Waiver and Liability of State. There are no caps on dollar amounts of damages, but punitive damages are not allowed.
  - HAW. REV. STAT. § 662–9 (2014). Costs. Court costs and fees as set forth by law may be allowed to the prevailing party.
  - HAW. REV. STAT. § 662–12 (2014). Attorney’s Fees. Attorneys’ fees may be awarded to the plaintiff as part of a judgment, award, or settlement, but such fees shall not exceed 25 percent of the amount recovered.
- **State-Specific Aspects:**
- Conveniently, all the airports in Hawaii are owned and operated by the Hawaii Department of Transportation. This means there would be no difference in the scope of immunity for different types of owners/operators.

- **Waiver of Immunity:**
  - Hawaii follows a vicarious liability style waiver of immunity for the State. This means the State or an agency becomes liable for the torts of its employees. However, Hawaii maintains a discretionary function exception and retains immunity against intentional tort claims. Moreover, the State’s liability would be the same as a private party’s liability in the same type of action. That is, tort law as it applies to private parties applies identically to the State.
  
- **Process:**
  - HAW. REV. STAT. § 662–3 (2014). Jurisdiction. Jurisdiction is the Circuit Court.
  - HAW. REV. STAT. § 662–4 (2014). Statute of Limitations. Statute of Limitations of 2 years applies.
  - HAW. REV. STAT. § 662–5 (2014). Jury. Actions shall be tried by the court without a jury.
  - HAW. REV. STAT. § 662–10 (2014). Judgment as Bar.
    - “The judgment in an action under this chapter shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the State whose act or omission gave rise to the claim.”
  - HAW. REV. STAT. § 662–14 (2014). Exclusiveness of Remedy.
    - “The authority of the State or any state agency to sue and be sued in its own name shall not be construed to authorize any other actions against the State or such agency or claims for torts of its employees, and the rights and remedies provided...shall be exclusive.”

## IDAHO

### Summary:

The State of Idaho has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$250,000 that varies annually based on statutory criteria. In addition, liability is limited to \$500,000 unless the governmental entity has purchased applicable insurance in excess of that amount. If the airport purchases insurance, the cap can rise to the level of that insurance. There is an 180-day notice requirement.

- **Statutory Authority:**
  - IDAHO CODE ANN. § 6-901 to 6-929 (2014). Idaho Tort Claims Act.
    - IDAHO CODE ANN. § 6-903 (2014). Liability of Governmental Entities—Defense of Employees. Immunity is waived for both tort and contract claims.
    - IDAHO CODE ANN. § 6-904 (2014). Tort Claims against Governmental Entities. Immunity is not waived for discretionary functions.

- **Relevant Case Law:**
  - *Tomich v. City of Pocatello*, 901 P.2d 501 (Idaho 1995).
    - Airplane owners sued City for destruction of airplane at municipal airport, claiming City was negligent in failing to maintain safe tie-down area. Held that: (1) aircraft owners have special relationship with municipal airport precluding governmental immunity under recreational use statute; (2) discretionary function exception did not immunize City; (3) owners were invitees at airport; and (4) owners were not entitled to attorney fees for unjustifiably denied requests for admissions.
  - *Dunbar v. United Steelworkers of Am.*, 602 P.2d 21 (Idaho 1979). *But see Sterling v. Bloom*, 753 P.2d 755 (Idaho 1986).
    - “We hold that our legislature has intended that wherein tort liability would attach to a private person, a governmental entity engaging in the same conduct will be liable. We do not ascertain an intent to create a new cause of action against a governmental entity for its attempts to govern.” *Dunbar*, 602 P.2d at 44.
- **Monetary Limits and Caps:**
  - IDAHO CODE ANN. § 6-1603 (2014). Limitation on Noneconomic Damages. Set at \$250,000. Each July 1, beginning in July 2004, the cap on noneconomic damages will increase or decrease according to the percentage amount of increase or decrease by which the Idaho Industrial Commission adjusts the average annual wage for purposes of workers’ compensation claims.
  - IDAHO CODE ANN. § 6-918 (2014). No Punitive Damages. Governmental entities and their employees shall not be liable for punitive damages on any claim allowed under the provisions of this act.
  - IDAHO CODE ANN. § 6-924 (2014). Policy limits—Minimum Requirements. Required that every policy or contract of insurance carry a limit of not less than \$500,000.
  - IDAHO CODE ANN. § 6-926 (2014). Judgment or Claims in Excess of Comprehensive Liability Plan—Reduction by Court—Limits of Liability. Liability is limited to \$500,000 unless the governmental entity has purchased applicable insurance in excess of that amount.
- **Process:**
  - IDAHO CODE ANN. § 6-911 (2014). Limitation of Actions. Action must be commenced within 2 years of when claim arose or when it should have reasonably been discovered.
  - IDAHO CODE ANN. § 6-905 (2014). Filing Claims Against State or Employee—Time. Claims against the State must be filed with the Secretary of State within 180 days from the date the claim arose.
  - IDAHO CODE ANN. § 6-906 (2014). Filing Claims Against Political Subdivision or Employee—Time. Claims against a political subdivision must be filed within 180 days from the date the claim arose.
  - IDAHO CODE ANN. § 6-906A (2014). Time for Filing Claims by Minors. A minor must file a claim within 180 days after reaching majority age, or 6 years after the claim arose, whichever is earlier.

## ILLINOIS

### Summary:

The State of Illinois has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. Tort claims heard by the Court of Claims are limited to \$100,000 if they did not involve operation of a state vehicle. Notice of claim must be filed within 1 year of accrual, and a 5-year statute of limitations applies to contract actions; all others (with few exceptions) are subject to a 2-year statute of limitations.

#### o **Statutory Authority:**

- ILL. CONST. art XIII, § 4. Sovereign Immunity Abolished.
- 620 ILL. COMP. STAT. 20/0.01 to 20/7 (2014). Joint Airports Act.
- 745 ILL. COMP. STAT. 5/1 (2014). Payment of Claims and Judgment. “Except as provided in the Illinois Public Labor Relations Act, the Court of Claims Act, the State Officials and Employees Ethics Act, and Section 1.5 of this Act, the State of Illinois shall not be made a defendant or party in any court.”
- 620 ILL. COMP. STAT. 20/3 (2014). Tort Immunity: Airport employees. “All employees of any airport established and operated under the ‘Intergovernmental Cooperation Act’ 1 are subject to the provisions of the Local Governmental and Governmental Employees Tort Immunity Act.”
- 705 ILL. COMP. STAT. 505/22 (2014). Time Limitations. Contract actions against the State must be filed within 5 years of accrual; other claims (with some exceptions) must be filed within 2 years.
- 745 ILL. COMP. STAT. 10/8-101 (2014). Limitation. Civil actions against a local entity must be commenced within 1 year from the date the claim accrued.

#### o **Relevant Case Law:**

- Village of Bloomingdale v. CDG Enterprises, Inc., 752 N.E.2d 1090 (Ill. 2001).
  - Courts must look to the Tort Immunity Act and not the common law to determine whether a governmental immunity exists. *Id.* at 1096.
- Mich. Ave. Nat’l Bank v. Cnty. of Cook, 732 N.E.2d 528 (Ill. 2000).
  - An immunity afforded to a unit of local government pursuant to the Tort Immunity Act is an affirmative defense. *Id.* at 535.
- Harinek v. 161 N. Clark St. Ltd. 692 N.E.2d 1177 (Ill. 1998). *But see* Ozik v. Gramins, 799 N.E.2d 871 (Ill. App. Ct. 1st Dist. 2003).
  - Section 2-201 immunity requires that the plaintiff’s injury must result from the public employee’s act or omission that was both an exercise of discretion and a policy determination. *Id.* at 355.
- Wrobel v. City of Chi., 742 N.E.2d 401 (Ill. App. Ct. 1st Dist. 2000).
  - “Discretionary” acts are those that are unique to a particular office and involve the exercise of personal deliberation and judgment in deciding whether to perform an act or in what manner the act should be performed. *Id.* at 396 (citations omitted).
- Spangenberg v. Verner, 747 N.E.2d 359 (Ill. App. Ct. 5th Dist. 2001).
  - “In order for immunity to attach via section 2–201, the plaintiff’s injuries must result from an act or omission involving both the

determination of policy and the exercise of discretion.” *Id.* at 435 (citation omitted).

- **Monetary Limits and Caps:**
  - 705 ILL COMP. STAT. 505/8(d) (2014). Court Claims of Jurisdiction; Deliberation Periods. Claims for tort damages heard by the Court of Claims are limited to \$100,000 if they did not involve operation of a state vehicle.
- **Waiver of Immunity:**
  - ILL CONST. art. XIII, § 4. Sovereign Immunity Abolished. “Except as the General Assembly may provide by law, sovereign immunity in this State is abolished.”
- **Process:**
  - 705 ILL COMP. STAT. 505/1 to 505/29 (2014). Court of Claims Act.
    - 705 ILL COMP. STAT. 505/22(a) (2014). Contract actions against the State must be filed within 5 years of accrual.
    - 705 ILL COMP. STAT. 505/22(h) (2014). With certain exceptions, other claims against the State must be filed within 2 years after the claim accrues.
    - 705 ILL COMP. STAT. 505/22-1 (2014). Notice of a claim must be provided within 1 year from the date the cause of action accrues.

## INDIANA

### Summary:

The State of Indiana has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$700,000 for injury or death of a single person or \$5,000,000 from multiple injuries in a single occurrence; however, no punitive damages may be awarded. Notice of a claim against the State must be filed within 270 days after the loss or within 180 days if the claim is against a political subdivision. There is a 10-year statute of limitations for contracts claims against the State or political subdivisions; otherwise ordinary statutes of limitations apply.

- **Statutory Authority:**
  - IND. CONST. art. IV, § 24. Right to Sue the State. “Provision may be made, by general law, for bringing suit against the State; but no special law authorizing such suit to be brought, or making compensation to any person claiming damages against the State, shall ever be passed.”
  - IND. CODE § 34-13-3-3 (LexisNexis 2014). Immunity of Governmental Entity or Employee. A governmental entity or an employee acting within the scope of the employee’s employment is not liable if a loss results from certain specified exemptions, including
    - (7) The performance of a discretionary function.
    - (8)(A). The adoption and enforcement of or failure to adopt and enforce a law (including rules and regulations).

- (10). The act or omission of anyone other than the governmental entity or the governmental entity's employee.
- **Relevant Case Law:**
    - *City of Indianapolis v. Duftitt*, 929 N.E.2d 231 (Ind. Ct. App. 2010).
      - Planning functions, which are immune, are functions involving formulation of basic policy characterized by official judgment, discretion, weighing of alternatives, and public policy choices; decisions about policy formation that involve assessment of competing priorities, weighing of budgetary considerations, or allocation of resources are also planning activities. *Id.* at 236–237.
      - Operational functions, to which no immunity attaches, are characterized by execution or implementation of previously formulated policy. Decisions based upon professional judgment rather than policy are not entitled to discretionary immunity under the Indiana Tort Claims Act. *Id.*
    - *Veolia Water Indianapolis LLC v. Nat'l Trust Ins. Co.*, 3 N.E.3d 1 (Ind. 2014).
      - “Pursuant to the ITCA, ‘governmental entities can be subject to liability for tortious conduct unless the conduct is within an immunity granted by Section 3 of [the] ITCA.’” *Id.* at 5 (citation omitted).
      - Regarding discretionary functions, “[t]he critical inquiry is not merely whether judgment was exercised but whether the nature of the judgment called for policy consideration.” *Id.* at 6 (citation omitted).
  - **Monetary Limits and Caps:**
    - IND. CODE § 34-13-3-4(a)(1)(C) (LexisNexis 2014). Damages cannot exceed \$700,000 for injury/death of one person.
    - IND. CODE § 34-13-3-4(a)(2) (LexisNexis 2014). Damages cannot exceed \$5,000,000 for injury/death of all persons from one occurrence.
    - IND. CODE § 34-13-3-4(b) (LexisNexis 2014). No punitive damages.
  - **Waiver of Immunity:**
    - IND. CONST. art. IV, § 24. Suits Against the State.
      - “Provision may be made by general law for bringing suit against the State, but no special law authorizing such suit to be brought, or making compensation to any person claiming damages against the State, shall ever be passed.”
  - **Process:**
    - IND. CODE § 34-13-3-6(a) (LexisNexis 2014). Filing of Notice with Attorney General or State Agency Required—When Claim Barred. Notice of a claim against the State must be filed within 270 days after the loss.
    - IND. CODE § 34-13-3-8(a) (LexisNexis 2014). Filing Notice for Claim Against Political Subdivision. Notice of a claim against a political subdivision must be filed within 180 days after the loss occurs.
    - IND. CODE § 34-13-1-1 (LexisNexis 2014). Statute of Limitations—Trial to Court. Suits against the State arising out an express or implied contract must be

brought within 10 years of accrual of the claim. Otherwise, general statutes of limitations apply.

- IND. CODE § 34-13-3-4 (LexisNexis 2014). Maximum Combined Aggregate Liability. Limitation on aggregate liability; punitive damages prohibited. Combined aggregate liability for all governmental entities for injury or death of one person in one occurrence, \$700,000; for injury to or death of all persons in that occurrence, \$5,000,000. “A governmental entity or an employee of a governmental entity acting within the scope of employment is not liable for punitive damages.”

## IOWA

### Summary:

The State of Iowa has abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When subject to liability, there is no cap on damage awards and attorney fees may be awarded; however, punitive damages may not. There is a 2-year statute of limitations within which a written notice must be filed for state claims or an action brought for claims against a governmental subdivision. Written notice for wrongful death must be made within 1 year.

### o Statutory Authority:

- IOWA CODE §§ 669.1–669.25 (2013). Iowa Tort Claims Act.
  - IOWA CODE § 669.14 (2013). Exempts discretionary functions from tort liability.
  - IOWA CODE § 669.15 (2014). Attorney fees may be awarded.
- Iowa Code §§ 670.1–670.13 (2013). Tort Liability of Governmental Subdivisions.
  - IOWA CODE § 670.2 (2013). Except as otherwise provided in this chapter, every municipality is subject to liability for its torts and those of its officers and employees, acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function. (Fifteen exceptions in § 670.4.)
  - IOWA CODE § 670.4(c) (2013). Exemption for any claim based upon an act or omission of an officer or employee of the municipality, exercising due care, in the execution of a statute, ordinance, or regulation whether the statute, ordinance, or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the municipality or an officer or employee of the municipality, whether or not the discretion is abused.
  - IOWA CODE § 670.5 (2013). An action against a governmental subdivision must be brought within 2 years of the loss, or injury.
  - IOWA CODE § 670.6 (2013). Claims against the State must be made in writing within 2 years after claim accrues and filed with director of department of management. Written claim for wrongful death against a governmental subdivision must be presented within 1 year after occurrence.

- **Relevant Case Law:**
  - Walker v. Iowa, 801 N.W.2d 548 (Iowa 2011).
    - The primary factor in determining whether a particular activity qualifies as a discretionary function, so as to protect governmental entity from liability under Iowa Tort Claims Act, is whether the decision to act involves the evaluation of broad policy factors; if so, the decision is more likely to be characterized as a discretionary function. The basis for the discretionary function exception is to prevent judicial “second guessing” of administrative decisions grounded in social, economic, and political policy through tort litigation, thereby protecting governmental entities from liability that would seriously handicap efficient government operations.
  - Goodman v. City of Le Claire, 587 N.W.2d 232 (Iowa 1998).
    - The two-step test for determining whether a challenged action falls within the discretionary function exception, and is thus entitled to statutory immunity from tort liability, requires the court to (1) consider whether the action is a matter of choice for the acting employee, and (2) when challenged conduct involves element of judgment, to determine whether that judgment is of the kind that the discretionary function exception was designed to shield.
- **Monetary Limits and Caps:**
  - IOWA CODE § 670.4(e) (2013). No claim for punitive damages.
  - Air Host Cedar Rapids, Inc. v. Cedar Rapids Airport Comm’n, 464 N.W.2d 450 (Iowa 1990). Municipal airport commission could not be held liable for punitive damages. *Id.* at 452.
- **Waiver of Immunity:**
  - Walker v. Iowa, 801 N.W.2d 548 (Iowa 2011). A governmental entity is entitled to immunity only to the extent permitted by statute. *Id.* at 554 (citation omitted).
- **Process:**
  - IOWA CODE § 669.18 (2013). Extension of Time. If a claim is made or a suit is begun under this chapter, and if a determination is made by the attorney general or by the court that the claim or suit is not permitted under this chapter for any reason other than lapse of time, the time to make a claim or to begin a suit under any other applicable law of this state shall be extended for a period of 6 months from the date of the court order making such determination or the date of mailing of notice to the claimant of such determination by the attorney general, if the time to make the claim or begin the suit under such other law would otherwise expire before the end of such period.

## KANSAS

### Summary:

The State of Kansas has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of

\$500,000. If the airport purchases insurance, the cap can rise to the level of that insurance. Standard statutes of limitations apply, as set forth in the Code of Civil Procedure, and written notice must be presented 120 days before suit is filed.

o **Statutory Authority:**

- KAN. STAT. ANN. §§ 75-6101 to 75-6120 (2014). Kansas Tort Claims Act. Applies to State and to municipalities.
  - KAN. STAT. ANN. § 75-6103 (2013). Liability of Governmental Entities for Damages Caused by Employee Acts or Omissions, When; Applicable Procedure.
    - o (a) Subject to the limitations of this act, each governmental entity shall be liable for damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment under circumstances where the governmental entity, if a private person, would be liable under the laws of this state.
  - KAN. STAT. ANN. § 75-6104 (2013). Same; When; Exceptions from Liability. A governmental entity is not liable for damages resulting from specified discretionary functions, legislative functions, and certain other activities.
  - KAN. STAT. ANN. § 75-6119 (2013). Exception from Liability for Members of Governing Body, Appointive Board, Commission, Committee or Council of a Municipality.
    - o (a) A member of a governing body of a municipality who is acting within the scope of such member's office and without actual fraud or actual malice shall not be liable for damages caused by the negligent or wrongful act or omission of such member or governing body.
- KAN. STAT. ANN. § 12-205 (2013). Municipal Exemption or Immunity from Antitrust Liability.

o **Relevant Case Law:**

- *Cessna Aircraft Co. v. Metro. Topeka Airport Auth.*, 940 P.2d 84 (Kansas Ct. App. 1997).
  - “A governmental entity claiming immunity bears the burden of showing it fits within one of the exceptions to liability.” *Id.* at 93 (citation omitted). “Immunity is available under 75–6104(e) (formerly 75–6104[d]) only when no mandatory duty or guidelines exist.” *Id.* at 94 (citation omitted).
- *Robertson v. City of Topeka*, 644 P.2d 458 (Kansas 1982).
  - The key in determining whether Section 75– 6104(e) applies is to focus on “the nature and quality of the discretion exercised...rather than the status of the employee exercising that discretion.” *Id.* at 462.
- *Wendler v. City of Great Bend*, 316 P.2d 265 (Kansas 1957).
  - “Regardless of the origin and development of the principle of governmental immunity, it is clear that our courts have almost from the beginning denied tort immunity to municipal governments performing

‘proprietary’ or ‘permissive’ functions.” *Id.* at 270 (citations omitted).

- **Monetary Limits and Caps:**
  - KAN. STAT. ANN. § 75-6105 (2013). Maximum liability for claims is \$500,000.
  - KAN. STAT. ANN. § 75-6111(a) (2013). If liability insurance is purchased, the limits of the insurance shall apply if those limits exceed the statutory limit.
- **Process:**
  - KAN. STAT. ANN. § 75-6106 (2013). Settlement of claims, Procedure.
  - KAN. STAT. ANN. § 12-105b (2013). As against a city or municipality, written notice must be presented 120 days before suit is filed. This requirement also applies to claims against the State, *Christopher v. Kansas ex rel. Kansas Juvenile Justice Auth.*, 143 P.3d 685 (Kan. Ct. App. 2006).
  - KAN. STAT. ANN. § 12-105b (2013). Suit must be brought within the time period provided for in the Code of Civil Procedure.
  - KAN. STAT. ANN. § 75-6117(a) (2013). Tort Claims Fund for Payment of Claims and Defense Expenses. “There is hereby established in the state treasury the tort claims fund which shall be administered by the attorney general. All expenditures from such fund shall be made upon warrants of the director of accounts and reports pursuant to vouchers approved by the attorney general or by a designee of the attorney general.”

## KENTUCKY

### Summary:

The Commonwealth of Kentucky has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$200,000 or a maximum of \$350,000 in the aggregate for multiple parties in a single occurrence. For specified incidents relating to airports, written notice must be given to the governmental unit within 7 days of the time within which it occurred.

- **Statutory Authority:**
  - KY. CONST. § 231. Suits against the Commonwealth. The General Assembly may, by law, direct in what manner and in what courts suits may be brought against the Commonwealth.
  - KY. REV. STAT. §§ 44.070 to 44.170 (2014). Board of Claims.
    - KY. REV. STAT. § 44.072 (2014). “The Commonwealth thereby waives the sovereign immunity defense only in the limited situations as herein set forth.”
    - KY. REV. STAT. § 44.073 (2014). Applies to discretionary functions. “It is further the intention of the General Assembly to otherwise expressly preserve the sovereign immunity of the Commonwealth, any of its cabinets, departments, bureaus or agencies or any of its officers, agents

or employees while acting in the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus or agencies in all other situations except where sovereign immunity is specifically and expressly waived as set forth by statute.” Note: This statute was held unconstitutional in *Yanero v. Davis*, 65 S.W.3d 510, 525 (Ky. 2001), but the exceptions apparently remain applicable as a matter of common law.

- KY. REV. STAT. § 183.132 (2014). Local Air Boards.
  - KY. REV. STAT. § 183.133 (2014). Purpose, Duties and Powers of the Board; Rules and Regulations, Publication; Enforcement; Promotion of Facilities.
- **Relevant Case Law:**
- *Comair, Inc. v. Lexington-Fayette Urban Cnty. Airport Corp.*, 295 S.W.3d 91 (Ky. 2009).
    - County airport board had sovereign immunity from airline operators' third party claims arising out of fatal airplane crash, although board charged fees and had held itself out to be a private entity independent of county government; county government was the “parent” entity of the board and retained significant control over the board, board carried out a function integral to state government by providing and maintaining part of commonwealth's air transportation infrastructure, board had the power to legislate for purposes for issuing bonds, and board's revenues were used solely to make improvements and maintain the airport.
  - *Gray v. Central Bank and Trust Co.*, 562 S.W.2d 656 (Ky. Ct. App. 1978).
    - County airport board was a legislative body and as such its members were granted absolute immunity for statements made while acting within scope of duties imposed upon them by statute.
  - *Inco, Ltd. v. Lexington-Fayette Urban Cnty. Airport Bd.*, 705 S.W.2d 933 (Ky. Ct. App. 1985).
    - Section 411.115 of the Kentucky Revised Statutes does not operate as a waiver of sovereign immunity for a unit of municipal government such as the board of an urban county airport. The immunity of the State and of a county must be extended to an urban county airport board where every function that a now-defunct city sponsored was merged into a county agency prior to the date of occurrence of the tort involved. *Id.* at 934–935.
  - *Hempel v. Lexington-Fayette Urban Cnty. Gov't*, 641 S.W.2d 51 (Ky. Ct. App. 1982). *But see Gas Service Co. v. City of London*, 687 S.W.2d 144 (Ky. 1985).
    - Urban county government is an arm of the State and is entitled to the protective cloak of sovereign immunity. *Id.* at 151 (citation omitted).
  - *Withers v. Univ. of Ky.*, 939 S.W.2d 340 (Ky. 1997).
    - All claims against entities that are protected by sovereign immunity fall squarely within purview of Board of Claims Act, where resides exclusive jurisdiction for claims against such entities, and Board of Claims Act and sovereign immunity are coextensive; it therefore follows that plea of sovereign immunity is admission of Board of Claims jurisdiction.
  - *Moore v. Ky. State Penitentiary*, 789 S.W.2d 788 (Ky. Ct. App. 1990). *But see Guffey v. Cann*, 766 S.W.2d 55 (Ky. 1989).
    - The Board of Claims Act, Ky. Rev. Stat. § 44.070, authorized by Ky.

Const. § 231, is a partial waiver of the Commonwealth's sovereign immunity, and the cause of action created under the Act is vested in the Board of Claims which is not a court; therefore, as the cause is the product of legislative grace and limited by legislative conditions, Ky. Rev. Stat. § 44.140 does not violate Ky. Const. § 115, which provides for at least one appeal to another court, by providing that there is no appeal from the board of claims if the amount in controversy is less than \$500. *Moore*, 789 S.W.2d at 789.

- *Guffey v. Cann*, 766 S.W.2d 55, 58 (Ky. 1989), “The doctrine of sovereign immunity is not extended by KRS 44.070 to protect state employees, sued in their individual capacities.”
- **Monetary Limits and Caps:**
  - KY. REV. STAT. § 44.070 Board of Claims (2014). Limitation on Damage Awards; Hearing Officers; Asbestos Related Claims.
    - 5) Regardless of any provision of law to the contrary, the jurisdiction of the board is exclusive, and a single claim for the recovery of money or a single award of money shall not exceed \$200,000, exclusive of interest and costs. However, if a single act of negligence results in multiple claims, the total award may not exceed \$350,000, to be equitably divided among the claimants, but in no case may any claimant individually receive more than \$200,000.
- **Waiver of Immunity:**
  - KY. REV. STAT. § 44.072 (2014). “The Commonwealth thereby waives the sovereign immunity defense only in the limited situations as herein set forth.”
- **Process:**
  - KY. REV. STAT. §§ 44.070 to 44.170 (2014). Board of Claims.
  - KY. REV. STAT. § 411.115 (2014). Notice of Action Against Governmental Unit for Damages from Use of Airport Required; Content. No action shall be brought against any governmental unit for damages, noise abatement or otherwise, arising from the operation of aircraft into or out of an airport unless written notice is given to such governmental unit within seven (7) days of the time within which each such operation occurred. Such notice shall state: (1) The location of the property affected; (2) The approximate time such operation occurred; and (3) If known, the type of aircraft and general direction of its flight.
  - Ky. Op. Att’y Gen. 92-148. A state agency may not settle a negligence claim unless a claim has been filed in the board of claims (1992).
  - Ky. Op. Att’y Gen. 87-45. Subrogation claims are collateral claims, which the 1986 amendments to the Board of Claims Act by 1986 c 499, eff. 7-15-86, preclude from payment by the State (1987).

## LOUISIANA

### Summary:

The State of Louisiana has partially abrogated sovereign immunity for airports, which

are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$500,000. There is a 1-year statute of limitations.

o **Statutory Authority:**

- LA. CONST. art. XII, § 10. Suits Against the State.
  - (A) No Immunity in Contract and Tort. “Neither the state, a state agency, nor a political subdivision shall be immune from suit and liability in contract or for injury to person or property.”
  - (B) Waiver in Other Suits. The legislature may authorize other types of lawsuits against the State, agency, or political subdivision.
  - (C) Limitations; Procedures; Judgments. Legislature may establish limits on liability of entities, actionable claims, and types of damages.
- LA. REV. STAT. ANN. § 9:2798.1 (2014). Policymaking or Discretionary Acts or Omissions of Public Entities or Their Officers or Employees.
  - (A) “Public entities” include State, branches, departments, agencies, officers, officials, employees, and the same of political subdivisions.
  - (B) Liability is not imposed on public entities and their officers and employees based on exercise/performance or failure of such in policymaking or discretionary acts when such acts are in the course and scope of their lawful powers and duties.
- LA. REV. STAT. ANN. § 13:5101 (2013). Suits Against State, State Agencies, or Political Subdivisions.
  - LA. REV. STAT. ANN. § 13:5101 (2013). Title and application. Applies statute to any suit in contract or tort to person or property against the State, its agencies and subdivisions, and officers/employees of such in the scope of their employment.
  - LA. REV. STAT. ANN. § 13:5102 (2013). Definitions.
    - o “State Agency” means boards, agencies, commissions, and departments of Louisiana government.
    - o “Political Subdivision” means parishes, municipalities, districts, departments, and other governmental bodies that are not state agencies.
  - LA. REV. STAT. ANN. § 13:5108 (2013), Indemnification of officers and employees of the state, civil rights, representation by attorney general; B. Coverage Process.
    - o To be a “covered individual,” a public employee must deliver a copy of the complaint against him to the attorney general, who will decide if the employee was in the scope of employment.
- LA. REV. STAT. ANN. § 2:131 (2013). Definition; Political Subdivisions May Acquire Airports.
  - This section allows political subdivisions, cities, and towns to acquire, improve, operate, and maintain, etc. airports.

- Thus, again, if a political subdivision owns and operates an airport, it could be open to liability per the constitutional waiver of immunity for political subdivisions.
- Part IV—Airport Districts
  - LA. REV. STAT. ANN. § 2:311 (2013). Definition; Political Subdivisions May Create Airport Districts.
    - Much like the previous provisions, this allows political subdivisions to create airport districts for the operation and maintenance of airports.
  - LA. REV. STAT. ANN. § 2:312 (2013). Airport Districts Subdivisions of the State.
    - This section defines airport districts as political subdivisions of the State, such that they are brought under the constitutional waiver of immunity and statutory procedures and limits thereof.
  - LA. REV. STAT. ANN. § 2:326 (2013). Authority of Airport District.
    - An airport district is a public corporation and has all powers of public corporations, including the right and power...to sue and be sued.
  - LA. REV. STAT. ANN. § 2:342 (2013). Authority of Ascension-St. James Airport and Transportation Authority.
    - The Ascension-St. James Airport and Transportation Authority is a public corporation and has all powers of public corporations including the right and power...to sue and be sued.
- Part IV, Chapter 4—Airport Authorities Law
  - LA. REV. STAT. ANN. § 2:602 (2013). Creation of Airport Authority.
    - Any subdivision may create a public body, an airport authority, to which it delegates its powers and duties it would normally have when operating an airport.
  - LA. REV. STAT. ANN. § 2:604 (2013). General Powers of the Authority.
    - Airport authorities have all the powers and duties, except for tax power, that a normal political subdivision would have when operating and maintaining an airport.
- **Relevant Case Law:**
  - *Hebert v. Adcock*, 55 So. 3d 1007 (La. App. 3d Cir. 2011).
    - Section 2798.1 of the Louisiana Revised Code absolves the government and its employees from liability that would arise from discretionary or policymaking acts. This is a standard exception to the waiver of sovereign immunity intended to shield the government and its officers from litigation that would interfere with their legitimate policymaking. It shields the government's decisions based on social, economic, or political concerns.
  - *Alpha Alpha, Inc. v. Southland Aviation*, 697 So. 2d 1364 (La. App. 3d Cir. 1997).
    - When airport authorities decide to operate public-use airports and accept aircraft for storage, they have no more discretion but to abide by the legal standards for bailment of property—"there is a difference



hazards.

- **Process:**
  - LA. REV. STAT. ANN. §§ 13:5101 to 13:5113 (2013).
    - LA. REV. STAT. ANN. §13:5105 (2013). Jury Trial Prohibited; Demand for Trial; Costs.
      - No jury trials are allowed in suits against state, agencies, or subdivisions, unless a party files for such.
      - Subdivisions may waive jury trial prohibition by ordinance or resolution.
      - Note—the constitutionality of this section is under serious question by Louisiana courts.
    - LA. REV. STAT. ANN. § 13:5106 (2013). Limitations.
      - (A) Suits against the State, agencies, and subdivisions must be brought in Louisiana state court.
      - (B)(1) Suits for individual personal injury together with all claims and derivatives are limited to \$500,000. This is exclusive of damage to property, medical care/benefits, and lost wages and future earnings.
      - (2) The same logic and limit applies to wrongful death claims.
      - (3)(a)–(c) The State, agencies, and subdivisions can be found liable for medical care expenses; medical care is defined in terms of future medical provisions necessary to remedy personal injuries.
    - LA. REV. STAT. ANN. § 13:5108 (2013). Indemnification of officers and employees of the State, civil rights, representation by attorney general;
      - A. Indemnification
        - Louisiana will “defend and indemnify a covered individual against any claim, demand, suit, complaint, or petition seeking damages filed in any court over alleged negligence or other act...in the course and scope of the individual’s employment, performance of official duties, or provision of services on behalf of the State.”
  - LA. CIV. CODE ANN. art. 3492 (2013). Delictual Actions. Creates a 1-year statute of limitations.

## MAINE

### Summary:

The State of Maine has partially abrogated sovereign immunity for airports. The State of Maine is not liable for any loss, injury, damage, or death occurring at the Augusta State Airport. Otherwise, airports are treated similarly to other governmental entities. Airports are immune from liability for discretionary functions. Governmental entity employees are absolutely immune for discretionary functions and intentional acts within the course of their employment unless performed in bad faith. However, a governmental entity employee’s liability shall be limited to \$10,000 per occurrence for their negligent acts or omissions occurring within the course and scope of their employment. The Maine Tort Claims Act caps damages at \$400,000 for any and all claims arising out of a single occurrence. Even if subject to liability, there are no punitive damages. There is a 2-year

statute of limitations and a written notice requirement of 180 days from date of occurrence.

o **Statutory Authority:**

- ME. REV. STAT. tit. 14, §§ 8101–8118 (2014). Maine Tort Claims Act.
- ME. REV. STAT. tit. 14, § 8102 (2014). Definitions.
  - “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, 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.
  - “Governmental entity” means and includes the State and political subdivisions.
  - “Political subdivision” means any city, town, plantation, county, administrative entity, or instrumentality, including an airport authority established pursuant to Title 6, Chapter 10.
  - “State” means the State of Maine or any office, department, agency, authority, commission, board, or other instrumentality of the State.
- ME. REV. STAT. tit. 14, § 8103 (2014). Immunity from Suit.
  - 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.
- ME. REV. STAT. tit. 14, § 8104-A (2014). Exceptions to Immunity.
  - A governmental entity is liable for property damages, bodily injury, or death for its negligent acts or omissions in its ownership, maintenance, or use of any motor vehicle, aircraft, or other machinery or equipment, whether mobile or stationary.
  - Absent an applicable exception, 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.
  - 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.
  - 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 sidewalk, parking area, causeway, bridge, or airport runway or taxiway, including appurtenances necessary for the control of those, including 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.





- Copies of each notice of appeal filed in an action arising under the Maine Tort Claims Act shall be served on the Attorney General at the same time such notice is served upon the other parties to the action.
- ME. REV. STAT. tit. 14, § 8107 (2014). Notice to Governmental Entity.
  - A claimant or a claimant's personal representative or attorney shall file a written notice within 180 days after any claim or cause of action permitted under the Maine Tort Claims Act.
  - However, if a claimant shows good cause why notice could not have reasonably been filed within the 180-day limit, a written notice may be filed so long as it is within the 2-year statute of limitations.
  - The written notice shall contain: (a) the name and address of the claimant, and the name and address of the claimant's attorney or other representative, if any; (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; (c) the name and address of any governmental employee involved, if known; (d) a concise statement of the nature and extent of the injury claimed to have been suffered; and (e) a statement of the amount of monetary damages claimed.
  - For any claims 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.
  - 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.
- ME. REV. STAT. tit. 14, § 8108 (2014). Time 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.
  - If the governmental entity has failed to approve or deny the claim within the 120-day period after the filing of the claim, the claim shall be deemed to have been denied.
- 17-229 ME. CODE R. § .04 (LexisNexis 1996).
  - Any person involved in an accident at the airport of any kind shall make a written report within 48 hours of such accident to the Airport Manager. Such report shall be addition to any report required by law.
- ME. REV. STAT. tit. 14, § 8110 (2014). Limitations of Actions.
  - Every claim against a governmental entity or its employees permitted under the Maine Tort Claims Act must be brought within 2 years after the cause of action accrues, unless the claimant is a minor when the cause of action accrued; a claim then may be brought within 2 years of the minor's attaining 18 years of age.

**MARYLAND****Summary:**

The State of Maryland has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities under the Maryland Tort Claims Act. Public officials are immune from liability for discretionary functions. State employees are immune from tort liability within the scope of public duties unless acts were performed with malice or gross negligence. Local government employees are not immune from liability, but the local government shall be liable for any judgment against its employee for tortious acts committed within the scope of employment. Even if subject to liability, both the State and local government have caps of \$200,000 per individual claim. The local government has a \$500,000 cap per total claims from the same occurrence. There are no punitive damages. The Maryland Tort Claims Act has a 3-year statute of limitations and a written claim requirement within 1 year from date of occurrence.

- **Statutory Authority:**

- MD. CODE ANN., STATE GOV'T §§ 12-101 to 12-110 (LexisNexis 2014). Maryland Tort Claims Act.
  - MD. CODE ANN., STATE GOV'T § 12-101 (LexisNexis 2014).
    - "State personnel" means (1) a State employee or official paid by the Central Payroll Bureau in the Office of the Comptroller of the Treasury; (2) an employee or official of the Maryland Transportation Authority; (3) a person who is a member of a State board, commission, or similar State entity; (4) a person is providing a service to or for the State, is not paid by the State, and satisfies all other requirements for designation as State personnel; and (5) an individual who, without compensation, exercises a part of the sovereignty of the State.
  - MD. CODE ANN., STATE GOV'T § 12-102 (LexisNexis 2014). This subtitle shall be broadly construed to ensure injured parties have a remedy.
  - MD. CODE ANN., STATE GOV'T § 12-103 (LexisNexis 2014). Does not limit any other law that waives sovereign immunity of the State or its units in tort, or any other law that authorizes the State or its units to have insurance for tortious conduct. Does not waive any right or defense of the State or its units, officials, or employees for actions not brought before a Maryland court. Does not apply to or waive any immunity of a bi-county unit, county, municipal corporation, or other political subdivision or any unit, official, or employee of any of those agencies or subdivisions.
  - MD. CODE ANN., STATE GOV'T § 12-104 (LexisNexis 2014).
    - Immunity of State and its units is waived as to tort actions in a court of the State subject to the following exceptions provided under Maryland Courts and Judicial Proceedings Code Section 5-522(a), which includes:
      - A cause of action specifically prohibited by law;
      - A claim by an individual arising from a single incident or occurrence that exceed \$200,000;
      - Any tortious act or omission of State personnel that is made with malice or gross negligence; or



- A person may not execute against an employee on a judgment rendered for tortious acts or omissions within the scope of employment with a local government unless the employee acted with actual malice.
  - Rights and immunities of employee are contingent upon cooperation in defense of the action.
- MD. CODE ANN., CTS. & JUD. PROC. § 5-303 (LexisNexis 2014). Liability of Government; Defenses.
  - A local government shall be liable for any judgment against its employee for damages resulting from tortious acts or omissions committed by the employee within the scope of employment with the local government.
  - A local government may not assert sovereign immunity to avoid the duty to defend or indemnify an employee.
  - Does not waive any common law or statutory defense or immunity in existence on June 30, 1987, possessed by an employee of a local government.
  - A local government may assert any common law or statutory defense or immunity existing on June 30, 1987, and possessed by its employee upon whose tortious act or omission the claim against the government is premised.
  - A local government may only be held liable to the extent that a judgment could have been rendered against such an employee.
- MD. CODE ANN., TRANSP. § 5-101 (LexisNexis 2014). Aviation.
  - “Administration” means the Maryland Aviation Administration.
  - MD. CODE ANN., TRANSP. § 5-102 (LexisNexis 2014).
    - The acquisition of any property; the planning, acquisition, establishment, construction, improvement, maintenance, equipping, and operation of airports, airport facilities, and air navigation facilities; and the exercise of any other powers granted in the Aviation Title are public and governmental functions, exercised for a public purpose, as matters of public necessity.
    - All property and privileged acquired and used by or on behalf of the State or a political subdivision under the Aviation title are used for public and governmental purposes, as matters of public necessity.
- MD. CODE ANN., TRANSP. § 5-201 (LexisNexis 2014). Establishes the Maryland Aviation Commission.
- MD. CODE ANN., TRANSP. § 5-202 (LexisNexis 2014). Establishes the Maryland Aviation Administration.
- MD. CODE ANN., TRANSP. § 5-401 (LexisNexis 2014). “Establish or operate” includes plan, acquire, construct, equip, maintain, alter, enlarge, improve, reconstruct, repair, regulate, protect, or police.
- MD. CODE ANN., TRANSP. § 5-404 (LexisNexis 2014).
  - With the approval of the Secretary, the Administration may establish or operate on behalf of and in the name of Maryland any airport, air facility, or air navigation facility within or without the State.
- MD. CODE ANN., TRANSP. § 5-416 (LexisNexis 2014).

- Political subdivisions may operate any airport, airport facility, or air navigation facility, and use any suitable property owned or controlled by the political subdivision.
- An airport or facility may be established by a county only within its boundaries or the boundaries of any other county with which it is acting jointly, and by Baltimore City or a municipal corporation, either within or without its boundaries.
- MD. CODE ANN., TRANSP. § 5-418 (LexisNexis 2014).
  - Any political subdivision that acquires, leases, controls, or sets apart any property for an airport, airport facility, or air navigation facility may establish and operate the airport or facility and may delegate any of its powers to a suitable officer or agency of the political subdivision.
- **Relevant Case Law:**
  - *Beka Indus. v. Worcester Cnty. Bd. of Educ.*, 18 A.3d 890 (Md. 2011).
    - In considering whether the doctrine of sovereign immunity prevents a court from exercising jurisdiction in a given suit, a court must ask “(1) whether the entity asserting immunity qualifies for the protection; and if so, (2) whether the legislature has waived immunity either directly or by necessary implication, in a manner that would render the defense of immunity unavailable.” *Id.* at 900 (quoting *Magnetti v. Univ. of Md.*, 937 A.2d 219, 224 (Md. 2007)).
  - *Univ. of Md. v. Maas*, 197 A. 123, 124 (Md. 1938).
    - “The decided cases here and elsewhere recognize and affirm the principle that purely governmental agencies, because of their relation to the state, are entitled to immunity from suits as is the state itself, unless the Legislature has expressly authorized suits to be brought against it, but this authority to sue is not free from restrictions, even though they are not expressly made by the Legislature, for this court has held that suits may not be maintained unless money has been appropriated for the payment of such damages as may be awarded, or the agency itself is authorized to raise money for that purpose.”
  - *Lee v. Cline*, 863 A.2d 297 (Md. 2004). *But see* *Benson v. Md.*, 887 A.2d 525 (Md. 2005).
    - “We hold that the immunity under the Maryland Tort Claims Act, if otherwise applicable, encompasses constitutional torts and intentional torts.” *Lee*, 863 A.2d at 310.
  - *Sawyer v. Humphries*, 587 A.2d 467 (Md. 1991).
    - For purposes of the Maryland Tort Claims Act, “scope of public duties” is synonymous with “scope of employment.” *Id.* at 470.
    - “The general test...for determining if an employee’s tortious acts were within the scope of his employment is whether they were in furtherance of the employer’s business and were ‘authorized’ by the employer.” *Id.*
  - *Thacker v. City of Hyattsville*, 762 A.2d 172 (Md. Ct. Spec. App. 2000), *cert. denied*, 768 A.2d 55 (Md. 2001).
    - Municipal public officials acting in a discretionary capacity are immune from civil liability as long as their actions are performed

without malice.

- **Monetary Limits and Caps:**
  - MD. CODE ANN., STATE GOV'T § 12-104 (LexisNexis 2014).
    - The State and its units' liability may not exceed \$200,000 to a single claimant for injuries arising from a single incident or occurrence.
    - The Treasurer may pay from the State Insurance Trust Fund all or part of a portion of a tort claim that exceeds \$200,000 if: (a) immunity is waived under the Maryland Tort Claims Act; (b) a judgment or settlement has been entered in excess of \$200,000; and (c) the Board of Public Works, with advice and counsel from the Attorney General, has approved the payment.
  - MD. CODE ANN., CTS. & JUD. PROC. § 5-303 (LexisNexis 2014). Liability of Government; Defenses.
    - \$200,000 limit per individual claim.
    - \$500,000 limit per total claims arising from same occurrence.
    - Limits do not include interest accrued on a judgment.
    - A local government may not be liable for punitive damages but may indemnify an employee for a judgment for punitive damages within the \$200,000/\$500,000 limit, except for law enforcement officers found guilty of an act or omission that would constitute a felony.
  - MD. CODE ANN., CTS. & JUD. PROC. § 5-522(a) (LexisNexis 2014).
    - Immunity is not waived for punitive damages and pre-judgment interest.
- **Process:**
  - MD. CODE ANN., STATE GOV'T § 12-106 (LexisNexis 2014).
    - A claimant may not institute an action under the Maryland Tort Claims Act unless:
      - The claimant submits a written claim to the Treasurer or a designee of the Treasurer within 1 year after the injury to person or property that is the claim's basis;
      - The Treasurer or designee denies the claim finally; and
      - The cause of action is filed within 3 years after it arises.
  - MD. CODE ANN., STATE GOV'T § 12-107 (LexisNexis 2014).
    - A claim shall:
      - Contain a concise statement of facts setting forth the nature of the claim, including the date and place of the alleged tort;
      - Demand specific damages;
      - State the name and address of each party;
      - State the name, address, and telephone number of counsel for the claimant, if any; and
      - Be signed by the claimant or the legal representative or counsel for the claimant.
    - A claim is denied finally if:
      - The Treasurer or designee sends the claimant or legal representative or counsel by certified mail, return receipt requested, under a U.S. Postal Service (USPS) postmark, a written notice of denial; or
      - The Treasurer or designee fails to give notice of a final decision within 6 months after the filing of the claim.

- MD. CODE ANN., STATE GOV'T § 12-108 (LexisNexis 2014).
  - A claimant must serve the complaint and accompanying documents on the Treasurer for any claim under the Maryland Tort Claims Act.
- MD. CODE ANN., CTS. & JUD. PROC. § 5-304 (LexisNexis 2014). Actions for Unliquidated Damages.
  - An action for unliquidated damages may not be brought against a local government or its employees unless the notice of claim is given within 180 days after the injury.
    - Upon motion and good cause shown, a court may entertain a suit without required notice unless defendant can affirmatively show its defense has been prejudiced by the lack of required notice.
  - The notice shall be in writing and shall state the time, place, and cause of the injury.
  - The notice shall be given in person or by certified mail, return receipt requested, bearing a USPS postmark, by the claimant or a representative of the claimant.
  - Notice shall be given to the county commission or county council if the defendant is a county except for
    - Howard and Montgomery—notice to County Executive, and
    - Anne Arundel, Baltimore, Harford, or Prince George's—notice to county solicitor or county attorney;
  - Notice for Baltimore City shall be given to the City Solicitor.
  - Notice of any other local government given to its corporate authorities.
- **State-Specific Aspects:**
  - Md. Code Ann., State Gov't § 12-109 (LexisNexis 2014). Counsel may not charge or receive fees in excess of 20 percent (settlement) or 25 percent (judgment) for any claims under the Maryland Tort Claims Act.
  - Md. Code Ann., State Gov't § 12-309 (LexisNexis 2014). If judgment is entered for a State officer or employee and the court finds the action or proceeding was instituted with bad faith or without substantial justification, a court shall require reimbursement from the claimant bringing that action; reimbursement shall consist of reasonable counsel fees and other costs and reasonable expenses incurred in defending the action.
  - Claims against the Maryland Aviation Administration are subject to the provisions of the Maryland Tort Claims Act.
- **Waiver of Immunity:**
  - The Maryland Tort Claims Act broadly waives the State's immunity. However, it did not waive its immunity for punitive damages, pre-judgment interest, individual claims for more than \$200,000, acts or omissions not within the scope of the public duties of the personnel, and acts or omissions committed with malice or gross negligence.
  - Maryland State personnel are immune from suits in Maryland courts for tortious acts or omissions committed within the scope of their public duties as long as the acts were made without malice or gross negligence.

## MASSACHUSETTS

### Summary:

The Commonwealth of Massachusetts has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. However, the Massachusetts Port Authority, which owns and operates Boston Logan International Airport, Hanscom Field, and Worcester Regional Airport, is not entitled to sovereign immunity. Airports are immune from liability for discretionary functions. For public employees acting within the scope of their authority, qualified immunity attaches for negligent or wrongful acts or omissions. Liability for a public entity is limited to \$100,000 and punitive damages are not recoverable. There is a 3-year statute of limitations and a written claim requirement within 2 years from date of occurrence.

### o Statutory Authority:

- MASS. GEN. LAWS ch. 258, §§ 1–14 (2014). Massachusetts Tort Claims Act.
  - MASS. GEN. LAWS ch. 258, § 1 (2014). Definitions.
    - o “Public employee” means any elected or appointed officers or employees of any public employer.
    - o “Public employer” means the Commonwealth and any county, city, town, or district, including the Massachusetts Department of Transportation; any duly constituted regional transit authority; and any department, office, commission, committee, council, board, division, bureau, institution, agency, or authority thereof, which exercises direction and control over the public employee.
      - But not a private contractor with any such public employer, the Massachusetts Port Authority, or any other independent body politic or corporate.
  - MASS. GEN. LAWS ch. 258, § 2 (2014). Liability; Exclusiveness of Remedy; Cooperation of Public Employee; Subsequent Actions; Representation by Public Attorney.
    - o Public employers shall be liable for personal injury, death, property loss, or property injury caused by the negligent or wrongful act or omission of any public employee while acting within the scope of his office or employment, in the same manner and to the same extent as a private individual.
    - o The remedies provided by the MTCA shall be exclusive of any other civil action or proceeding of the same subject matter against the public employer or public employee.
    - o No public employee or their estate shall be liable for any personal injury, death, property loss, or property injury caused by his negligent or wrongful act or omission while acting within the scope of his office or employment.
      - Provided that public employee shall provide reasonable cooperation to the public employer in the defense of any action brought under the MTCA.
        - Failure to provide reasonable cooperation shall cause the public employee to be jointly liable with the public employer, to the extent

the failure prejudiced the defense of the action.

- Final judgment in an action brought against a public employer shall constitute a complete bar to any action by a party to such judgment against such public employer or public employee.
- If a cause of action is improperly commenced against a public employee alleging personal injury, death, property loss, or property injury as a result of the negligent or wrongful act of the employee, that employee may request and receive representation by a public attorney of the Commonwealth at no cost if the employee is determined to have been acting within the scope of his office or employment.
- MASS. GEN. LAWS ch. 258, § 9 (2014). Indemnity of Public Employees.
  - Public employers may indemnify public employees, and the Commonwealth shall indemnify persons holding office under the Constitution, from personal financial loss, all damages and expenses, including legal fees and costs, in an amount not to exceed \$1,000,000 arising out of any claim, action, award, compromise, settlement, or judgment by reason of an intentional tort, or by reason of any act or omission constituting a civil rights violation if:
    - Such employee or official or office holder was acting within the scope of his official duties or employment.
  - No employee or official shall be indemnified for any civil rights violation if he acted in a grossly negligent, willful or malicious manner.
    - Does not apply to a person holding office under the Constitution acting within the scope of his official duties or employment.
- MASS GEN. LAWS ch. 258 § 10 (2014). Application of Sections 1 to 8.
  - The provisions of §§ 1 to 8 shall not apply to any claim:
    - (a) Based upon an act or omission of a public employee who was exercising due care in the execution of any statute or regulation of a public employer, or any municipal ordinance or by-law;
    - (b) Based upon the exercise or performance or failure to exercise or perform a discretionary function or duty on the part of a public employer or public employee, acting within the scope of his office or employment;
    - (c) Arising out of an intentional tort;
    - (f) Based upon the failure to inspect, or an inadequate or negligent inspection of any property to determine compliance with any law, regulation, ordinance, or code;
    - (j) Based on an act or failure to act to prevent or diminish the harmful consequences of a condition, or situation, including the violent or tortious conduct of a third person, which is not originally caused by the public employer or any person acting on its behalf, except:

- Any claim based upon explicit and specific assurance of safety or assistance, beyond general representations that investigation or assistance has been or will be taken, made to the direct victim or a member of his family or household by a public employee, provided that the injury resulted in part from reliance on those assurances; and
  - Any claim based upon the intervention of a public employee that causes injury to the victim or places the victim in a worse position than he was in before the intervention; and
  - Any claim based on negligent maintenance of public property.
- MASS. GEN. LAWS ch. 258, § 11 (2014). Frivolous claims; Costs; Subsequent actions.
  - If the court finds the claimant's action to have been frivolous or in bad faith, judgment for costs and execution thereon may be issued in favor of the public and the court may enter final judgment barring any other action on the same claim or subject matter.
- MASS. GEN. LAWS ANN. § 13 (2014). Indemnification of Municipal Officials.
  - Any city or town must indemnify its elected or appointed municipal officers from personal financial loss and expense, including reasonable legal fees and costs in an amount not to exceed \$1,000,000 arising out of any claim, demand, suit, or judgment by reason of any act or omission while acting within the scope of his official duties or employment.
    - If the city or town has accepted Chapter 41, Section 1001 of the Massachusetts General Code before July 1, 1978, or Chapter 258, Section 13 of the Massachusetts General Code.
  - However, a city or town is not required to indemnify a claim, demand, suit, or judgment for an intentional violation of any person's civil rights.
- MASS. GEN. LAWS ch. 90, §§ 1- 61 (2014). Motor Vehicles and Aircraft.
  - MASS. GEN. LAWS ch. 90, § 51D (2014). Municipal Airports and Air Navigation Facilities.
    - Airports and air navigation facilities may be established, maintained, and operated by any city or town as provided in §§ 35-52.
  - MASS. GEN. LAWS ch. 90, § 51I (2014). Power of Commission; Expenditure of Funds; Contracts for Maintenance, Operation, Construction and Enlargement of Airports.
    - The airport commission of any city or town is authorized to expend any funds granted, received, or appropriated for airport purposes and may make contracts for the maintenance, operation, construction, enlargement, and improvement of the airport.

- MASS. GEN. LAWS ch. 90, § 51N (2014). Establishment, Maintenance and Operation of Airport by Municipalities as Joint Enterprise; Contents of Agreement; Joint Airport Commission.
  - Two or more municipalities may agree to establish, maintain and operate an airport as a joint enterprise.
- MASS. GEN. LAWS ch. 90, § 39G (2014). Applicability of §§ 35 to 52 to counties.
  - These sections that are applicable to any city or town shall apply to airports and aeronautical facilities owned or operated by any county, except the appointment of the airport commission.
- **Relevant Case Law:**
  - Karlin v. Mass. Turnpike Auth., 506 N.E.2d 1149 (Mass. 1987).
    - The Massachusetts Port Authority is not entitled to governmental or sovereign immunity as the legislature expressly excluded it from the MTCA's definition of "public employer."
  - Wheeler v. Bos. Hous. Auth., 606 N.E.2d 916 (Mass. App. Ct. 1993).
    - "The first step in deciding whether § 10(b) [the discretionary function exception] is applicable is to decide whether the defendant had any discretion as to what course of conduct to follow." *Id.* at 918 (citation omitted).
      - "If a statute, regulation, or established agency practice prescribe a course of action, the defendant's conduct is not protected by the discretionary function exception." *Id.*
    - "[The] next step is to determine whether the discretion that the defendant has is the kind afforded immunity from liability under § 10 (b)." *Id.* at 919 (citation omitted).
      - "In deciding this question, we look to the criteria set forth in *Whitney v. Worcester*, 366 N.E.2d 1210, 1217 (1977). These considerations are
        - (1) Whether the injury-producing conduct was an integral part of governmental policy making or planning;
        - (2) Whether the imposition of tort liability would jeopardize the quality and efficiency of the governmental process;
        - (3) Whether a judge or jury could review the conduct in question without usurping the power and responsibility of the legislative or executive branches; and
        - (4) Whether there is an alternate remedy available to the injured individual other than an action for damages." *Id.* at 919.
  - Clickner v. City of Lowell, 663 N.E.2d 852 (Mass. 1996).
    - Courts must apply "the common law test [for whether an employee is acting within the scope of his or her employment] considers whether

the act was in furtherance of the employer’s work” under the MTCA. *Id.* at 855 (citation omitted).

- “Factors to be considered include whether the conduct in question is of the kind the employee is hired to perform, whether it occurs within authorized time and space limits, and whether it is motivated, at least in part, by a purpose to serve the employer.” *Id.*

○ **Monetary Limits and Caps:**

- MASS. GEN. LAWS ch. 258, § 2 (2014).
  - Public employers shall not be liable for:
    - Pre-judgment interest;
    - Punitive damages;
    - Any amount in excess of \$100,000;
    - Levy of execution on any real and personal property to satisfy judgment.
  - “[T]he general rule is that ‘the Commonwealth...is not liable for post judgment interest in the absence of a clear statutory waiver of sovereign immunity in that regard.’” *Sheriff of Suffolk Cnty. v. Jail Officers & Emps. of Cnty.*, 990 N.E.2d 1042 (Mass. 2013) (quoting *Chapman v. Univ. of Mass. Med. Ctr.*, 670 N.E.2d 166 (Mass. 1996)).

○ **State-Specific Aspects:**

- The Massachusetts Port Authority owns and operates three airports in Massachusetts: Boston Logan International Airport, Hanscom Field, and Worcester Regional Airport.
  - The Massachusetts legislature enabled the Massachusetts Port Authority as an independent public authority in 1959.
  - It is not considered a state agency and therefore is not covered by sovereign immunity.
- All other airports established, operated, maintained, etc., under Chapter 90 fall within the sovereign immunity and waiver of the Massachusetts Torts Claims Act.

○ **Waiver of Immunity:**

- Massachusetts has a general waiver of immunity for public employers for personal injury and property damage caused by their employees’ negligent or wrongful act or omission while acting within the scope of their employment.
- However, this general waiver is subject to the limitations of Section 10 of the MTCA.

○ **Process:**

- MASS. GEN. LAWS ch. 258, § 3 (2014).
  - All civil actions brought against a public employer on a claim for damages under the MTCA shall be brought in the county where the claimant resides or in the county where such public employer is situated.
  - Civil actions against the Commonwealth shall be brought in the county where the claimant resides or in Suffolk County.
  - The superior court shall have jurisdiction of all civil actions against a public employer.

- MASS. GEN. LAWS ch. 258, § 4 (2014).
  - Before instituting a civil action against a public employer under the MTCA,
    - A claimant must first present his claim in writing to the executive officer of the public employer within 2 years after the date the cause of action arose; and
    - Such claim shall have been finally denied by: (1) executive officer's writing and sent by certified or registered mail; (2) failure to deny claim in writing within 6 months after the date it was presented; or (3) failure to reach final arbitration, settlement or compromise under Section 5.
  - No civil action shall be brought more than 3 years after the date of accrual.
  - In the case of a city or town, presentment of a claim shall be deemed sufficient if presented to any of the following: mayor, city manager, town manager, corporation counsel, city solicitor, town counsel, city clerk, town clerk, chairman of the board of selectmen, or executive secretary of the board of selectmen.
  - In the case of the Commonwealth, or any department, office, commission, committee, council, board, division, bureau, institution, agency, or authority thereof, presentment of a claim shall be deemed sufficient if presented to the attorney general.
- MASS. GEN. LAWS ch. 258, § 6 (2014).
  - Service of process for civil actions brought against a public employer or employee of the Commonwealth shall be made upon the public attorney or upon the public employer's executive officer when no public attorney has been employed at the time of service.

## MICHIGAN

### Summary:

The State of Michigan has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. Airports are immune from liability for governmental functions. The operation and maintenance of Detroit Metropolitan Airport is considered a governmental function since it is authorized by the State legislature. For employees acting within the scope of their authority, qualified immunity attaches unless their conduct amounts to gross negligence. Michigan does not have a damages cap on the liability of a governmental agency. Michigan does not permit recovery of punitive damages absent statutory authorization. Except for claims resulting from highway safety and repair, the statute of limitations for actions are the same as under general law. Claimants must provide written notice within 120 days from the time of injury for claims resulting from a defective highway or dangerous or defective public building.

- **Statutory Authority:**
  - MICH. CONST. article VII, §§ 1–17. Local Government. Each organized county and township shall be a body corporate with powers and immunities provided by law. § 1 (Counties), § 17 (Township).
  - MICH. COMP. LAWS §§ 691.991–691.1419 (2014). Judiciary, Governmental Liability for Negligence; Government Immunity Act.

- MICH. COMP. LAWS § 691.1401 (2014). Definitions.
  - “Governmental agency” means the State or a political subdivision.
  - “Governmental function” means an activity that is expressly or impliedly mandated or authorized by law and includes an activity performed on public or private property by a law enforcement officer within the scope of his authority, as directed or assigned by his public employer for the purpose of public safety.
  - “Highway” means a public highway, road, or street that is open for public travel and includes a bridge, sidewalk, trailway, crosswalk, or culvert on the highway.
  - “Municipal corporation” means a city, village, or township or a combination of any when acting jointly.
  - “Political subdivision” means a municipal corporation, county, transportation authority, or a combination of any when acting jointly; a district or authority authorized by law or formed by any number of political subdivisions; or an agency, department, board, or council of a political subdivision.
  - “State” means Michigan, its agencies, departments, commissions, boards, councils, and statutorily created task forces.
- MICH. COMP. LAWS § 691.1402 (2014).
  - A person who sustains bodily injury or property damage by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him from the governmental agency.
- MICH. COMP. LAWS § 691.1403 (2014).
  - The governmental agency must have known or should have known of the existence of the defect and had a reasonable time to repair before the injury.
  - Knowledge and time to repair is conclusively presumed when defect was readily apparent to ordinarily observant person for a period of 30 or more days before injury.
- MICH. COMP. LAWS § 691.1405 (2014).
  - Governmental agencies are liable for bodily injury and property damage resulting from the negligent operation by any governmental agency officer, agent, or employee of a governmental agency-owned motor vehicle.
- MICH. COMP. LAWS § 691.1406 (2014).
  - Governmental agencies are liable for bodily injury and property damage resulting from a dangerous or defective condition of a public building if:
    - They had actual or constructive knowledge of the defect; and
    - Failed to remedy the condition or take action reasonably necessary to protect the public against the

condition for a reasonable time after acquiring knowledge.

- Knowledge and time to repair condition is conclusively presumed when defect was readily apparent to ordinarily observant person for a period of 90 or more days before injury.
- MICH. COMP. LAWS § 691.1407 (2014). Immunity from Tort Liability; Intentional Torts.
  - Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function.
  - Without regard to the discretionary or ministerial nature of the conduct, each governmental agency officer, employee, and volunteer, and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused while in the course of employment or service if all of the following are met:
    - The party is acting or reasonably believes they are acting within the scope of their authority;
    - The governmental agency is engaged in the exercise or discharge of a governmental function; and
    - Their conduct does not amount to gross negligence that is the proximate cause of the injury or damage.
      - “Gross negligence” means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.
- MICH. COMP. LAWS § 691.1408 (2014).
  - A governmental agency may pay for, engage, or furnish the services of an attorney to advise and represent their officer, employee, or volunteer when a claim is made or a civil action is commenced against them for personal or property injuries caused by their negligence while in the course of their employment or actions on behalf of the governmental agency and acting within the scope of their authority.
  - The governmental agency may compromise, settle, and pay the claim before or after the commencement of a civil action.
  - The governmental agency may indemnify their officer, employee, or volunteer or pay, settle, or compromise a judgment entered against the officer, employee, or volunteer for personal injuries or property damage caused in their course of employment and within the scope of their authority.
  - The governmental agency may pay for, engage, or furnish the services of any attorney to advise and represent their officer or employee in a criminal action against the officer or employee based upon their conduct in the course of employment, if they had a reasonable basis for believing they were acting within the scope of their authority at the time of the conduct.
- MICH. COMP. LAW ANN. § 691.1409 (2014).

- A governmental agency may purchase liability insurance to indemnify and protect it against loss or to protect it and its agents, officers, employees, or volunteers against an adverse judgment arising from a claim for personal injury or property damage they caused.
    - The existence of an insurance policy indemnifying a governmental agency against liability for damages is not a waiver of a defense otherwise available.
  - MICH. COMP. LAWS § 691.1410 (2014).
    - Claims against the State under the Government Immunity Act shall be brought under the Court of Claims Act, Sections 600.6401 to 600.6497 of the Michigan Compiled Laws.
    - Claims against any political subdivision or municipal corporation by civil action shall be brought in any court having jurisdiction.
    - Any claim authorized under the Government Immunity Act is subject to the Revised Judicature Act of 1961, Sections 600.101 to 600.9947 of the Michigan Compiled Laws.
  - MICH. COMP. LAWS § 691.1412 (2014).
    - Claims under the Government Immunity Act are subject to all of the defenses to tort claims brought against private persons.
  - MICH. COMP. LAWS § 691.1413 (2014).
    - A governmental agency is not immune to actions to recover for bodily injury or property damage arising out of the performance of a proprietary function.
      - A proprietary function means any activity conducted primarily for the purpose of producing a pecuniary profit for the governmental agency.
        - Does not include any activity normally supported by taxes or fees.
  - MICH. COMP. LAWS § 259.101 (2014). State Airport and Landing Fields; Acquisition. The Aeronautics Commission may, on behalf of and in the name of Michigan, acquire property for the purposes of establishing and constructing airports, landing fields, and other aeronautical facilities and may own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police these facilities within Michigan.
  - MICH. COMP. LAWS § 259.126 (2014). Airports; Acquisition and Operation by Political Subdivisions.
  - MICH. COMP. LAWS § 259.132 (2014). These acts are declared to be public, governmental, and municipal functions, exercised for a public purpose, and matters of public necessity.
  - MICH. COMP. LAWS § 259.807 (2014). Airport Authority as Body Corporate; Other Airports; Powers. An airport authority shall be a public body corporate with powers to sue and be sued in any Michigan court.
- **Relevant Case Law:**
    - Codd v. Wayne Cnty., 537 N.W.2d 453 (Mich. Ct. App. 1995).
      - In order for an activity to be a proprietary function under Section 691.1413, the “activity must (1) be conducted primarily for the purpose of producing a pecuniary profit and (2) not normally be

- supported by taxes or fees.” *Id.* at 455 (citing *Hyde v. Univ. of Mich. Bd. of Regents*, 393 N.W.2d 847 (Mich. 1986)).
    - “Whether an activity actually produces a profit is not dispositive.” *Id.* at 455.
    - “[T]he use of the revenue only to pay current and long-range expenses may indicate a nonpecuniary purpose.” *Id.*
    - Since “[t]he acquisition, operation, and maintenance of airports by political subdivisions is expressly authorized by the Legislature....The operation of Detroit Metropolitan Airport by defendant Wayne County constitutes a governmental function.” *Id.*
    - The County’s operation of the airport did not fall within the proprietary function exception to governmental immunity. *Id.* at 456.
  - *In re Air Crash at Detroit Metro. Airport*, 976 F. Supp. 1076 (E.D. Mich. 1997).
    - “In assessing whether the activity produces a pecuniary profit, a court must consider (1) whether the activity produces a profit and (2) where any profit generated by the activity is deposited and spent.” *Id.* at 1084 (citing *Hyde v. Univ. of Mich. Bd. of Regents*, 393 N.W.2d 847 (Mich. 1986)).
- **Monetary Limits and Caps:**
    - Michigan does not have any limits or caps on liability of a governmental agency.
    - Generally, Michigan does not permit recovery of punitive damages that are designed to punish unless authorized by statute. See *Casey v. AutoOwners Ins. Co.*, 729 N.W.2d 277 (Mich. Ct. App. 2006).
      - However, exemplary damages are available, which are to compensate for an injury to feelings by a voluntary act or conduct that inspires feelings of humiliation, outrage, and indignity. See *McPeak v. McPeak*, 593 N.W.2d 180 (Mich. Ct. App. 1999).
  - **Waiver of Immunity:**
    - Michigan public airports are subject to very few exceptions to immunity for damages and injuries that occur on their premises. Those exceptions are: (1) public roads, (2) public buildings, (3) public vehicles, (4) proprietary function, and (5) government employee exception.
  - **Process:**
    - MICH. COMP. LAWS § 691.1404 (2014). Notice of Injury and Defect in Highway.
      - A person injured by reason of a defective highway shall serve a notice on the governmental agency of the occurrence of the injury and the defect within 120 days from the time the injury occurred.
        - Unless the injured person is under 18 years of age at the time of injury; then notice shall be served within 180 days from the time of injury by a parent, attorney, next friend, or legally appointed guardian; or
        - Unless the person is physically or mentally incapable of giving notice; then notice shall be served within 180 days after the termination of the disability.

- The notice shall specify the exact location and nature of the defect, the injury sustained, and names of any known witnesses.
- The notice may be served upon any individual, either personally or by certified mail, return receipt requested, who may lawfully be served with civil process directed against the governmental agency.
  - Notice to the State shall be filed in triplicate with the clerk of the court of claims.
- MICH. COMP. LAWS § 691.1406 (2014). Public Buildings; Dangerous Conditions; Liability; Notice, Contents, Service.
  - A person injured by reason of a dangerous or defective public building shall serve a notice on the responsible governmental agency of the occurrence of the injury and the defect within 120 days from the time the injury occurred.
  - The notice shall specify the exact location and nature of the defect, the injury sustained, and names of any known witnesses.
  - The notice may be served upon any individual, either personally or by certified mail, return receipt requested, who may lawfully be served with civil process directed against the responsible governmental agency.
    - Notice to the State shall be filed in triplicate with the clerk of the court of claims.
- MICH. COMP. LAWS § 691.1411 (2014). Claim against Government Agency; Limitations of Actions.
  - Every claim against any government agency shall be subject to the general law respecting limitations of actions, except:
    - 2-year period of limitations for claims for bodily injury or damage by failure of a governmental agency to keep a highway under reasonable repair and reasonably safe and fit for travel; and
    - Periods of limitations for claims against the State, other than injuries occurring from a failure to keep a highway under reasonable repair and reasonably safe and fit for travel, shall be governed by the Court of Claims Act, Sections 600.6401 to 600.6497 of the Michigan Compiled Laws.

## MINNESOTA

### Summary:

The State of Minnesota has partially abrogated sovereign immunity for airports, which are treated similarly to other municipal entities. Airport authorities are immune from liability for discretionary functions. For employees performing the duties of their position, they are not immune, but indemnified by the municipality unless their actions amount to malfeasance, bad faith, or willful neglect. Even if subject to liability, there is a cap of \$500,000 per claim and \$1,500,000 per occurrence for both state and municipalities unless insurance covering the claim exists in excess of these amounts. Punitive damages are not recoverable. The statute of limitations for all tort claims is the same as in other actions; there is a notice requirement of 180 days from date of discovery of the loss or injury.

- **Statutory Authority:**
  - MINN. STAT. § 3.736 (2014). Tort Claims.

- MINN. STAT. §§ 3.732–3.756 (2014). Settlement of Claims.
  - MINN. STAT. § 3.732 (2014). Definitions.
    - “State” includes each of the departments, boards, agencies, commissions, courts, and officers in the executive, legislative, and judicial branches of the state of Minnesota. It does not include a city, town, county, or other local governmental body corporate or public.
    - “Employee of the state” means all present or former officers, members, directors, or employees of the State, or persons acting on behalf of the State in an official capacity, temporarily or permanently, with or without compensation. It does not include an independent contractor.
      - It also includes any officer, agent, or employee of the State of Wisconsin performing work for the State of Minnesota pursuant to a joint state initiative.
    - “Scope of office or employment” means that the employee was acting on behalf of the State in the performance of duties or tasks lawfully assigned by competent authority.
  - MINN. STAT. § 3.736(1) (2014). Tort Claims—General Rule.
    - The state will pay compensation for injury to or loss of property or personal injury or death caused by an act or omission of an employee of the State while acting within the scope of office or employment or a peace officer, who is not acting on behalf of a private employer and who is acting in good faith, under the circumstances where the State, if a private person, would be liable to the claimant, whether arising out of a governmental or proprietary function.
  - MINN. STAT. § 3.736(3) (2014). Tort Claims—Exclusions.
    - The State and its employees are not liable in the following losses:
      - Caused by an act or omission of a state employee exercising due care in the execution of a statute or rule;
      - Caused by the performance or failure to perform a discretionary duty, whether or not the duty is abused;
      - Caused by snow or ice conditions on a highway or public sidewalk that does not abut a publicly owned building or a publicly owned parking lot—except when the condition is affirmatively caused by a state employee’s negligent acts;
      - A loss other than injury to or loss of property or personal injury or death;
      - A loss involving or arising out of the use or operation of a recreational motor vehicle within the right-of-way on the road unless the State would be liable for conduct that would entitle a trespasser to damages against a private person.
    - Additionally, the courts may find additional cases where the State and its employees should not, in equity and good conscience, pay compensation for personal injuries or property losses.

- MINN. STAT. § 3.736(9) (2014). Tort Claims—Indemnification.
  - The State shall defend, save harmless, and indemnify any employee of the State against expenses, attorneys’ fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the employee in connection with any tort, civil, or equitable claim or demand...arising out of an alleged act or omission occurring during the period of employment if the employee provides complete disclosure and cooperation in the defense of the claim or demand and if the employee was acting within the scope of the employment.
- MINN. STAT. § 3.736(10) (2014). Tort Claims—Judgment as Bar.
  - The judgment in an action under the Tort Claims section is a complete bar to any action by the claimant, by reason of the same subject matter, against the State employee whose act or omission gave rise to the claim.
- MINN. STAT. §§ 466.01–466.15 (2014). Tort Liability; Political Subdivisions.
  - MINN. STAT. § 466.01 (2014). Definitions.
    - “Municipality” means any city, county, town, public authority, public corporation, joint powers board or organization, other political subdivision, community action agency, or a limited partnership in which a community action agency is the sole general partner.
    - “Employee, officer, or agent” means a present or former employee, officer, or agent of a municipality, or other person acting on behalf of the municipality in an official capacity, but does not include an independent contractor.
  - MINN. STAT. § 466.02 (2014). Tort Liability.
    - Every municipality is subject to liability for its torts and those of its officers, employees, and agents acting within the scope of their employment or duties whether arising out of a governmental or proprietary function.
  - MINN. STAT. § 466.03 (2014). Exceptions.
    - The waiver of immunity under Section 466.02 does not apply to the following:
      - Any claim based on snow or ice conditions on any highway or public sidewalk that does not abut a publicly owned building or publicly owned parking lots, except when the condition is affirmatively caused by the negligent acts of the municipality.
      - Any claim based upon an act or omission of an officer or employee, exercising due care, in the execution of a valid or invalid statute, charter, ordinance, resolution, or rule.
      - Any claim based upon the performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.
      - Any claim for a loss other than injury to or loss of property or personal injury or death.
      - Any claim for a loss involving or arising out of the use or operation of a recreational motor vehicle within the

right-of-way of a road or highway, except that a municipality is liable for conduct that would entitle a trespasser to damages against a private person.

- MINN. STAT. § 466.07 (2014). Indemnification.
  - A municipality or an instrumentality of a municipality shall defend and indemnify any of its officers and employees for damages, including punitive damages, claimed or levied against the officer or employee provided the officer or employee was:
    - Acting in the performance of the duties of the position; and
    - Not guilty of malfeasance in office, willful neglect of duty, or bad faith.
- MINN. STAT. §§ 360.031–360.046 (2014). Airports and Aeronautics—Establishing Airports.
  - MINN. STAT. § 360.031 (2014). Definition of Municipality.
    - “Municipality” means any county, city, town, or airport authority of this state.
  - MINN. STAT. § 360.032 (2014). Municipality May Acquire Airport.
    - Every municipality is authorized, through its governing body, to acquire property, for the purpose of establishing, constructing, and enlarging airports and to acquire, construct, enlarge, improve, maintain, operate, and regulate such airports and structures and other property incidental to their operation, either within or without the territorial limits of such municipality and within or without this state;
    - Prior to any such acquisition, every municipality is authorized to make investigations, surveys, and plans; to construct, install, and maintain airport facilities for the servicing of aircraft for the comfort and accommodation of air travelers; and
    - Every municipality is authorized to purchase and sell equipment and supplies as an incident to the operation of its airport properties.
  - MINN. STAT. § 360.033 (2014). Sovereign Rights.
    - The acquisition of any lands for the purpose of establishing airports; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports; and the exercise of any other powers herein granted to the State or to municipalities are hereby declared to be public, governmental, and municipal functions, exercised for a public purpose, and matters of public necessity.
- **Relevant Case Law:**
  - *Minder v. Anoka Cnty.*, 677 N.W.2d 479 (Minn. Ct. App. 2004).
    - “The first step in analyzing a claim of statutory immunity is to identify what governmental conduct is being challenged.” *Id.* at 484 (citation omitted).

- “The question is not whether the [government’s] conduct resulted in a condition posing an unreasonable risk of harm; it is whether the conduct consisted of planning or policymaking decisions (protected) or operational level decisions (unprotected).” *Id.* at 485 (quoting *Holmquist v. Minn.*, 425 N.W.2d 230, 232 (Minn. 1988)).
  - *Zank v. Larson*, 552 N.W.2d 719 (Minn. 1996).
    - “In determining whether particular government activity is protected by statutory immunity, we have interpreted the discretionary function exception narrowly and have focused on its underlying purposes—to preserve the separation of powers by preventing courts from passing judgment ‘on policy decisions entrusted to coordinate branches of government.’” *Id.* at 721 (quoting *Holmquist v. State*, 425 N.W.2d 230, 231 (Minn. 1988)).
    - “Discretionary immunity protects the government only when it can produce evidence its conduct was of a policy-making nature involving social, political, or economic considerations, rather than merely professional or scientific judgments.” *Id.* at 721 (quoting *Steinke v. City of Andover*, 525 N.W.2d 173, 175 (Minn. 1994)).
  - *Watson v. Metro. Transit Comm’n*, 553 N.W.2d 406 (Minn. 1996).
    - “If a governmental decision involves the type of political, social and economic consideration that lie at the center of a discretionary action, including considerations of safety issues, financial burdens, and possible legal consequences, it is not the role of the courts to second-guess such policy decisions.” *Id.* at 412 (citation omitted).
  - *Cracraft v. City of St. Louis Park*, 279 N.W.2d 801 (Minn. 1979).
    - “[G]eneral duties owed to the entire public rather than a specific class of persons cannot form the basis of a negligence action.” *Id.* at 804.
    - Four factors to consider to determine if a special duty exists:
      - Actual knowledge by the governmental entity of a dangerous condition;
      - Reasonable reliance by persons on the governmental entity’s specific actions or representations, which cause the person to forego other alternatives of protecting themselves;
      - An ordinance or statute setting forth mandatory acts clearly for the protection of a particular class of persons rather than the public as a whole; and
      - The governmental entity used due care to avoid increasing the risk of harm. *Id.* at 806-07.
  - *McGowan v. Our Savior’s Lutheran Church*, 527 N.W.2d 830 (Minn. 1995).
    - “Generally, an order denying a motion for summary judgment is not appealable,” but “[a]n exception to the general rule exists where the motion denied is based on governmental immunity from suit.” *Id.* at 832.
- **Monetary Limits and Caps:**
  - MINN. STAT. § 3.736(4) (2014). Tort Claims—Limits.
    - The State will not pay punitive damages.

- The total liability of the State and its employees acting within the scope of their employment on any tort claim shall not exceed:
  - \$500,000 for claims arising after July 1, 2009.
  - \$1,500,000 for any number of claims arising out of a single occurrence after July 1, 2009.
  - These limitations include damages claimed for loss of services or loss of support arising out of the same tort.
- MINN. STAT. § 466.04 (2014). Tort Liability—Maximum Liability.
  - No award for punitive damages against any municipality.
  - The total liability of any municipality on any claim for any permissible tort claim shall not exceed:
    - \$500,000 for any claims arising after July 1, 2009.
    - \$1,500,000 for any number of claims arising out of a single occurrence arising after July 1, 2009.
  - The liability of an officer or an employee of any municipality for a tort arising out of an alleged act or omission occurring in the performance of a duty shall not exceed these same limits unless the officer or employee provides professional services and is employed in the profession for compensation by a person other than the municipality.
  - The total liability of the municipality on a claim against it and against its officers or employees arising out of a single occurrence shall not exceed these limits.
  - The damage limitations include damages claimed for loss of services or support arising out of the same tort.
  - Procurement of insurance by the State or a municipality is a waiver of the limits of governmental liability only to the extent that valid and collectible insurance exceeds the limits and covers the claim. MINN. STAT. §§ 466.06, 3.736(8).
- **Waiver of Immunity:**
  - Minnesota waives sovereign immunity for torts to both the State and municipalities under Sections 3.736 and 466.02 of the Minnesota Statutes unless one of the exceptions in those chapters applies.
    - Under Section 360.033 of the Minnesota Statute, the acquisition, maintenance, and operation of an airport is declared to be a public, governmental, and municipal function, exercised for a public purpose, and matters of public necessity.
      - However, the waivers of immunity apply to both governmental and proprietary functions for municipalities.
- **Process:**
  - MINN. STAT. § 3.736(5) (2014). Tort Claims—Notice Required. [State].
    - Every person who claims compensation from the State or a state employee acting within the scope of employment for or on account of any loss or injury shall present a notice to the attorney general and any state employee from whom the claimant will seek compensation, within 180 days after the alleged loss or injury is discovered.
      - The notice shall state: Its time, place and circumstances, the names of any state employees known to be involved, and the amount of compensation or other relief demanded.
    - Actual notice of sufficient facts to reasonably put the State or its insurer on notice of a possible claim complies with the notice requirements.

- Failure to state the amount of compensation or other relief demanded does not invalidate the notice, but the claimant shall furnish full information available regarding the nature and extent of the injuries and damages within 15 days after demand by the State.
  - The time for giving notice does not include the time during which the person injured is incapacitated by the injury from giving the notice.
  - When the claim is one for death by a wrongful act or omission, the notice may be presented by the personal representative, surviving spouse, or next of kin, within 1 year after the alleged injury or loss resulting in the death.
  - An additional notice is not necessary if the person about whose death the claim is made had already presented a sufficient notice prior to the death of the decedent.
- MINN. STAT. § 466.05 (2014). Tort Liability—Notice of Claim. [Municipality].
    - Every person claiming damages from any municipality or municipal employee acting within the scope of employment for or on account of any loss or injury within the scope of the immunity waiver, shall cause a notice to be presented to the governing body of the municipality within 180 days after the alleged loss or injury is discovered.
      - The notice shall state: Its time, place and circumstances, the names of any municipal employees known to be involved, and the amount of compensation or other relief demanded.
    - Actual notice of sufficient facts to reasonably put the governing body of the municipality or its insurer on notice of a possible claim complies with the notice requirements.
      - Failure to state the amount of compensation or other relief demanded does not invalidate the notice, but the claimant shall furnish full information available regarding the nature and extent of the injuries and damages within 15 days after demand by the municipality.
    - The time for giving notice does not include the time during which the person injured is incapacitated by the injury from giving the notice.
    - When the claim is one for death by a wrongful act or omission, the notice may be presented by the personal representative, surviving spouse, or next of kin, within 1 year after the alleged injury or loss resulting in the death.
    - An additional notice is not necessary if the person about whose death the claim is made had already presented a sufficient notice prior to the death of the decedent.
  - MINN. STAT. § 3.736(11) (2014). The statute of limitations for all tort claims brought against the state is the same as it would be in other actions.

## MISSISSIPPI

### Summary:

The State of Mississippi has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. Airports are immune from liability for discretionary functions. Government employees shall not be held personally liable for their acts or omissions occurring within the course and scope of their duties. Even if subject to liability, there is currently a \$500,000 damage cap per occurrence and a

governmental entity is subject to liability for any excess insurance carried. Punitive damages are not available. Claimants must exhaust all claim procedures with the governmental entity before filing suit and must deliver a written notice of claim at least 90 days before filing suit. There is a 1-year statute of limitations for claims under the Mississippi Tort Claims Act.

o **Statutory Authority:**

- MISS. CODE ANN. §§ 11-46-1 to 11-46-23 (2014). Immunity of State and Political Subdivisions from Liability and Suit for Torts and Torts of Employees.
- MISS. CODE ANN. § 11-46-1 (2014). Definitions.
  - “Employee” means any officer, employee or servant of the State of Mississippi or a political subdivision of the State, including elected or appointed officials...but not] an independent contractor under contract to the State or a political subdivision.
  - “Governmental entity” means the State and political subdivisions.
  - “Political subdivision” means any body politic or body corporate other than the State responsible for governmental activities only in geographic areas smaller than that of, including but not limited to, any county, municipality..., [and] airport authority....
  - “State” means the State of Mississippi and any office, department, agency, division, bureau, commission, [or] airport authority.
- MISS. CODE ANN. § 11-46-3 (2014). Declaration of Legislative Intent.
  - The Legislature of the State of Mississippi finds and determines as a matter of public policy and does hereby declare, provide, enact and reenact that the “state” and its “political subdivisions” are not now, have never been and shall not be liable, and are, always have been and shall continue to be immune from suit at law or in equity on account of any wrongful or tortuous act or omission or breach of implied term or condition of any warranty or contract...by the State or its political subdivisions, or any such act, omission or breach by any employee of the State or its political subdivisions, notwithstanding that any such act, omission or breach constitutes or may be considered as the exercise or failure to exercise any duty, obligation or function of a governmental, proprietary, discretionary or ministerial nature.
- MISS. CODE ANN. § 11-46-5 (2014). Waiver of Immunity; Course and Scope of Employment; Presumptions.
  - The immunity of the State and its political subdivisions is waived as to claims for money damages arising out of the torts of such governmental entities and the torts of their employees while acting within the course and scope of their employment.
  - An employee’s conduct constituting fraud, malice, libel, slander, defamation, or any non-traffic violation criminal offense shall not be considered as acting within the course and scope of his employment for purposes of waiver of immunity.
  - For purposes of sovereign immunity, it is a rebuttal presumption that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment.
- MISS. CODE ANN. § 11-46-7 (2014). Exclusiveness of Remedy; Joinder of Government Employee; Immunity for Acts or Omissions Occurring within

Course and Scope of Employee's Duties; Provision of Defense for and Payment of Judgments or Settlements of Claims against Employees; Contribution or Indemnification by Employee.

- The remedy provided under the Mississippi Tort Claims Act against a governmental entity or its employee is the exclusive remedy for the claims provided under the Act.
  - An employee may be joined in an action against a governmental entity in a representative capacity if the act or omission complained of is one for which the governmental entity may be liable.
  - No employee shall be held personally liable for acts or omissions occurring within the course and scope of the employee's duties.
  - Every governmental entity shall be responsible for providing a defense to its employees and for the payment of any judgment in any civil action or settlement of any claim against an employee for money damages arising out of any act or omission within the course and scope of his employment whether or not the employee is currently employed by the governmental entity.
  - The governmental entity's responsibility to provide a defense for its employee applies whether the claim is brought in a court of Mississippi or any other state or in a court of the United States.
  - The governmental entity shall not be entitled to contribution or indemnification or reimbursement for legal fees and expenses for its employees unless a court finds that the act or omission of the employee was outside the course and scope of his employment.
- MISS. CODE ANN. § 11-46-9 (2014). Exemption of Governmental Entity from Liability on Claims Based on Specified Circumstances.
- A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:
    - (a) Arising out of legislative, judicial, administrative action or inaction;
    - (b) Acts or omissions in reliance, execution, or performance or failure to execute or perform statutes or other laws while exercising ordinary care;
    - (c) Police and fire protection, unless there is reckless disregard for safety and well-being of any person not engaged in a criminal activity;
    - (d) Performance or exercise of a discretionary function or duty on the part of a governmental entity or employee;
    - (g) Arising out of the exercise of discretion in determining whether or not to seek or provide the resources necessary for the purchase of equipment, the construction or maintenance of facilities, the hiring of personnel and, in general, the provision of adequate governmental services;
    - (p) Claims arising out of plans or designs for the construction or improvement of public works and buildings;
    - (q) Injuries caused solely by weather conditions;
    - (v) Arising out of an injury caused by a dangerous condition on property of the governmental entity that was not caused by the negligent or other wrongful conduct of an employee of the governmental entity or of which the governmental entity did not have actual or constructive notice and an adequate opportunity to protect or warn against;



- “[A] joint airport board which exercises powers which are declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity, as does the Airport Authority in this case, is a ‘political subdivision’ under § 11-46-1(i). . . .” *Id.* at 710.
- Stuart v. Univ. of Miss. Med. Ctr., 21 So. 3d 544 (Miss. 2009).
- The notice requirements of the Mississippi Tort Claims Act can be waived.
- Miss. Transp. Comm’n v. Montgomery, 80 So. 3d 789 (Miss. 2012).
- “This Court has adopted a two-part public-function test to determine if ‘governmental conduct is discretionary so as to afford the governmental entity immunity.’” *Id.* at 795 (citation omitted).
- First, the Court must determine “whether the activity in question involved an element of choice or judgment.” *Id.*
- Second, the Court must determine “whether that choice or judgment involved social, economic, or political-policy considerations.” *Id.*
- Pratt v. Gulfport-Biloxi Reg’l Airport Auth., 97 So. 3d 68 (Miss. 2012).
- To determine whether an activity involved an element of choice or judgment, the Court must determine “whether the activity was discretionary or ministerial.” *Id.* at 72 (citation omitted).
- “A duty or an activity is discretionary if ‘it is not imposed by law and depends upon the judgment or choice of the government entity or its employee.’” *Id.*
- “A ministerial function is one ‘positively imposed by law and required to be performed at a specific time and place, removing an officer’s or entity’s choice or judgment.’” *Id.*
- “Day-to-day operational decisions, such as actions taken while construction is underway, fall under the overall function of operating the airport. The fact that day-to-day decisions may be ‘routine or frequent’ does not remove them from protection as discretionary functions attendant to the operation of the airport.” *Id.* at 73 (citation omitted).
- “[N]ot every day-to-day decision or activity at an airport will be discretionary.” *Id.* at 73.
- “[D]iscretionary conduct or decisions must involve considerations of public policy for discretionary-function immunity to apply.” *Id.* at 73 (quoting *United States v. Gaubert*, 499 U.S. 315, 325 (1991)).
- “A regional airport authority, like GBRAA, is a public body ‘corporate and politic’ that is governed by commissioners.” *Id.* at 75 (quoting MISS. CODE ANN. § 61-3-7 (2014)).
- Alexander v. Newton Cnty., 124 So. 3d 688 (Miss. Ct. App. 2013).
- “Immunity under the [Mississippi Tort Claims Act] is an affirmative defense that must be specifically pled in order not to be waived.” *Id.* at

690 (citation omitted).

- **Monetary Limits and Caps:**
  - MISS. CODE ANN. § 11-46-15 (2014). Limitation of Liability; Exemplary or Punitive Damages; Interest; Attorney’s Fees; Reduction of Award.
    - A governmental entity or its employee’s liability for any claim or suit for damages arising out of a single occurrence shall not exceed \$500,000 for any claims or causes of actions arising from acts or omissions occurring on or after July 1, 2001.
    - No punitive or exemplary damages shall be awarded against any governmental entity or its employee for any act or omission for which is waived under the Mississippi Tort Claims Act.
    - No pre-judgment interest or non-specifically authorized attorney’s fees shall be awarded against any governmental entity or its employee for any act or omission for which is waived under the Mississippi Tort Claims Act.
    - The court shall reduce any verdict in excess of the amount of \$500,000 or the limits of any excess insurance policy retained to the amount not to exceed the maximum dollar amount of liability.
  - MISS. CODE ANN. § 11-46-17 (2014). Creation of Tort Claims Fund; liability insurance.
    - All political subdivisions must obtain an insurance policy or establish self-insurance reserves to cover all risks of claims and suits for which they may be liable under the MTCA.
    - Any governmental entity of the State may purchase liability insurance to cover claims in excess of the amounts provided in Section 11-46-15 of the Mississippi Code and may be sued by anyone in excess of those amounts to the extent of such excess insurance carried.
- **State-Specific Aspects:**
  - The MTCA immunity waiver scheme reads and seemingly functions as a liability insurance policy with a general waiver of immunity subject to conditions and exclusions that re-grant immunity.
  - Mississippi is a “single occurrence” state in terms of governmental liability, with a single damage cap that applies to multiple injuries resulting from the same occurrence.
- **Waiver of Immunity:**
  - Airport authorities are considered political subdivisions and are potentially subject to liability under the MTCA. Prior to waiving the immunity, the MTCA reinforces the traditional rule that the State of Mississippi and its political subdivisions are immune from suit unless it is otherwise waived.
  - The State of Mississippi and its political subdivisions are only liable for their entities’ and employees’ actions in the course and scope of their employment, but also list out 25 exceptions to the waiver of immunity.
- **Process:**
  - MISS. CODE ANN. § 11-46-11 (2014). Statute of Limitations; Notice of Claim Requirements; Savings Clause in Favor of Infants and Those of Unsound Mind.
    - Any person with a claim under the Mississippi Tort Claims Act against a governmental entity must first exhaust all procedures within that governmental entity.

- After all procedures have been exhausted, the person may file suit.
- At least 90 days before filing suit, the person must deliver, in person or by registered or certified United States mail, a written notice of claim with the chief executive officer of the governmental entity.
  - Every notice of claim shall contain a short and plain statement of the facts upon which the claim is based, including:
    - The circumstances which brought about the injury;
    - The extent of the injury;
    - The time and place the injury occurred;
    - The names of all persons known to be involved;
    - The amount of money damages sought; and
    - The residence of the person making the claim (a) at the time of injury and (b) at filing the notice.
- One-year statute of limitations.
- The 1-year statute of limitations will toll up to 95 days from the date the notice of claim is received by the proper party.
  - To determine the running of the limitations period, service of any notice of claim or notice of denial of claim is effective upon proper delivery.
- All notices of denial of claim shall be served by governmental entities upon claimants only by certified mail, return receipt requested.
- The claimant has an additional 90 days to file suit following the receipt of a notice of denial of claim, or the tolling period (95 days) expires.

## MISSOURI

### Summary:

The State of Missouri has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. Sovereign immunity is waived in only three circumstances; otherwise, sovereign immunity applies. Airports are immune from liability for discretionary functions. Even if subject to liability, damage caps are set on a yearly basis and there are no punitive damages. There is a 2-year statute of limitations for claims against the State and a 90-day notice for claims against a city for injuries on public thoroughfares.

- **Statutory Authority:**
  - MO. REV. STAT. § 537.600 (2014). Sovereign Immunity in Effect—Exceptions. Sovereign Immunity is waived for
    - Injuries directly resulting from the negligent acts or omissions by public employees arising out of the operation of motor vehicles or motorized vehicles within the course of their employment.
    - Injuries caused by the condition of a public entity's property if the plaintiff established that:
      - (1) The property was in a dangerous condition at the time of the injury;
      - (2) That the injury directly resulted from the dangerous condition;
      - (3) That the dangerous condition created a reasonably foreseeable risk of harm of the kind of injury which was incurred; and

- (4) That either (a) a negligent or wrongful act or omission of an employee of the public entity within the course of his employment created the dangerous condition or (b) a public entity had actual or constructive notice of the dangerous condition in sufficient time prior to the injury to have taken measures to protect against the dangerous condition.
  - These express waivers of sovereign immunity are absolute waivers whether or not the public entity was functioning in a governmental or proprietary capacity
  - These express waivers of sovereign immunity are absolute waivers whether or not the public entity is covered by liability insurance for tort.
- MO. REV. STAT. § 537.610 (2014). Liability Insurance for Tort Claims May be Purchased by Whom—Limitation on Waiver of Immunity—Maximum Payable for Claims Out of Single Occurrence—Exception—Apportionment of Settlements-Inflation-Penalties.
    - Sovereign immunity for the State and its political subdivisions is waived only to the maximum amount of and only for the purposes covered by the liability insurance policy purchased by the commissioner of administration and the governing body of each political subdivision of the State or any self-insurance plan adopted by any political subdivision of the State.
  - MO. REV. STAT. § 71.185 (2014). Tort Liability for Governmental Acts, Insurance, Trial.
    - Any municipality engaged in the exercise of governmental functions may carry liability insurance against claims or causes of action for property damage or personal injuries caused while in the exercise of governmental functions and shall be liable to the extent of the insurance policy.
    - A court shall reduce any verdict rendered by a jury in excess of the insurance limits to the amount of the coverage for the claim.
  - MO. REV. STAT. §§ 305.010 to 305.630 (2014). Aircraft and Airports.
    - MO. REV. STAT. § 305.170 (2014). Operation of Airports by Cities.
      - Cities, villages, and towns are authorized to acquire, construct, maintain, operate, and regulate airports or landing fields.
    - MO. REV. STAT. § 305.180 (2014). Operation of Airports by Counties.
      - Counties are authorized to acquire, construct, maintain, operate, and regulate airports or landing fields
    - MO. REV. STAT. § 305.295 (2014). Establishment of Airport Authority, when
      - Eligible entities may create airport authorities to operate airports within their jurisdiction.
      - The authority must include “airport authority” in its name.
    - MO. REV. STAT. § 305.307 (2014). Powers of Board—Condemnation Authorized.
      - An airport authority may sue and be sued, and its actions are declared to be for a public purpose.

o **Relevant Case Law:**

- *Mo. ex rel. St. Louis Hous. Auth. v. Gaertner*, 695 S.W.2d 460 (Mo. 1985).
  - “The legislature’s intent in using such [“sue and be sued”] language was to empower creditors and other proper claimants to sue for debts legitimately incurred, and not to authorize a tort suit against a governmental entity.” *Id.* at 462.
- *St. Louis Flying Club v. St. Louis Cnty.*, 866 S.W.2d 929 (Mo. Ct. App. 1993).
  - An airplane damaged while being moved by a tow truck used by county, as the owner/operator of airport, fell within the sovereign immunity exception for injuries arising from an operation of a motor vehicle by a public employee.
- *Mo. ex rel. City of Marston v. Mann*, 921 S.W.2d 100 (Mo. App. 1996).
  - “A municipal corporation is a ‘public entity’ within the meaning of section 537.600 and section 537.610.” *Id.* at 102 (citation omitted).
- *Brennan v. Curators of the Univ. of Mo.*, 942 S.W.2d 432 (Mo. Ct. App. 1997).
  - A plaintiff must affirmatively plead the existence of an insurance policy and that the policy covers the claims asserted in order to fall under the insurance exception provided by Section 547.610 of the Missouri Revised Statutes.
- *Allen v. City of St. Louis*, 117 S.W.3d 707 (Mo. Ct. App. 2003).
  - “The statutory provisions that waive sovereign immunity must be strictly construed.” *Id.* at 709 (citation omitted).
- *Davis v. Lambert-St. Louis Int’l Airport*, 193 S.W. 3d 760 (Mo. 2006).
  - “A governmental employer may still be liable for the actions of its employee even if the employee is entitled to official immunity.” *Id.* at 766.
- *Gregg v. City of Kansas City*, 272 S.W.3d 353 (Mo. Ct. App. 2008).
  - “The City is a municipal corporation....‘A municipality is completely immune from liability arising from its performance of acts classified as governmental functions, unless a specific exception applies or the municipality specifically waives the immunity.’ Thus, the City may waive immunity for acts considered governmental function, such as acts designed to protect the public.” *Id.* at 359 (citation omitted). “A municipality has no immunity from liability for its negligence in performing proprietary functions.” *Id.*

o **Monetary Limits and Caps:**

- MO. REV. STAT. § 537.610(5) (2014). The Missouri Department of Insurance calculates the sovereign immunity limits for Missouri public entities and publishes them annually in the Missouri Register.
  - The limitations on awards shall be increased or decreased on an annual basis in accordance with the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau of Economic Analysis of the United States Department of Commerce.

- The limitations for all claims arising out of a single accident or occurrence for 2013 and 2014 are \$2,657,587 and \$2,687,594, respectively.
  - The limitations for non-workers compensation claims for any one person in a single accident or occurrence for 2013 and 2014 are \$398,638 and \$403,139, respectively.
  - These and other amounts can be found at: <https://insurance.mo.gov/industry/sovimmunity.php>.
  - No punitive or exemplary damages may be awarded on any claim against a public entity where sovereign immunity has been waived.
- **Waiver of Immunity:**
    - Sovereign Immunity is waived in three situations—(1) injuries arising from motor vehicle accidents; (2) injuries arising from dangerous premises conditions; and (3) any applicable coverage under an insurance policy carried by the State or a political subdivision. MO. REV. STAT. § 537.600.1 (2014).
    - Since all airports are locally owned by subdivisions/municipalities, there is no difference in the function of the immunity waiver.
  - **Process:**
    - MO. REV. STAT. § 33.120(1) (2014). Claims against the State must be presented within 2 years after accrual.
    - MO. REV. STAT. § 82.201 (2014). Notice must be provided within 90 days of claims against a city for injuries involving the defective condition of public thoroughfares.

## MONTANA

### Summary:

The State of Montana has abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. Montana does not have a discretionary function exception to the waiver of sovereign immunity. A governmental entity employer shall defend and indemnify any employee for negligent acts within the scope of their employment. Tort damages are capped at \$750,000 per claim and \$1,500,000 per occurrence. Punitive damages are not recoverable. Claims against the State or political subdivisions are subject to the same statutes of limitations as normal actions and must be filed with the department of administration (State claims) or clerk or secretary (political subdivisions).

- **Statutory Authority:**
  - MONT. CONST. art. II, § 18. State Subject to Suit.
    - The State, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property.
  - MONT. CODE ANN. § 2-9-101 to 2-9-114 (2013). Liability Exposure.
  - MONT. CODE ANN. § 2-9-101 (2013). Definitions.
    - “Governmental entity” means the State and political subdivisions.

- “Political subdivision” means any county, city, municipal corporation, school district, special improvement or taxing district, or other political subdivision or public corporation.
- “State” means the State of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the State.
- MONT. CODE ANN. § 2-9-102 (2013). Governmental Entities Liable for Torts Except as Specifically Provided by Legislature.
  - Every governmental entity is subject to liability for its torts and those of its employees acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function except as specifically provided by the legislature under Article II, Section 18, of the Constitution of the State of Montana.
- MONT. CODE ANN. § 2-9-111 (2013). Immunity from Suit for Legislative Acts and Omissions.
  - A governmental entity vested with legislative power by statute is immune from suit for a legislative act or omission by its legislative body, or any member or staff of the legislative body engaged in legislative acts.
  - Any member or staff of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with legislative acts of the legislative body.
  - The acquisition of insurance coverage by a governmental entity does not waive immunity granted to legislative acts or omissions.
- MONT. CODE ANN. § 2-9-305 (2013). Immunization, Defense, and Indemnification of Employees.
  - The governmental entity employer shall defend and indemnify any employee of a state, county, city, town, or other governmental entity against an action brought for a negligent act, error, or omission, including alleged violations of civil rights under 42 U.S.C. § 1983, or other actionable conduct of the employee committed while acting within the course and scope of the employee’s office or employment.
    - Unless (1) the employee’s conduct constitutes a criminal offense, oppression, fraud, or malice or for any other reason does not arise out of the course and scope of their employment; (2) the employee compromised or settled the claim without the consent of the government entity employer; or (3) the employee failed or refused to cooperate reasonably in the defense of the case.
  - The employee shall give written notice to their supervisor, or to the legal officer or agency defending the entity if no supervisor or if elected, requesting a defense to the action be provided by the employer upon receiving service of a summons and complaint.
    - The employer shall notify the employee within 15 days after receipt of the notice whether a direct defense will be provided.
    - If the employer refuses or is unable to provide the direct defense, the defendant employee may retain other counsel, for which the employer shall pay all expenses and any judgment that otherwise would be indemnified.

- If the claimant recovers against the governmental entity arising out of a waiver of sovereign immunity, the claimant is completely barred to any action or recovery of damages for the same subject matter against the employee.
- MONT. CODE ANN. §§ 67-10-101 to 67-10-904 (2013). Municipal Airports Act.
  - MONT. CODE ANN. § 67-10-102 (2013). Counties, cities, and towns may, either individually or by the joint action of a county and one or more of the cities and towns within the county, acquire land for airport purposes which the local governments may use to establish, construct, own, control, lease, operate, and regulate airports for the use of airplanes and other aircraft. Additionally, a county, city, or town may exercise this authority by acting jointly with one or more counties, cities, towns, or any combination of counties, cities, or towns. A multijurisdictional airport is not required to be located within the limits of each subdivision participating in the joint venture.
  - MONT. CODE ANN. § 67-10-103 (2013). Land acquired, owned, controlled, or occupied for airport purposes is done so for a public use and as a matter of public necessity. The acquisition of land; planning, acquisition, development, construction maintenance, operation, regulation and policing of airports and air navigation facilities; and the exercise of any other powers granted under the Municipal Airport Act are considered public and governmental functions exercised for public purposes and as matters of public necessity.
- MONT. CODE ANN. §§ 67-11-101 to 67-11-401 (2013). Airport Authorities Act.
  - MONT. CODE ANN. § 67-11-102 (2013). Any municipality may, by resolution of its governing body, create a public body, corporate and politic, to be known as a municipal airport authority, which shall be authorized to exercise its functions upon the appointment and qualifications of the first commissioners thereof; or the governing body may by resolution determine to exercise any or all powers granted to such authorities under the Airport Authorities Act until or unless such powers are or have been conferred upon a municipal or regional airport authority.
  - MONT. CODE ANN. § 67-11-103 (2013). Two or more municipalities may by joint resolution create a public body, corporate and politic, to be known as a regional airport authority. The regional airport authority has the same powers as all other political subdivisions in the adoption and enforcement of airport-affected area regulations provided in title 67 of the Montana Code.
  - MONT. CODE ANN. § 67-11-105 (2013). The acquisition of any land; the planning, acquisition, establishment, development, construction, improvement, maintenance, operation, regulation, and protection of airports and air navigation facilities, including acquisition and elimination of airport hazards; and exercise of any powers granted to authorities and other public agencies are declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity.
  - MONT. CODE ANN. § 67-11-201 (2013). Authority powers include the power to sue and be sued.

- **Relevant Case Law:**
  - *Orr v. Mo.*, 106 P.3d 100 (Mont. 2004).
    - “It is inconsistent to apply the discovery rule to the accrual of a cause of action for statute of limitation purposes, but then discard it when conducting a sovereign immunity analysis.” *Id.* at 117.
  - *Barovich v. City of Miles City*, 340 P.2d 819 (Mont. 1959).
    - “This court has many times held that cities and counties are immune from tort liability when exercising governmental functions.” *Id.* at 820 (citations omitted).
  
- **Monetary Limits and Caps:**
  - MONT. CODE ANN. § 2-9-105 (2013). State or Other Governmental Entity Immune from Exemplary and Punitive Damages.
    - The State and other governmental entities are immune from exemplary and punitive damages.
  - MONT. CODE ANN. § 2-9-108 (2013). Limitation on Governmental Liability for Damages in Tort.
    - The State, a county, municipality, taxing district, or any other political subdivision is not liable in tort action for damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of \$750,000 for each claim and \$1.5 million for each occurrence.
    - An insurer is not liable for excess damages unless the insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of the stated limitation, in which case the insurer may not claim the benefits of the limitation specifically waived.
  - MONT. CODE ANN. § 2-9-317 (2013). Absent a breach of contract, no penalty or interest may be assessed against a governmental entity that pays a judgment within 2 years from the date that judgment was entered.
  
- **Process:**
  - MONT. CODE ANN. § 2-9-301 (2013). Filing of Claims Against State and Political Subdivisions—Disposition by State Agency as Prerequisite.
    - All claims against the State arising under the waiver of sovereign immunity must be presented in writing to the department of administration.
    - A complaint based on a claim against the State arising under the waiver of sovereign immunity may not be filed in district court until the department of administration has denied the claim.
      - The department of administration must grant or deny the claim in writing within 120 days after the claim is presented to it; the failure to dispose of a claim within 120 days must be considered a final denial of the claim.
      - The statute of limitation is tolled 120 days upon receipt of the claim.
    - All claims against a political subdivision arising under the waiver of sovereign immunity shall be presented to and filed with the clerk or secretary of the political subdivision.

- MONT. CODE ANN. § 2-9-302 (2013). A claim against the State or a political subdivision is subject to the limitations of actions provided by law.
  - MONT. CODE ANN. § 2-9-311 (2013). The district court shall have jurisdiction over any action brought under the waiver of sovereign immunity and such actions shall be governed by the Montana Rules of Civil Procedure insofar as they are consistent with such parts.
  - MONT. CODE ANN. § 2-9-313 (2013). The State must be named the defendant in all actions against the State under a waiver of sovereign immunity. The summons and complaint must be served on the director of the department of administration in addition to service required by Montana Rules of Civil Procedure Rule 4 (l). The State shall serve an answer within 40 days after service of the summons and complaint.
- **State-Specific Aspects:**
- An attorney representing a claimant on a tort claim against a state or a political subdivision shall file with the claim a copy of the contract of employment showing specifically the terms of the fee arrangement. The district court may regulate the attorney fees amount by considering the time required to be spent on the case, the complexity of the case, and any other relevant matter the court considers appropriate. MONT. CODE ANN. § 2-9-314(1)-(2) (2013).
    - The attorney forfeits the right to any fees that the attorney may have collected or have been entitled to collect if the attorney violates a provision of this section, a rule of court adopted under this section, or an order fixing attorney fees under this section. MONT. CODE ANN. § 2-9-314(4) (2013).

## NEBRASKA

### Summary:

The State of Nebraska has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. Airports are immune from liability for discretionary functions. Tort damages are capped at \$1,000,000 per claim and \$5,000,000 per occurrence. Punitive damages are not available in the State. There is a 2-year statute of limitations and a written notice requirement of 1 year from the date of accrual for claims against political subdivisions and 2 years from the date of accrual for claims against the State.

- **Statutory Authority:**
- NEB. CONST. art. V, § 22. State may sue and be sued.
  - NEB. CONST. art. V, § 22. The State waives its immunity for contract claims.
  - NEB. REV. STAT. §§ 81-8,209 to 81-8,239.11 State Tort Claims Act. The State waives its immunity for tort.
  - NEB. REV. STAT. § 81-8,219 (2014). Discretionary functions are exempt.
  - NEB. REV. STAT. § 81-8,219 (2014). Misrepresentation exception.
  - NEB. REV. STAT. § 13-908 (2014). Political Subdivision Tort Claims Act. Liability for political subdivisions is the same as for any private individual or business.
  - NEB. REV. STAT. § 13-910(2) (2014). Discretionary functions are exempt.

- NEB. REV. STAT. § 13-910 (2014). Proprietary functions, including operation of airports, are not exempt from liability.
  - NEB. REV. STAT. §§ 13-919, 13-905 (2014). One year to provide notice to the governmental entity. Two-year statute of limitations is subject to an additional 6-month extension.
- **Relevant Case Law:**
    - *McKenna v. Julian*, 763 N.W.2d 384 (Neb. 2009).
      - “When an action is brought against an individual employee of a state agency, a court must determine whether the action against the individual official is in reality an action against the State and therefore barred by sovereign immunity.” *Id.* at 388.
      - “[S]overeign immunity deprives a trial court of subject matter jurisdiction for lawsuits in which the State or certain governmental units have been sued, unless the State consents to suit.” *Id.* at 389.
    - *Shipley v. Dep’t. of Rds.*, 813 N.W.2d 455 (Neb. 2012).
      - “Both the PSTCA and the STCA provide limited waivers of sovereign immunity, which are subject to statutory exceptions. If a statutory exception applies, the claim is barred by sovereign immunity.” *Id.* at 461.
      - “[T]he decision...required the exercise of judgment and was therefore a discretionary function for which sovereign immunity was not waived.” *Id.* at 463–64.
    - *Molina v. Am. Alternative Ins. Corp.*, 699 N.W.2d 415 (Neb. 2005).
      - Regardless of actual insurance coverage, claimant is not entitled to recover more than insured county was legally obligated to pay.
  - **Monetary Limits and Caps:**
    - NEB. REV. STAT. § 13-926 (2014). Limitations. \$1,000,000 per claimant, \$5,000,000 per occurrence.
  - **Waiver of Immunity:**
    - NEB. CONST. art. V, § 22 waives its immunity for contract claims.
    - NEB. REV. STAT. §§ 81-8,209 to 81-8239.11 (2014). State Tort Claims Act. The State waives its immunity for tort.
    - NEB. REV. STAT. § 13-908 (2014). Political Subdivision Tort Claims Act. Liability for political subdivisions is the same as for any private individual or business.
  - **Process:**
    - NEB. REV. STAT. § 81-8,213 (2014). A lawsuit against the State cannot be filed until the Risk Manager of the State Claims Board has made final disposition of the claim, but suit may be filed if final disposition of claim has not been made within 6 months after it was submitted.
    - NEB. REV. STAT. § 13-919(1) (2014). Suit against a political subdivision must be filed within 2 years after accrual of the claim.

- NEB. REV. STAT. § 81-8,227 (2014). Notice of claims against the State must be provided within 2 years after the accrual of the claim.
- NEB. REV. STAT. §§ 13-919, 13-905 (2014). One year to provide notice to the governmental entity. Two-year statute of limitations is subject to an additional 6-month extension.

## NEVADA

### Summary:

The State of Nevada has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. Airports are immune from liability for discretionary functions. The State or political subdivisions shall indemnify employees acting within the scope of their employment unless their act was wanton or malicious. Tort damages are capped at \$100,000. Punitive damages are not available. There is a 2-year statute of limitations and a no claim notice requirement.

### o **Statutory Authority:**

- NEV. CONST. art. IV, § 22. Suits Against State.
  - “Provision may be made by general law for bringing suit against the State as to all liabilities originating after the adoption of this Constitution.”
- NEV. REV. STAT. § 41.031(3) (2014). The State of Nevada does not waive immunity conferred by 11th Amendment (must have consent to be sued in fed. court).
- NEV. REV. STAT. § 41.031(1) (2014). The State of Nevada hereby waives its immunity from liability and action and hereby consents to have its liability determined in accordance with the same rules of law as applied to civil actions against natural persons and corporations, except as provided in Sections 41.032 to 41.038 of the Nevada Revised Code.
  - Exceptions to the waiver of immunity: No action may be brought under Section 41.031 or against an officer or employee of the State or political subdivisions, which is based upon specified criteria.
- NEV. REV. STAT. § 41.032 (2014). An employee exercising due care in the execution of a statute or regulation or the exercise of or failure to exercise a discretionary function.
- NEV. REV. STAT. § 41.033(1)(A) (2014). Failure to inspect any building, structure, street, or facility to determine any hazards.
- NEV. REV. STAT. § 41.033(1)(B) (2014). Failure to discover such a hazard or deficiency.
- NEV. REV. STAT. § 41.0334 (2014). Injury, wrongful death, or other damage sustained in a public building by a person who was engaged in any criminal activity at the time the injury, wrongful death, or damage was caused.

### o **Relevant Case Law:**

- Granite Oil Secs. v. Douglas Cnty., 219 P.2d 191 (Nev. 1950).
  - Tort claim for the destruction of plaintiff’s airplane due to a fire at an airport owned by the county and operated by another. The county was

authorized to engage in the airport business in a proprietary capacity and therefore was not protected by the rule of sovereign immunity from tort liability.

- **Monetary Limits and Caps:**
  - NEV. REV. STAT. § 41.035(1) (2014).
    - Award for damages may not exceed the sum of \$100,000, exclusive of interest computed from the date of judgment to or for the benefit of any claimant.
    - No exemplary or punitive damages.
- **State-Specific Aspects:**
  - Nature of Activity: When the State qualifiedly waived its immunity and consented to civil actions, it did so to provide relief for persons injured through negligence in performing or failing to perform non-discretionary or operational/ministerial actions.
  - Discretionary functions are not subject to Section 41.0322 of the Nevada Revised Code.
  - Requires the exercise of personal deliberation, decision, and judgment. *Travelers Hotel, Ltd. v. City of Reno*, 741 P.2d 1353, 1354 (Nev. 1987).
  - Ministerial acts are subject to Section 41.0322 of the Nevada Revised Code.
  - Nature of Governmental Entity:
    - State is authorized to maintain and operate airports. NEV. REV. STAT. § 494.030 (2014).
    - City, town, or municipal corporation authorized to acquire and maintain airports. NEV. REV. STAT. § 495.010 (2014).
- **Waiver of Immunity:**
  - The State of Nevada hereby waives its immunity from liability and action and hereby consents to have its liability determined in accordance with the same rules of law as applied to civil actions against natural persons and corporations. NEV. REV. STAT. § 41.031 (2014).
- **Process:**
  - NEV. REV. STAT. § 41.036 (2014). Claim against the State or a political subdivision must be filed within 2 years after the cause of action accrues.

## NEW HAMPSHIRE

### Summary:

The State of New Hampshire has not abrogated sovereign immunity for airports for torts, which are treated differently than other governmental entities. Damages against the State are capped at \$475,000 per claim and \$3,750,000 per occurrence unless insurance proceeds cover a higher amount. Damages against a governmental unit are capped at \$275,000 per claim and \$925,000 per occurrence. Punitive damages are not prohibited in the State. There is a 3-year statute of limitations and a written notice requirement of 180 days (claims against the State) and 60 days (claims against governmental units) from accrual of the cause of action.

- **Statutory Authority:**

- N.H. REV. STAT. ANN. §§ 541-B:1 to 541-B:23 (2014). Claims Against the State.
  - N.H. REV. STAT. ANN. § 541-B:19 (2014). Exceptions. Discretionary function. Creates exception for planning function or duty and exercises of legislative or judicial function.
  - N.H. REV. STAT. ANN. § 422:11 (2014). Suits Affecting. “The construction, maintenance and operation of air navigation facilities is hereby declared a public governmental function, and no action or suit shall be brought or maintained against the state, or any county or municipality thereof, or its officers, agents, servants, or employees, in or about the construction, maintenance, operation, superintendence, or management of any air navigation facility.”
- **Relevant Case Law:**
    - Op. of the Justices, 493 A.2d 1182 (N.H. 1985).
      - New Hampshire Supreme Court Advisory Opinion on governmental immunity in the context of proposed legislation addressing sovereign immunity of the State. The court considered a proposed provision granting immunity to the State from “[a]ny claim arising out of the ownership, occupation, maintenance, or operation of public sidewalks, streets, highways, or publicly owned airport runways or taxiways.” *Id.* at 1190.
      - Indicating that the provision was unconstitutional, the court stated that the State’s interest in minimizing its liability exposure could be met by “retention of the State’s immunity for injuries caused in the exercise of a legislative, judicial, or planning function, and for intentional torts based on a reasonable belief in the lawfulness of the offensive act.” *Id.* at 1190. It stated further that “[i]f the legislature wishes to further insulate the State from the consequences of its tortious conduct, it must employ measures that do not purport to reduce the substantive scope of the State’s liability.” *Id.*
    - Great Lakes Aircraft Co. v. City of Claremont, 608 A.2d 840 (N.H. 1992).
      - In concluding that immunity did not apply to a contract between a business and an airport, the court stated its decision was “further bolstered by the Act’s declaration of purpose, which states that the Act’s purpose is, in part, to provide for ‘the protection and promotion of the public interest and safety in connection with the operation of aircraft.’” *Id.* at 846 (quoting N.H. REV. STAT. ANN. § 422:2 (2014)). Conferring immunity from contract actions would not serve this purpose. Furthermore, it seems unlikely that the various private contractors and businesses required to promote, construct and maintain a municipal airport would enter into contracts with the City if they did not have a remedy for breach.” *Id.* at 846 (citation omitted).
- **Monetary Limits and Caps:**
    - N.H. REV. STAT. ANN. § 541-B:14(1) (2014). Limitations on Damages. An award may be higher than statutory caps if covered by insurance proceeds. Otherwise, damages are limited to \$475,000 per claimant for a single occurrence, or \$3,750,000 if there are multiple claimants in a single occurrence.

- N.H. REV. STAT. ANN. § 541-B:14 (2014). Punitive damages prohibited.
- **Waiver of Immunity:**
  - N.H. REV. STAT ANN. § 541-B:1 (2014). The State waives its immunity for tort claims.
  - N.H. REV. STAT ANN. § 491-8 (2014). The State waives its immunity for contract claims.
- **Process:**
  - N.H. REV. STAT. ANN. § 541-B:1 (2014). The term political subdivision includes village districts, school districts, towns, cities, counties, or unincorporated areas of the State.
  - N.H. REV. STAT. ANN. § 541-B:19 (2014). Immunity exists with respect to claims based on the exercise of legislative or judicial functions or discretionary functions, and certain intentional torts. Other specific statutory exceptions also apply.

## NEW JERSEY

### Summary:

The State of New Jersey has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. Airports are immune from liability for discretionary functions. The Port Authority of New York and New Jersey is a joint public venture between the states, which operates six airports; the Port Authority has consented to suits. Public employees are liable to the same extent as a private person, except they are not liable for injuries resulting from a discretionary decision or where a public entity would otherwise be immune. Damages are not capped in the State and punitive damages are not available. Pain and suffering damages are only recoverable in cases of permanent dismemberment or disfigurement or permanent loss of bodily function with medical expenses in excess of \$3,600. Statutes of limitations are the same as generally applicable in the State, and there is a written notice requirement of 90 days from accrual of the cause of action. For claims against the Port Authority, there is a 60-day claim notice requirement and a 1-year statute of limitations.

- **Statutory Authority:**
  - N. J. REV. STAT. §§ 59:1-1 to 59:14-4 (2014). Claims Against Public Entities.
    - N. J. REV. STAT. §§ 59:1-1 to 59:1-7 (2014). New Jersey Tort Claims Act.
    - N. J. REV. STAT. § 59:1-1 (2014). Tort immunity is waived but is subject to the provisions of the New Jersey Tort Claims Act.
    - N. J. REV. STAT. § 59:1-4 (2014). Immunity is waived with respect to contract claims.
    - N. J. REV. STAT. § 59:1-3 (2014). The term “public entity” is defined to include counties, municipalities, districts, public authorities, public agencies, and other political subdivisions.

- N. J. REV. STAT. § 59:2-3 (2014). Immunity exists for claims involving the exercise of judicial, legislative, administrative, or discretionary function.
  - N. J. REV. STAT. § 32:1-157 (2014). Consent to Suits.
  - N. J. REV. STAT. § 6:1-29 (2014). Powers and Duties of the Commissioner; Adoption of Rules, Regulations, and Orders.
  - N. J. REV. STAT. § 6:2-4 (2014). Right of Sovereignty in Air: Sovereignty in space above the lands and waters of this state is declared to rest in the State, except where granted to and assumed by the United States pursuant to a constitutional grant from the people of this state.
  - N. J. REV. STAT. § 27:1A-3 (2014). Transfer of Functions, Powers and Duties from Existing Departments: All of the functions, powers and duties of the existing State Highway Department and the State Highway Commissioner, of the existing Division of Railroad Transportation, and of the existing Department of Conservation and Economic Development and its commissioner deriving from Title 6, Aviation, of the Revised Statutes as amended and supplemented, are hereby transferred to and vested in the Department of Transportation established hereunder.
- **Relevant Case Law:**
  - *Miller v. Layton*, 44 A.2d 177 (N.J. 1945).
    - The State Highway Commission is an alter ego of the State, as respects immunity from suit.
  - *Empire Trust Co. v. Bd. of Commerce and Navigation*, 11 A.2d 752 (N.J. 1940).
    - The State Board of Commerce and Navigation and State Highway Commission are alter egos of the State and as such are immune from suits.
    - The State may not be sued in its own courts without its consent, since such immunity is an attribute of sovereignty and a suit brought against a state agency is, in fact, a “suit against the state” if the judgment sought would operate to control the action of the State or subject it to liability.
  - *Berends v. City of Atlantic City*, 621 A.2d 972 (N.J. Super. Ct. App. Div. 1993).
    - City was entitled to immunity for its action in closing a runway and not reopening it for over 4 months, even if unavailability of runway created dangerous condition.
    - Company could not be held liable, in that it deferred to City's decision to keep runway closed, and control tower defendants could not be held liable.
- **Monetary Limits and Caps:**
  - No caps apply.
  - N.J. REV. STAT. § 9:9-2(c), (d). Damages cannot be awarded for pain and suffering but this limitation on recovery does not apply in cases of permanent loss of bodily function, permanent disfigurement, or dismemberment when medical expenses are in excess of \$3,600.
- **Process:**
  - General statutes of limitations apply.

- N.J. REV. STAT. § 59:8-8 (2014). Notice of the claim must be presented within 90 days of the accrual of the cause of action.
- N.J. REV. STAT. § 59:8-9 (2014). A claimant who fails to file the notice within the 90-day period may be permitted to file the notice at any time within 1 year after the accrual of the claim, in the discretion of the judge of the Superior Court, if the public entity was not substantially prejudiced by the delay.

## NEW MEXICO

### Summary:

The State of New Mexico has partially abrogated sovereign immunity for airports, which are treated differently than other governmental entities. Airports waive immunity only for personal injury or property damages resulting from the negligent act of a public employee acting within the scope of his or her duties in the airport's operation. For employees acting within the scope of their authority, qualified immunity attaches unless acts are intentional or grossly negligent. Damages are capped at \$200,000 for real property damage, \$300,000 for medical expenses, or \$400,000 per claimant and \$750,000 per occurrence. Punitive damages are not recoverable. There is a 2-year statute of limitations and a written notice requirement of 90 days from date of occurrence.

### o Statutory Authority:

- N.M. STAT. ANN. §§ 41-4-1 to 41-4-30 (2014). Tort Claims Act.
  - N.M. STAT. ANN. § 41-4-7(A), (B) (2014). Grant of Immunity from Tort Liability.
    - o N.M. STAT. ANN. § 41-4-7(A) (2013). The immunity granted...does not apply to liability 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.
    - o N.M. STAT. ANN. § 41-4-7(B) (2013). The liability imposed shall 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.
    - o N.M. STAT. ANN. § 41-4-5 (2013). Exception for wrongful death or property damage caused by negligence of public employees while acting within the scope of their duties in the operation or maintenance of an...aircraft.

### o Relevant Case Law:

- *Lyman v. Aramark Corp.* 728 F. Supp. 2d 1222 (D. N.M. 2010).
  - It was "declared to be the public policy of New Mexico that governmental entities and public employees shall only be liable within the limitations of the Tort Claims Act and in accordance with the principles established in that act." *Id.* at 1251 (quoting N.M. STAT. ANN. § 41-4-2(A) (2014)).



- **Process:**
  - N.M. STAT. ANN. § 37-1-23B (2014). Contract claims must be brought within 2 years of the date of occurrence.
  - N.M. STAT. ANN. § 41-4-15 (2014). Tort claims must be brought within 2 years of the date of occurrence.
  - N.M. STAT. ANN. § 41-4-16(A) (2014). Written notice of the claim must be provided within 90 days after the occurrence.
  - N.M. STAT. ANN. § 41-4-16(B) (2014). Statutory notice is not required if the governmental entity had actual notice of the occurrence.

## NEW YORK

### Summary:

The State of New York has partially abrogated sovereign immunity for airports which are treated similarly to other governmental entities. The Port Authority of New York and New Jersey is a joint public venture between the states, which operates six airports; the Port Authority has consented to suits but can raise a defense of governmental immunity. Airports are immune from liability for discretionary functions. There is no cap on damages; punitive damages are unavailable. There is a 2-year statute of limitations for claims against the State and a 1-year statute of limitations against a municipality. There is a 90-day claim notice requirement from the date of accrual. For claims against the Port Authority, there is a 60-day claim notice requirement and a 1-year statute of limitations.

- **Statutory Authority:**
  - N.Y. CT. CL. ACT § 8 (2014). Waiver of Immunity from Liability.
    - New York State has waived its immunity from liability and consents to being sued in the same manner as a corporation would, so long as claimants comply with the requirements in the Court of Claims Act.
    - This does not abrogate government immunity defenses based on performance of a government function.
  - N.Y. CT. CL. ACT § 10 (2014). Time of Filing Claims and Notices of Intention to File Claims.
    - Claimants must comply with strict time limits and statutes of limitation in order to bring a claim.
    - They may file for leave to file late with the court.
  - N.Y. CT. CL. ACT § 11 (2014). Filing, Service and Contents of Claim or Notice of Intention.
    - Claimants must comply with certain rules regarding service of process and serving notices of intent to file a claim.
  - Port Authority of New York and New Jersey
    - N.Y. UNCONSOL. LAW § 7101 (2014). Consent to Suits Against the Port Authority.
      - Both New York and New Jersey consent to suits against the Port Authority.
      - Substantially similar to the Section 8 Waiver, the Port Authority is generally open to liability but may still raise a

defense of government immunity based on government functions.

- N.Y. UNCONSOL. LAW § 7106 (2014). Venue of Action; Consent to Liability for Tortious Acts.
    - Functions like vicarious liability because it mentions liability for the actions of its agents and employees.
    - However, the Port Authority may still raise the government immunity defense.
  - N.Y. UNCONSOL. LAW § 7107 (2014). Limitation of Actions; Service of Notice of Claim Required.
    - Nearly identical to Section 10 above; this is the statute of limitations and time limitations on filing claims.
    - Claimants may file for leave for late filing.
  - N.Y. UNCONSOL. LAW § 7108 (2014), Contents of Notice of Claim; Manner of Service; Extension of Time for Service.
    - Nearly identical to Section 11 above, this governs the content and service of process for claims against the Port Authority
    - Failure to comply with these requirements is a defense available to the Port Authority.
- **Relevant Case Law:**
- *In re World Trade Ctr. Bombing Litig.*, 957 N.E.2d 733 (N.Y. 2011).
    - This confirms the Port Authority’s (and by extension the State’s) right to raise a defense of governmental immunity when it is sued. The court will examine whether the actions giving rise to the claim were governmental (immune) or proprietary (non-immune). *Id.* at 741.
  - *Jones v. N.Y.*, 40 A.D. 2d 227 (N.Y. App. Div. 4th Dep’t 1972), *aff’d as modified & remanded*, 307 N.E.2d 236 (N.Y. 1973).
    - This explains the policy behind New York’s formulation of sovereign/governmental immunity. Governmental immunity is designed to protect government officials from retaliation for their actions and prevent the invasion of their duties by courts and juries. Moreover, it is designed to protect the expert opinions of agencies over the non-expert opinions of the judiciary. *Jones*, 40 A.D. 2d at 229.
  - *Wang v. N.Y. State Dep’t of Health*, 933 N.Y.S.2d 503 (N.Y. Sup. Ct. 2011); *Barrington v. N.Y.*, 806 F. Supp. 2d 730 (S.D.N.Y. 2011).
    - Both stand for the proposition that the waivers of immunity to liability do not extend to punitive damages. Only compensatory judgments are permitted. *Wang*, 933 N.Y.S.2d at 507; *Barrington*, 806 F. Supp. 2d at 740.
  - *Trippe v. Port of N.Y. Auth.*, 14 N.Y. 2d 119 (N.Y. 1964).
    - Confirms that claimants must strictly comply with the requirements in the waiver statutes in order to bring a claim.
- **Monetary Limits and Caps:**
- As noted in *Wang* and *Barrington* above, punitive damages are not permitted under New York’s waiver statutes.
- **State-Specific Aspects:**
- New York’s parallel statutes govern the State and its divisions generally and the Port Authority specifically. Both statutes are nearly identically worded and thus function the same way. Claimants must, however, pay attention to the timing

and filing requirements that may differ between the two laws.

- **Waiver of Immunity:**
  - New York and the Port Authority consent to suits in the same manner as corporations would be sued. This does not mean that New York and the Port Authority cannot raise a defense of government immunity based on performing government functions.
  - The relevant state statutes govern the waiver of immunity and inferior entities, and agencies cannot modify the waiver of immunity as it is in the statute.
- **Process:**
  - N.Y. CT. CL. ACT §§ 10.3, 10.4. Claims against the State to recover damages for injuries to property or personal injuries, or claims for breach of contract, must be filed and served upon the Attorney General within 90 days after accrual of the claim, but if written notice of intention to file a claim is served within this period, then the claim must be filed and served within 2 years after accrual.
  - N.Y. GEN. MUN. LAW § 50(i) (Consol. 2014). Suit against a municipality must be filed within 1 year and 90 days after the event upon which the claim is based, but wrongful death actions must be commenced within 2 years from the date of death.
  - N.Y. GEN. MUN. LAW § 50(e) (Consol. 2014). Notice of a claim against a municipality must be provided within 90 days after the claim arises.

## NORTH CAROLINA

### Summary:

The State of North Carolina has abrogated sovereign immunity for airports which are treated differently than other governmental entities. The operation and maintenance of a municipal airport is considered proprietary and not subject to governmental immunity. Even if subject to liability, the State has a \$1,000,000 damage cap per occurrence, and there are no punitive damages. There is a 3-year statute of limitations for filing a claim against the State, except for wrongful death cases, which is 2 years. The State does not have a written notice requirement, but cities may adopt their own notice requirements.

- **Statutory Authority:**
  - N.C. GEN. STAT. § 143-291 (2014). Industrial Commission Constituted a Court to Hear and Determine Claims; Damages; Liability Insurance in Lieu of Obligation Under Article. (a) The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State.
  - N.C. GEN. STAT. § 63-50 (2014). Airports a Public Purpose. "The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment and operation of airports and other air navigation facilities, and the exercise of any other powers herein granted to municipalities, are hereby declared to be public, governmental and municipal functions exercised for a public purpose and matters of public necessity, and such lands and other

property, easements and privileges acquired and used by such municipalities in the manner and for the purposes enumerated in this Article, shall and are hereby declared to be acquired and used for public, governmental and municipal purposes and as a matter of public necessity.”

- N.C. GEN. STAT. § 143-299.1A (2014). Limits Use of Public Duty Doctrine as an Affirmative Defense. (a) The public duty doctrine is an affirmative defense on the part of the State department, institution, or agency against which a claim is asserted only in strictly limited circumstances.
  - N.C. GEN. STAT. § 160A-485.5 (2014). Waiver of Immunity for Large Cities Through State Tort Claims Act. (a) Any city with a population of 500,000 or more according to the most recent decennial federal census is authorized to waive its immunity from civil liability in tort by passage of a resolution.
- **Relevant Case Law:**
- *Rhodes v. City of Asheville*, 52 S.E.2d 371 (N.C. 1949).
    - Monetary Limits and Caps: (indicating maximum limits on litigation awards and the types of claims which can be brought against an airport).
  - *APAC-Carolina, Inc. v. Greensboro-High Point Airport Auth.*, 431 S.E.2d 508 (N.C. Ct. App. 1993).
    - “The State's sovereign immunity had only been waived as to those persons and corporations which had actually contracted with the State. See N.C.G.S. § 143-135.3(c) (1990) (allows those who have contracted with the State to file a claim against the State).” *Id.* at 512.
  - *Hare v. Butler*, 394 S.E.2d 231 (N.C. Ct. App. 1990).
    - “Non-traditional governmental activities such as the operation of a golf course or an airport are usually characterized as proprietary functions. Charging a substantial fee to the extent that a profit is made is strong evidence that the activity is proprietary.” *Id.* at 235.
  - *Vaughn v. Cnty. of Durham*, 240 S.E.2d 456 (N.C. Ct. App. 1977).
    - “When the activity of a governmental entity is clearly governmental in nature, and not proprietary, the rule of sovereign immunity will protect the government from suit.” *Id.* at 458.
  - *Lincoln Constr. Co. v. Prop. Control & Constr. Div. of Dep’t of Admin.*, 165 S.E. 2d 338 (N.C. Ct. App. 1969). *But see* *Smith v. N.C.*, 209 S.E.2d 336 (N.C. App. 1974).
    - “It is settled as a general rule that the State may not be sued unless by statute it has consented to be sued or has otherwise waived its immunity from suit.” *Lincoln Constr. Co.*, 165 S.E.2d at 339 (citation omitted).
  - *Koontz v. City of Winston-Salem*, 186 S.E.2d 897 (N.C. Ct. App. 1972).
    - “The liability of cities and towns for the negligence of their officers or agents, depends upon the nature of the power that the corporation is exercising, when the damage complained of is sustained.... ‘When such municipal corporations are acting...in their ministerial or corporate character in the management of property for their own benefit, or in the exercise of powers, assumed voluntarily for their own advantage, they are impliedly liable for damage caused by the

negligence of officers or agents, subject to their control, although they may be engaged in some work that will inure to the general benefit of the municipality...‘On the other hand, where a city or town in exercising the judicial, discretionary or legislative authority..., imposed solely for the benefit of the public, it incurs no liability for the negligence of its officers...unless some statute (expressly or by necessary implication) subjects the corporation to pecuniary responsibility for such negligence.’” *Id.* at 902 (citation omitted).

- **Monetary Limits and Caps:**
  - N.C. GEN. STAT. § 143-299.2(a) (2014). The maximum amount that the State may pay cumulatively to all claimants on account of injury and damage to any one person arising out of any one occurrence...shall be \$1,000,000, less any commercial liability insurance.
  
- **Waiver of Immunity:**
  - N.C. GEN. STAT. § 160A-485 (2014). Civil tort immunity is waived by a municipality only to the extent that the city or town is indemnified by an insurance contract from liability for the acts alleged.
  
- **Process:**
  - N.C. GEN. STAT. § 143-293 (2014). Appeals to Court of Appeals. Either the claimant or the State may, within 30 days after receipt of the decision and order of the full Commission, to be sent by registered or certified mail, but not thereafter, appeal from the decision of the Commission to the Court of Appeals. Such appeal shall be for errors of law only under the same terms and conditions as govern appeals in ordinary civil actions
  - N.C. GEN. STAT. § 143-295 (2014). Settlement of claims. (a) Any claims except claims of minors pending or hereafter filed against the various departments, institutions and agencies of the State may be settled upon agreement between the claimant and the Attorney General for an amount not in excess of \$25,000, without the approval of the Industrial Commission.
  - N.C. GEN. STAT. § 143-299 (2014). Limitation on claims. Claim must be filed within 3 years of the accrual of such claim, or if death results from the accident within 2 years after such death, otherwise the claim is forever barred.
  - N.C. GEN. STAT. § 143-299.1 (2014). Contributory negligence a matter of defense; burden of proof. Contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted shall be deemed to be a matter of defense on the part of the State department, institution or agency against which the claim is asserted.
  - The State of North Carolina adheres to the concept of *nullum tempus*. See, e.g., *Rowan Cnty. Bd. of Educ. v. U.S. Gypsum Co.*, 418 S.E.2d 648, 653 (N.C. 1992). This means that a statute of limitations does not apply to claims by the State.

**NORTH DAKOTA****Summary:**

The State of North Dakota has partially abrogated sovereign immunity for airports to the extent of any liability insurance maintained. Airports are immune from liability for discretionary functions. A state employee, who is acting within the scope of their authority, is not personally liable for money damages for an injury proximately caused by their negligence, wrongful act, or omission. Damages are capped at \$250,000 per claim and occurrences are capped at \$500,000 for political subdivisions and \$1,000,000 for the State. Punitive damages are not available. There is a 3 year statute of limitations and a claim notice requirement of 180 days from date of occurrence for injuries and 1 year for death.

- o **Statutory Authority:**

- N.D. Const. art. I, § 9.
  - “All courts shall be open, and every man for any injury done to him in his land, goods, person, or reputation shall have remedy by due process of law...Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct.”
- N.D. CENT. CODE §§ 32-12.1-01 to 32-12.1-15 (2013). Governmental Liability.
  - N.D. CENT. CODE § 32-12.1-02 (2013). Definitions.
    - o 1. Claim—any claim permitted by this chapter brought against a political subdivision for an injury caused by a subdivision or an employee of the subdivision acting within the scope of the employee’s employment or office.
    - o 3. Employee—any officer, employee, board member, or servant of a political subdivision, whether elected or appointed, compensated or not.
    - o 4. Injury—personal injury, death, or property damage.
    - o 5. Personal Injury—includes bodily injury, mental injury, sickness, or disease sustained by a person, and injury to a person’s rights or reputation.
    - o 6. Political Subdivision.
      - Includes all counties, townships, districts, cities, public and public non-profit corporations.
      - It does not include the State of North Dakota or its state level agencies and divisions, etc.
    - o 7. Property Damage—injury to or destruction of tangible or intangible property.
    - o 8. Public Non-profit Corporation—non-profit corporation that performs a governmental function and is funded wholly or in part, by the State or political subdivision.
  - N.D. CENT. CODE § 32-12.1-03 (2013). Liability of Political Subdivisions—Limitations.
    - o Each political subdivision is liable for money damages for injuries when they are:
      - Proximately caused by the negligence or wrongful act or omission of any employee acting within the scope of employment under circumstances in which the

- employee would be personally liable to a claimant in accordance with state law, or
    - Caused from some condition or use of tangible property, real or personal, under circumstances in which the subdivision, if a private person, would be liable to the claimant.
  - The liability of a subdivision under this chapter is limited to a total of \$250,000 per person and \$500,000 for injury to three or more persons during any single occurrence.
  - A political subdivision may not be held liable, or be ordered to indemnify an employee held liable, for punitive or exemplary damages.
  - Subdivisions and their employees may not be held liable under this chapter for
    - Claim based upon an act or omission of a subdivision employee exercising due care in the execution of a statute or regulation.
    - Decision or refusal to undertake any legislative/quasi-legislative act.
    - Same for judicial/quasi-judicial act.
    - Decision or refusal to perform any discretionary act.
  - “Public Duty” does not include action of the subdivision or employee where a special relationship can be established between the subdivision and the injured party; the necessary elements are:
    - Direct contact between the subdivision and the injured party.
    - Assumption by subdivision, by means of promise or action, of an affirmative duty to act on behalf of the allegedly injured party.
    - Subdivision’s knowledge that its inaction could lead to harm.
  - Injured party’s justifiable reliance on subdivision’s affirmative undertaking, occurrence of the injury while the injured party was under the direct control of the subdivision, or the subdivision’s action increases the risk of harm.
- N.D. CENT. CODE § 32-12.1-05 (2013). Liability Insurance Policy Coverage.
  - Subdivision may procure liability insurance that can cover liability in excess of statutory limits.
- N.D. CENT. CODE § 32-12.1-10 (2013). Statute of Limitations.
  - Plaintiffs have 3 years from the accrual of a claim to bring suit.
- N.D. CENT. CODE § 32-12.2-01 (2013). Definitions.
  - 3. “Occurrence”—an accident, including continuous or repeated exposure to a condition that results in injury.
  - 6. “Scope of employment”—the State employee was acting on behalf of the State in the performance of duties or tasks of the employee's office or employment lawfully assigned to the employee by competent authority or law.
  - 7. “State”—includes an agency, authority, board, body, branch, bureau, commission, committee, council, department,

- division, industry, institution, instrumentality, and office of the State.
- 8. “State employee”—every present or former officer or employee of the State or any person acting on behalf of the State in an official capacity, temporarily or permanently, with or without compensation.
  - N.D. CENT. CODE § 32-12.2-02 (2013). Liability of the State—Limitations—Statute of limitations.
    - The State may only be held liable for money damages for an injury proximately caused by the negligence or wrongful act or omission of a State employee acting within the employee’s scope of employment under circumstances in which the employee would be personally liable to a claimant in accordance with the laws of this State, or an injury caused from some condition or use of tangible property under circumstances in which the State, if a private person, would be liable to the claimant.
    - The liability of the State under this chapter is limited to a total of \$250,000 per person and \$1,000,000 for any number of claims arising from any single occurrence. The State may not be held liable, or be ordered to indemnify a State employee held liable, for punitive or exemplary damages.
    - The same exclusions from Section 32-12.1-03 apply here, but replacing “political subdivision” with “state.”
  - N.D. CENT. CODE § 32-12.2-04 (2013). Notice Required—Payment of Claims.
    - A person bringing a claim against the State or a State employee for an injury shall present to the director of the office of management and budget within 180 days after the alleged injury is discovered or reasonably should have been discovered a written notice stating the time, place, and circumstances of the injury; the names of any State employees known to be involved; and the amount of compensation or other relief demanded.
  - N.D. CENT. CODE §§ 2-02-01 to 2-02-09; N.D. CENT. CODE §§ 2-06-01 to 2-06-23 (2013). Aeronautics, Chapters 2-02 and 2-06.
    - N.D. CENT. CODE §§ 2-02-01 to 2-02-09. Airports and Landing Fields.
      - N.D. CENT. CODE § 2-02-09 (2013). Authorization for Airport Liability Insurance—Exceptions.
        - After June 30, 1967, any airport authority, county, city, township, or other political subdivision which operates an airport, is hereby authorized to carry liability insurance for its own protection and the protection of any employee from general tort claims...provided, that any airport authority or political subdivision, and its agents, servants, and employees have full government immunity for any claims in excess of the limits afforded by such insurance policies or full governmental immunity in the event no insurance is carried.

- N.D. CENT. CODE §§ 2-06-01 to 2-06-23 (2013). Airport Authorities Act.
  - N.D. CENT. CODE § 2-06-01 (2013). Definitions.
    - 3. “Airport authority” or “authority” means any regional airport authority or municipal airport authority created pursuant to the provisions of this chapter.
  - N.D. CENT. CODE § 2-06-01.1 (2013). Aeronautics Commission May Exercise Powers of Airport Authority—Exceptions.
    - The North Dakota aeronautics commission shall have all powers of an airport authority as defined in this chapter...for the purpose of constructing and operating a public airport near the International Peace Garden.
  - N.D. CENT. CODE § 2-06-07 (2013). General Powers of an Authority.
    - An authority has all the powers necessary or convenient to carry out the purposes of this chapter...
      - 1. To sue and be sued.
      - 3. To plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities.
  - N.D. CENT. CODE § 2-06-17 (2013). Public Purpose.
    - The acquisition, owning, and operation are public government functions, for a public purpose, and a matter of public necessity.
- **Relevant Case Law:**
  - *Bulman v. Hulstrand Constr. Co.*, 521 N.W.2d 632 (N.D. 1994).
    - “[T]he second sentence merely authorizes the Legislature to waive or modify that common-law doctrine if it saw fit.” *Id.* at 637.
  - *Lang v. N.D.*, 622 N.W.2d 238 (N.D. Ct. App. 2001).
    - “The State and its employees generally enjoy immunity from liability for discretionary acts.” *Id.* at 240 (citation omitted).
  - *Geraci v. Women's Alliance, Inc.*, 436 F. Supp. 2d 1022 (D. N.D. 2006).
    - “Section 32-12.1-03(3)(d) of the North Dakota Century Code exempts political subdivisions from liability for an act or omission of its employees who are performing discretionary functions or duties. To determine the applicability of the discretionary function exception, courts engage in a two-part inquiry: “(1) whether the conduct at issue is discretionary, involving an element of judgment or choice for the acting employee; and (2) if the act is discretionary, whether the judgment or choice is of the kind the discretionary function exception was designed to shield.” *Id.* at 1029.

- **Monetary Limits and Caps:**
  - N.D. CENT. CODE § 32-12.2-02 (2013). Liability of the State—Limitations—Statute of Limitations.
  - Liability for the State is capped at \$250,000 per person and \$1,000,000 for any number of claims arising from the same occurrence.
  - Liability for subdivisions is capped at \$250,000 per person and \$500,000 for three or more persons injured during any single occurrence.
- **State-Specific Aspects:**
  - Public entities in North Dakota are liable vicariously through their employees and for dangerous conditions on public premises; so long as in both cases a private person would have been liable in the same situation.
- **Waiver of Immunity:**
  - While North Dakota has duly waived its immunity for the State and subdivisions, it does not appear to have affected airports. The discretionary function exception still present in the common law is likely still protecting them. Like some other jurisdictions, the combination of the discretionary function and the government function declaration operate to keep airports out of court.
- **Process:**
  - N.D. CENT. CODE § 28-01-22.1 (2013). Suit must be filed against the State within 3 years after the accrual of the claim.
  - N.D. CENT. CODE § 32-12.1-10 (2013). Suit must be filed against a political subdivision within 3 years after the accrual of the claim.
  - N.D. CENT. CODE § 32-12.2-04(1) (2013). Notice of claims against the State must be presented to the Director of the Office of Management and Budget within 180 days after the alleged injury. If claim is for death, the notice may be presented within 1 year.

## OHIO

### Summary:

The State of Ohio has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. There is no limit to actual damages, except in wrongful death actions there is a \$250,000 limit per person. Even if subject to liability, punitive damage and other intangible losses are not allowed. If the airport purchases insurance, the cap can rise to the level of that insurance. There is a 2-year statute of limitations.

- **Statutory Authority:**
  - OHIO CONST. art. I, § 16. Redress in Courts.
    - Suits may be brought against the State, in such courts and in such manner, as may be provided by law.
  - OHIO REV. CODE ANN. §§ 2743.01 to 2743.72 (2014). Court of Claims.

- OHIO REV. CODE ANN. § 2743.01 (2014). State Liability Definitions. Defines discretionary action and defines applicable entities to whom statute applies, to include “other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state.”
- OHIO REV. CODE ANN. § 2743.02 (2014). State Waives Immunity from Liability.
  - State waives its immunity from liability and consents to be sued and have its liability determined in the court of claims created in this chapter in accordance with the same rules of law applicable to suits between private parties, except that the determination of liability is subject to the limitations set forth in this chapter.
  - A civil action filed in the court of claims results in a complete waiver of any cause of action based on the same act or omission that the filing party has against any officer or employee of the State, including elected or appointed persons, unless the court determines either (1) the act or omission was manifestly outside the scope of the officer’s or employee’s office or employment; or (2) that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.
  - The State shall be held liable in the court of claims if a claimant proves in the court of claims that an officer or employee would have personal liability for their acts or omissions, but for personal immunity under Section 9.86 of the Ohio Revised Code.
  - The State is immune from liability in any civil action or proceeding involving the performance or non-performance of a public duty unless a special relationship is established between the State and the injured party.
    - A special relationship is demonstrated if all of the following elements exists:
      - Assumption by the State, by means of promises or actions, of an affirmative duty to act on behalf of the party who was allegedly injured;
      - Knowledge on part of the State’s agents that inaction of the State could lead to harm;
      - Some form of direct contact between the State’s agents and the injured party; and
      - The injury party’s justifiable reliance on the State’s affirmative undertaking.
- OHIO REV. CODE ANN. § 2744.01 (2014). Political Subdivision Tort Liability Definitions.
  - “Employee” means an officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of their employment for a political subdivision.
    - Does not include independent contractors.
    - Includes elected or appointed officials.

- “Governmental function” includes any of the following:
    - A function that is imposed upon the State as an obligation of sovereignty and that is performed by a political subdivision voluntarily or pursuant to legislative requirement;
    - A function that is for the common good of all citizens of the State;
    - A function that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by non-governmental persons; and that is not a proprietary function;
    - Provision/non-provision of police, fire, emergency medical, ambulance, and rescue services or protection;
    - Power to preserve the peace; to prevent and suppress riots, disturbances, and disorderly assemblages; to prevent, mitigate, and clean up releases of oil and hazardous and extremely hazardous substances; and to protect persons and property;
    - Regulation/maintenance/repair of roads, highways, sidewalks, bridges, and public grounds;
    - Construction/repair/maintenance/operation of buildings used in connection with the performance of a governmental function;
    - Regulation of traffic and erection/non-erection of traffic signs, signals, or control devices;
    - Provision/non-provision of inspection services of all types; or
    - A function that the general assembly mandates a political subdivision to perform.
  - “Proprietary function” is a function that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by non-governmental persons.
    - A “proprietary function” includes the establishment, maintenance, and operation of a utility including...an airport.
  - “Political subdivision” means a municipal corporation, township, county...or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the State.
- OHIO REV. CODE ANN. § 2744.02 (2014). Governmental Functions and Proprietary Functions of Political Subdivisions.
    - A political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property.
    - The courts of common pleas, the municipal courts, and the county courts have jurisdiction over claims under this chapter.
    - A political subdivision is only liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function in the following circumstances:
      - Negligent operation of any motor vehicle by a political subdivision’s employees while in the scope of their employment and authority
        - Unless the political subdivision’s police department, fire department, or emergency medical service are

- responding to an emergency call/engaged in their duty, and the operation of the vehicle did not constitute willful or wanton misconduct;
      - o Negligent performance of acts by their employees with respect to proprietary functions of the political subdivisions;
      - o Negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads; or
      - o Civil liability is expressly imposed upon the political subdivision by a section of the Revised Code.
    - An order denying a political subdivision or their employee the benefit of an alleged immunity is a final order.
  - OHIO REV. CODE ANN. § 2744.03 (2014). Defenses—Immunities.
    - A political subdivision or their employee may assert the following defense or immunities to establish non-liability in a civil action brought to recover damages allegedly caused by any act or omission in connection with a governmental or proprietary function:
      - o If the employee’s conduct was non-negligent and required or authorized by law or necessary or essential to the exercise of powers of the political subdivision or employee;
      - o If the action or failure to act by the employee was within the discretion of the employee with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee;
      - o If the injury, death, or loss to person or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources;
        - Unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.
    - A political subdivision’s employee is immune from liability unless (1) their acts or omissions were: (a) manifestly outside the scope of their employment or official responsibilities, or (b) with malicious purpose, in bad faith, or in a wanton or reckless manner; or (2) civil liability is expressly imposed upon the employee by a section of the Revised Code.
    - Any immunity or defenses conferred upon an employee does not affect or limit any liability of a political subdivision for an act or omission of the employee provided in this Chapter.
  - OHIO REV. CODE ANN. § 2744.07 (2014). Defending and Indemnifying Employees.
    - A political subdivision shall provide for the defense of an employee in any civil action or proceeding that contains an allegation for damages for injury, death, or loss to person or property caused by an act or omission of the employee in connection with a governmental or proprietary function.
    - The political subdivision has the duty to defend the employee if the act or omission occurred while the employee was acting both in good faith and not manifestly outside the scope of employment or official responsibilities unless the civil action or proceeding is commenced by or on behalf of a political subdivision.
    - A political subdivision shall indemnify and hold harmless an employee in the amount of any judgment, other than a judgment for punitive or

exemplary damages, that is obtained against the employee in a state or federal court or as a result of a law of a foreign jurisdiction and that is for damages for injury, death, or loss to person or property caused by an act or omission in connection with a governmental or proprietary function, if at the time of the act or omission the employee was acting in good faith and within the scope of employment or official responsibilities.

- The political subdivision may motion the court to conduct a hearing regarding the political subdivision's duty to defend an employee in a civil action. The motion shall be filed within 30 days of the close of discovery in the action. The court shall order the political subdivision to defend the employee if it determines the employee was acting both in good faith and not manifestly outside the scope of employment or official responsibilities.
- OHIO REV. CODE ANN. § 2744.08 (2014). Liability and Self-insurance Programs.
  - The purchase of liability insurance, or the establishment and maintenance of a self-insurance program, by a political subdivision does not constitute a waiver of any immunity or defense of the political subdivision or its employees.
  - The political subdivision may specifically waive any immunity or defense to which it or its employees may be entitled if a provision to that effect is specifically included in (1) the policy of insurance; (2) a written plan of operation of the self-insurance program; or (3) the legislative enactment of the political subdivision authorizing the purchase of the insurance or the establishment and maintenance of the self-insurance program.
  - Any specific waiver shall only be to the extent of the insurance coverage.
- OHIO REV. CODE ANN. § 2744.09 (2014). Exceptions.
  - The immunities, defenses and waivers of this chapter shall not be construed to apply to civil actions/claims: (1) for contractual liability; (2) arising out of the employment relationship between the employee and political subdivision; (c) brought by an employee against the political subdivision relative to wages, hours, conditions, or other terms of his employment; (d) based upon alleged violation of the United States Constitution or States except to indemnify and defend the employee under section 2744.07 of the Ohio Revised Code.
- Ohio Rev. Code Ann. § 308.03. Resolution Creating Regional Airport Authority.
  - Any two or more contiguous counties or any single county may create a regional airport authority by the adoption of a resolution by the board of county commissioners of each county to be included in the regional airport authority.
  - Such resolution shall state: (1) necessity for its creation; (2) counties included; (3) official name; (4) place in which its principal office will be located; (5) number, term, compensation, and manner of selecting the members of its board of trustees; (6) manner in which vacancies on its board of trustees shall be filled; and (7) manner and to what extent the expenses shall be apportioned among the creating counties.
- OHIO REV. CODE ANN. § 308.03 (2014). Resolution Creating Regional Airport Authority.

- The regional airport authority may sue or be sued in its corporate name.
- OHIO REV. CODE ANN. § 717.01 (2014). Powers of Municipal Corporations.
  - Each municipal corporation may acquire real or personal property and thereon establish, construct, maintain, and operate airports, landing fields, or other navigation facilities, either within or outside the limits of a municipal corporation.
  - Each municipal corporation may provide by agreement with any regional airport authority for the acquisition, construction, maintenance, or operation of any airport or airport facility owned or to be owned and operated by the regional airport authority, or owned or to be owned and operated by the municipal corporation, and pay the portion of the expense of it as set forth in the agreement.
- **Relevant Case Law:**
  - *Anderson v. City of Massillon*, 983 N.E.2d 266 (Ohio 2012).
    - “Willful misconduct implies an intentional deviation from a clear duty or from a definite rule of conduct, a deliberate purpose not to discharge some duty necessary to safety, or purposefully doing wrongful acts with knowledge or appreciation of the likelihood of resulting injury.” *Id.* at 273 (citation omitted).
    - “Wanton misconduct is the failure to exercise any care toward those to whom a duty of care is owed in circumstances in which there is a great probability that harm will result.” *Id.* (citation omitted).
    - “Reckless conduct is characterized by the conscious disregard of or indifference to a known or obvious risk of harm to another that is unreasonable under the circumstances and is substantially greater than negligent conduct.” *Id.* (citation omitted).
  - *Kagy v. Toledo-Lucas Cnty. Port Auth.*, 711 N.E.2d 256 (Ohio Ct. App. 6th Dist. 1998).
    - Decision to expand airport is immune from liability, but effects of implementation of that expansion may not be immune.
- **Monetary Limits and Caps:**
  - OHIO REV. CODE ANN. §§ 2743.01 to 2743.72 (2014). Court of Claims.
    - OHIO REV. CODE ANN. § 2743.02 (2014). State Waives Immunity from Liability. Recoveries against the State shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant.
    - OHIO REV. CODE ANN. § 2743.18 (2014). Prejudgment Interest—Interest on Judgment or Determination. Prejudgment interest shall be allowed with respect to a civil action on which a judgment or determination is rendered against the State for the same time and at the same rate as allowed between private parties to a suit, but may be denied for delay by the claimant.
  - OHIO REV. CODE ANN. § 2744.05 (2014). Damage Limitations.
    - Punitive or exemplary damages shall not be awarded in an action against a political subdivision under this Chapter.

- Any benefits a claimant receives or is entitled to receive from an insurance policy or other source shall be disclosed to the court and deducted from any award against a political subdivision recovered by that claimant.
  - No limitation on compensatory damages that represent the actual loss of the person who is awarded the damages.
  - Except in wrongful death actions, damages arising from the same cause of actions, transactions or occurrences, or series of transactions or occurrences, and which do not represent the actual loss of the person who is awarded the damages, shall not exceed \$250,000 in favor of any one person.
    - This limitation does not apply to awarded court costs or to interest on a judgment.
  - Actual loss does not include any attorney's fees, damages for pain and suffering, loss of consortium/companionship/society, mental anguish, or any other intangible loss.
- **State-Specific Aspects:**
    - The Ohio Court of Claims has exclusive, original jurisdiction over all civil claims against the State permitted by the waiver of immunity.
    - 3-Step Political Subdivision Immunity Analysis:
      1. Was the political subdivision performing a governmental or proprietary function when the injury, death, or loss to person or property occurred?
      2. If the political subdivision was performing a governmental or proprietary function providing immunity, does one of the five exceptions to immunity under Section 2744.02(B) of the Ohio Revised Code apply?
      3. If one of the exceptions applies, do any of the seven statutory defenses under Section 2744.03(A) of the Ohio Revised Code apply?
  - **Waiver of Immunity:**
    - The State of Ohio waives sovereign immunity absent a public duty exception without a special relationship.
    - Immunity applies to political subdivisions exercising governmental or proprietary functions subject to the five exceptions of Section 2744.02(B) of the Ohio Revised Code (listed above).
  - **Process:**
    - OHIO REV. CODE ANN. §§ 2743.01 to 2743.72 (2014). Court of Claims.
      - OHIO REV. CODE ANN. § 2743.02 (2014). State Waives Immunity from Liability. The only defendant in original actions in the court of claims is the State.
        - A civil action against an officer or employee of the State alleging their conduct was manifestly outside the scope of their employment or official responsibilities or that they acted with malicious purpose, in bad faith, or in a wanton or reckless manner, shall first be filed against the State in the court of claims that has exclusive, original jurisdiction to determine, initially, whether they are entitled to personal immunity under Section 9.86 and whether the court of common pleas has jurisdiction over the civil action. That

officer or employee may participate in the immunity determination proceeding before the court of claims.

- OHIO REV. CODE ANN. § 2743.13 (2014). Filing Complaint or Other Pleading—Summons.
  - The complaint or other pleading asserted in the court of claims against the State shall name as defendant each state department, board, office, commission, agency, institution, or other instrumentality whose actions are alleged as the basis of the complaint.
  - The claimant shall serve the clerk with sufficient copies to serve one copy upon each named defendant and the attorney general.
- OHIO REV. CODE ANN. § 2743.16 (2014). Statute of Limitations—Compromise of Claims
  - Civil actions permitted against the State shall be commenced no later than 2 years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties.
  - A claim for injury, death, or loss to a person or property occurring from a state officer or employee's operation of a motor vehicle, aircraft, or self-propelling equipment in the course of his employment or official responsibilities for the State shall attempt, prior to commencement of an action, to have that claim compromised by the State or satisfied by the State's liability insurance.
    - The claimant may commence an action in the court of claims to recover the claim or unpaid amount of the claim if the State does not compromise the claim within a reasonable time after the request is made and at least 60 days prior to the expiration of the applicable period of limitations.
    - An action cannot be commenced against an officer or employee to recover damages until after the action has been commenced in the court of claims against the State and the action in that court is terminated. If the court of claims determines the State is not liable for the damages caused by the employee or officer's operation, the claimant is not prohibited from commencing action against the officer or employee to recover the claim or the unpaid amount.
    - For this type of claim, the statute of limitations is tolled pending compromise, satisfaction, or written denial of the claim as to the State and is tolled as to the employee or officer when the action against the State is pending in the court of claims.
  - The State shall notify the claimant in writing as soon as possible of its denial of any claim attempted to be compromised by the State or satisfied by the State's liability insurance.
- OHIO REV. CODE ANN. § 2744.04 (2014). Statute of Limitations—Demand for Judgment for Damages.

- Subject to any applicable tolling provisions, an action against a political subdivision to recover damages for injury, death, or loss to person or property allegedly caused by an act or omission in connection with a governmental or proprietary function...shall be brought within 2 years after the cause of action accrues, or within any applicable shorter period of time for bringing the action provided by the Revised Code.
- The complainant shall include in his complaint a demand for a judgment for the damages that the judge or jury finds that the complainant is entitled to be awarded, but shall not specify in that demand any monetary amount for damages sought.
- OHIO REV. CODE ANN. § 2743.02 (2014). The filing of a claim against an officer or employee tolls the running of the applicable statute of limitations until the court of claims determines personal immunity.
- OHIO REV. CODE ANN. § 2743.11 (2014). Trial by Jury. No claimant in the court of claims shall be entitled to have his civil action against the State determined by a trial by jury, but retains their right to a trial by jury in the court of claims of any civil actions not against the State.

## OKLAHOMA

### Summary:

The State of Oklahoma has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$175,000 (personal injury per person, single act) and \$1,000,000 aggregate (single act). If a county has a population of less than 300,000, then the limits are \$25,000 (property damage) and \$125,000 (personal injury—single act or occurrence). There is a 2-year statute of limitations with a shorter notice period for claims.

- **Statutory Authority:**
  - OKLA. STAT. tit. 51, §§ 151–172 (2013). Governmental Tort Claims Act.
  - OKLA. STAT. tit. 51, § 155 (2013). Exemption from liability for discretionary functions, and other exemptions.
- **Relevant Case Law:**
  - *Ex Parte Hous.*, 224 P.2d 281 (Okla. Crim. App. 1957).
    - “[I]t was the intent of the Legislature to declare that the acquisition, construction, operation and maintenance of an airport by a municipality was a governmental function in the sense that it was a public purpose.” *Id.* at 301–02.
  - *Fine Airport Parking, Inc. v. City of Tulsa*, 71 P.3d 5 (Okla. 2003).
    - “The Oklahoma Antitrust Reform Act, while expressly excluding the state from antitrust liability, clearly subjects municipalities to liability for anti-competitive conduct. Municipalities are not immune from the Act under the federal doctrine of state action immunity.” *Id.* at 14.

- **Monetary Limits and Caps:**
  - OKLA. STAT. tit. 51, § 154 (2013). Extent of liability shall not exceed \$25,000 for property damage or \$125,000 for personal injury in a single act, accident, or occurrence. For counties with a population of 300,000 or greater, limit is \$175,000 for personal injury in a single act, accident, or occurrence, with a maximum cap of \$1 million for multiple claims arising from a single act, accident, or occurrence. No punitive damages.
  - OKLA. STAT. tit. 51, § 160 (2013). Recovery of payments from employees, no payment for punitive damages.
  - OKLA. STAT. tit. 51, § 162(D) (2013). No punitive damages.
- **Waiver of Immunity:**
  - OKLA. STAT. tit. 51, § 162(E) (2013). State does not waive any immunities available under the 11th Amendment.
- **Process:**
  - OKLA. STAT. tit. 51, § 157 (2013). Denial of Claim, Notice. Suit may not be brought against the State or its political subdivisions unless the claim has been denied in whole or in part by that entity within 90 days of claim. If approved or denied, State must give 5 days notice to claimant. Claimant has 180 days from date of notice to file a claim in State court. If claim is neither approved nor denied, Claimant has 180 days from the conclusion of the 90-day period to file. In no event shall a claim be instituted more than 2 years beyond the date of the loss.

## OREGON

### Summary:

The State of Oregon has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$4,000,000 (no punitive damages). There is a 1-year statute of limitations.

- **Statutory Authority:**
  - OR. CONST. art. IV, § 24. Bringing suit against State, establishes legislative authority.
  - OR. REV. STAT. §§ 30.310 to 30.402 (2013). Actions and Suits By and Against Governmental Units and Officials.
  - OR. REV. STAT. § 30.320 (2013). Contract and Other Actions and Suits Against Governmental Units.
  - OR. REV. STAT. § 30.265(6)(c) (2013). Discretionary functions are exempt.
- **Relevant Case Law:**
  - Walker v. Mitchell, 891 P.2d 1359 (Or. Ct. App. 1995).
    - Misclassification of airport as personal use was outside the definition of discretionary function and, therefore, subject to suit.

- *Penland v. Redwood Sanitary Sewer Serv. Dist.*, 965 P.2d 433 (Or. Ct. App. 1998).
    - “The Supreme Court [concluded] that discretionary function immunity under the OTCA ‘confers immunity on public bodies only from liability for damages and does not confer immunity from injunctive actions including, particularly, an action to enjoin a nuisance.’” *Id.* at 434 (citation omitted).
  - *City of North Bend v. Cnty. of Coos*, 485 P.2d 1226 (Or. 1971).
    - “[T]his case comes within the provisions of ORS 30.320, which waives immunity in suits upon contract.” *Id.* at 1228.
  - *Hillman v. N. Wasco Cnty. People’s Util. Dist.*, 323 P.2d 664 (Or. 1958). *But see* *Maulding v. Clackamas Cnty.*, 563 P.2d 731 (Or. 1977).
    - “Whether the defendant is immune from tort liability depends on the status of defendant, the nature of the activity in which it is engaged and the application of ORS 30.320 thereto.” *Hillman*, 323 P.2d at 683.
  - *Norgaard v. Port of Portland*, 196 P.3d 67 (Or. 2008).
    - “[A]lthough the Oregon Supreme Court has characterized the Port as a state instrumentality for purposes of state law immunity, the record before us demonstrates that it is financially independent from the state and that the state is not a ‘real, substantial party in interest’ when the Port is sued. It follows that the Port is not an arm of the state for purposes of pre-ratification immunity and is therefore not entitled to immunity from plaintiff’s federal law action under that doctrine.” *Id.* at 72–73.
  - *Vaughn v. First Transit, Inc.*, 206 P.3d 181 (Or. 2009).
    - “[T]he legislature enacted the OTCA to abrogate sovereign immunity and make public bodies, with some limits, liable for their torts to the same extent as private persons and corporations. Given that purpose, it would not make sense to interpret the OTCA to bring all torts of a public body’s common-law ‘agents’ (when acting with the scope of their agency) within the statute. Such a definition would impose liability on the public body far beyond that imposed on private entities.” *Id.* at 188.
- **Monetary Limits and Caps:**
  - OR. REV. STAT. § 30.269(a) (2013). No punitive damages.
  - OR. REV. STAT. § 30.271 (2013). Limitations on Liability of State for Personal Injury and Death. Limits are tied to the cost of living and are established by the State Court Administrator. Current limits are set at \$4 million, for causes of action arising on or after July 1, 2014, and before July 1, 2015.
- **Process:**
  - OR. REV. STAT. § 30.275 (2013). Notice of Claim, Time of Notice, Time of Action. Notice of claim must be made within 1 year for a wrongful death claim; for all other claims within 180 days of the injury. A 90-day tolling applies in the event that an injury prevents filing or due to incapacity, incompetence, or minority.

- OR. REV. STAT. § 30.370 (2013). Service of summons on Attorney General. “In any suit, action or proceeding commenced under the provisions of ORS 30.360...to which the state is made a party, service of summons upon the state shall be made upon the Attorney General. In addition to other required content, any summons served pursuant to this section shall state the state agency involved in the suit, action or proceeding.”

## PENNSYLVANIA

### Summary:

The Commonwealth of Pennsylvania has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$250,000 per person and \$1,000,000 in the aggregate. There is a 6-month statute of limitations and notice requirement.

- **Statutory Authority:**
  - PA. CONST., art. II, § 11, Courts to be Open; Suits Against the Commonwealth.
    - Suits may be brought against the Commonwealth in such manner, in such courts, and in such cases as the Legislature may by law direct.
  - 1 PA. CONS. STAT. § 2310 (2014). Sovereign Immunity Reaffirmed; Specific Waiver.
    - The Commonwealth, and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign immunity and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity.
    - When the General Assembly specifically waives sovereign immunity, a claim against the Commonwealth and its officials and employees shall be brought only in such manner and in such courts and in such cases as directed by the provision of Title 42 (relating to judiciary and judicial procedure) or 62 (relating to procurement), unless otherwise specifically authorized by statute.
  - 35 PA. CONS. STAT. § 7704 (2014). Immunity from Civil Liability.
    - The Commonwealth and any political subdivision shall not be liable for any personal or property loss or damage for any emergency service activities or disaster relief service activities.

- 74 PA. CONS. STAT. § 1711 (2014). Metropolitan Transportation Authorities.
  - (3) It is hereby declared to be the intent of the General Assembly that an authority created or existing under this chapter...shall continue to enjoy sovereign and official immunity, as provided in 1 Pa.C.S. § 2310 (relating to sovereign immunity reaffirmed; specific waiver), and shall remain immune from suit except as provided by and subject to the provision of 42 Pa.C.S. §§ 8501 (relating to definitions) through 8528 (relating to limitations on damages).
- 42 PA. CONS. STAT. § 8501 (2014). Definitions.
  - “Commonwealth party” means a Commonwealth agency and any employee thereof, but only with respect to an act within the scope of his office or employment.
  - “Employee” means any person who is acting or who has acted on behalf of a government unit, whether on a permanent or temporary basis, whether compensated or not, and whether within or without the territorial boundaries of the government unit, including any elected or appointed officer, member of a governing body, or other person designated to act for the government unit. Independent contractors are not included if the government entity has no legal right of control.
  - “Local agency” means a government unit other than the Commonwealth government. It includes intermediate units, municipalities performing governmental functions, intergovernmental cooperation, councils of government, and entities created by two or more municipalities.
- 42 PA. CONS. STAT. § 8522 (2014). Exceptions to Sovereign Immunity.
  - The General Assembly waives sovereign immunity as a bar to an action against Commonwealth parties, for damages arising out of a negligent act where the damages would be recoverable under the common law or a statute creating a cause of action if the injury were caused by a person not having available the defense of sovereign immunity for the following acts:
    - The operation of any motor vehicle in the possession or control of a Commonwealth party;
    - A dangerous condition of Commonwealth agency-owned, leased, or leased-out real estate and sidewalks; and
    - A dangerous condition of highways under the jurisdiction of a Commonwealth agency created by potholes or sinkholes or other conditions created by natural elements, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury that was incurred and the Commonwealth agency had actual written notice of the dangerous condition of the highway a sufficient time prior to the event to have taken measures to protect against the dangerous condition.
- 42 PA. CONS. STAT. § 8524 (2014). Defenses.
  - A Commonwealth agency official may assert on his own behalf, or the Commonwealth may assert on his behalf:
    - (1) Defenses that have been available to such officials;
    - (2) The defense that the employee was acting pursuant to a duty required by statute; and

- (3) The defense that the act was within the discretion granted to the employee by statute.
- 42 PA. CONS. STAT. § 8525 (2014). Legal Assistance.
  - The Attorney General shall defend an action alleging that a Commonwealth government employee acting within the scope of the office and duties of the employee gave rise to a claim unless the Attorney General determines that the act did not occur within the scope of the office or duties of the employee.
- 42 PA. CONS. STAT. § 8541 Governmental Immunity Generally.
  - No local agency shall be liable for any damages on account of any injury to a person or property caused by a local agency or its employee's act.
- 42 PA. CONS. STAT. § 8542 (2014). Exceptions to Governmental Immunity.
  - A local agency shall be liable for damages on account of an injury to a person or property within the limits of this Act if both of the following conditions are satisfied and the injury occurs as a result of one of the prescribed acts imposing liability:
    - (1) Damages would be recoverable under common law or a statute creating a cause of action if the injury were caused by a person without a governmental or official immunity defense; and
    - (2) The local agency or its employee's negligent acts that caused the injury were within the scope of his office or duties.
      - "Negligent acts" shall not include acts or conduct that constitute a crime, actual fraud, actual malice, or willful misconduct.
- 42 PA. CONS. STAT. § 8545 (2014). Official Liability Generally.
  - A local agency's employee is liable for civil damages for any personal or property injury caused by the employee's acts within the scope of office or duties to the same extent of his employing local agency and subject to any other imposed limitations.
- 42 PA. CONS. STAT. § 8546 (2014). Defense of Official Immunity.
  - Any action brought against a local agency's employee for damages on account of personal or property injury based upon claims arising from or reasonably related to the employee's office or performance of duties, the employee may assert, or the local agency may assert on his behalf:
    - Any available common law defense;
    - The defense that the employee's conduct that gave rise to the claim was or in good faith reasonably believed to be authorized or required by law; and
    - The defense that the employee's act that gave rise to the claim was within the policymaking discretion granted to the employee by law.
- 53 PA. CONS. STAT. § 5607 (2014). Purposes and Powers.
  - Every authority incorporated under the Municipality Authorities Act shall be a body corporate and politic and shall be for the purposes of financing working capital; acquiring, holding, constructing, financing, improving, maintaining and operating, owning, or leasing airports and all facilities necessary or incident thereto.

- “Municipal authority” means the body or board authorized by law to enact ordinances or adopt resolutions for the particular municipality. 53 PA. CONS. STAT. § 5602 (2014).
  - “Municipality” means a county, city, town, borough, or township of the Commonwealth. 53 PA. CONS. STAT. § 5602 (2014).
- 351 PA. CODE § 4.4-500 (2014). Functions (Philadelphia Home Rule Charter).
  - The City of Philadelphia Department of Commerce shall itself, or by contract, maintain, improve, repair, and operate City airport facilities and equipment and, when authorized by the Council, acquire, design, and construct additional such facilities. The Department may grant leases and licenses for use of City airport facilities.
- **Relevant Case Law:**
  - *Sanchez-Guardiola v. City of Phila.*, 87 A.3d 397 (Pa. Commw. Ct. 2014).
    - Plaintiff tripped and fell over an unmarked platform or stage, approximately 12 to 14 inches tall, at the Philadelphia International Airport and filed suit against the City based on the negligent construction, maintenance, and placement of the platform using the real property governmental immunity exception in Title 42, Section 8542(b)(3) of the Pennsylvania Consolidated Statutes. *Id.* at 936.
    - “Plaintiff failed to allege or present any evidence that the platform was permanently attached or affixed in any manner to the Airport terminal floor.” *Id.* at 939.
    - “In the present case, the platform or stage over which Plaintiff tripped constituted movable personal property akin to furniture. As such, the platform did not create a hazardous condition constituting a defect in the real estate itself.” *Id.*
    - “In short, Plaintiff’s injuries were caused by the alleged negligent care of the movable platform or stage, not by the negligent care of the real property itself.” *Id.* at 941.
  - *Page v. City of Phila.*, 25 A.3d 471 (Pa. Commw. Ct. 2011).
    - “Sovereign immunity is only waived for damages arising out of a negligent act where the common law or a statute would permit recovery if the injury were caused by a person not protected by sovereign immunity and the cause of action falls under one of the specifically enumerated exceptions to immunity.” *Id.* at 475.
  - *Commonwealth of Pa. Dep’t. of Transp. v. Mun. Auth. of the Borough of W. View*, 919 A.2d 343 (Pa. Commw. Ct. 2007), *aff’d* 936 A.2d 487 (Pa. 2007).
    - “[B]ecause the claim is not tort based but ‘contract’ based, the Tort Claims Act is inapplicable.” *Id.* at 347.
  - *Sweeney v. Merrymead Farm, Inc.*, 799 A.2d 972 (Pa. Commw. Ct. 2002).
    - “In order to determine whether an entity is a Commonwealth or local agency, we look to the entity’s enabling legislation.” *Id.* at 976 (citation omitted).
  - *Sphere Drake Ins. v. Phila. Gas Works*, 782 A.2d 510 (Pa. 2001).

- Under the Tort Claims Act, a local agency is defined as a “government unit other than the Commonwealth government.” A “government unit” under the Judicial Code is defined as “any government agency.” *Id.* at 513. The Judicial Code defines a “government agency” as “[a]ny Commonwealth agency or any political subdivision or municipal or other local authority, or any officer or agency of any such political subdivision or local authority.” *Id.* at 513 (citation omitted). The Statutory Construction Act defines “local authority” as “a municipal authority or any other body corporate and politic created by one or more political subdivisions pursuant to statute.” *Id.* at 513 (citation omitted).
- *Jones v. Southeastern Pa. Transp. Auth.*, 772 A.2d 435 (Pa. 2001). *See also* *Young v. 2002 U.S. Dist. LEXIS 19801* (E.D. Pa. Oct. 15, 2002).
  - “Because the legislature’s intent in both the Sovereign Immunity and Tort Claims Act is to shield government from liability, except as provided for in the statutes themselves, we apply a rule of strict construction in interpreting these exceptions.” *Jones*, 772 A.2d at 440 (citation omitted).
  - “A claim for damages for injuries caused by a substance or an object on Commonwealth real estate must allege that the dangerous condition ‘derive[d], originate[d] or ha[d] as its source the Commonwealth realty’ itself, if it is to fall within the Sovereign Immunity Act’s real estate exception.” *Id.* at 443 (quoting *Snyder v. Harmon*, 562 A.2d 307, 311 (Pa. 1989)).
  - “In other words, assuming all other requirements of the statutory exception at 42 Pa. C.S. § 8522(b)(4) are met, the Commonwealth may not raise the defense of sovereign immunity when a plaintiff alleges, for example, that a substance or an object on Commonwealth realty was the result of a defect in the property or in its construction, maintenance, repair or design.” *Jones*, 772 A.2d at 443–44.
  - “[T]he material words the General Assembly used in the Sovereign Immunity’s Act real estate exception mirror the material words it used in the Tort Claim Act’s sidewalk exception.” *Id.* at 444 (citation omitted).
- *Bullard v. Lehigh-Northampton Airport Auth.*, 668 A.2d 223 (Pa. Commw. Ct. 1995).
  - “We agree with the trial court that a tarmac does not fall within the definition of a sidewalk.” *Id.* at 225.
- *Cnty. of Schuylkill v. Maurer*, 536 A.2d 479 (Pa. Commw. Ct. 1988).
  - The Court must consider the following factors in determining whether an individual is a governmental body employee or independent contractor for purposes of immunity: “control of the manner work is done; responsibility for result only; terms of agreement between the parties; nature of the work or occupation; skill required for performance; whether one is engaged in a distinct occupation or

business; which party supplied the tools; whether payment is by the time or by the job; whether work is part of the regular business of the employer; and also the right to terminate the employment at any time.” *Id.* at 482–83 (quoting *Stepp v. Renn*, 135 A.2d 794 (Pa. Super. Ct. 1957)).

- “None of these factors standing alone, however, is dispositive of one’s status, and each case must be determined according to its own facts.” *Id.* at 483.
- *Thomas v. City of Phila.*, 861 A.2d 1023 (Pa. Commw. Ct. 2004).
  - “However, while the general [notice requirement] rule [42 Pa. C.S. § 5522(a)] sets forth a bright line, broad exceptions exist that prevent the dismissal of any action due to lack of notice.” *Id.* at 1026.
  - “One exception to the six-month notice requirement is where the plaintiff can show a reasonable excuse for failure to comply with the notice requirement.” *Id.* at 1027.
  - “Included as a reasonable excuse for failing to file the prescribed notice due to ignorance of an inability to understand where there is no prejudice to the governmental unit as a result.” *Id.* at 1027 (citing *Ramon v. Dept. of Transp.*, 556 A.2d 919 (Pa. Commw. Ct. 1989), *aff’d*, 573 A.2d 1025 (Pa. 1990)).
  - “[A]ll these exceptions require is a reasonable excuse and/or actual or constructive notice of the incident.” *Id.* at 1027.
  - “[42 Pa. C.S.] § 5522 is not strictly a statute of limitations which bars the right to bring the action, but rather provides an affirmative defense to recovery.” *Id.* at 1027 n.8 (quoting *Landis v. City of Phila.*, 369 A.2d 746, 749 (Pa. Super. Ct. 1976)).
  - “This issue must first be raised by the governmental defendant as an affirmative defense in its answer and new matter. Once the defense is properly raised, a plaintiff may set forth the reasons for his delay under Pa. C.S. § 5522(a)(2). Having done so, the burden shifts to the defendant to aver specific facts alleged to constitute prejudice.” *Id.* at 1027 n.8 (citation omitted).
  - “What constitutes reasonable excuse involves a balancing of the reason for the delay against the prejudice to the defendant and is left largely within the discretion of the trial court.” *Id.* at 1027 n.8 (citation omitted).
- **Monetary Limits and Caps:**
  - 42 PA. CONS. STAT. § 8528 (2014). Limitations on Damages.
    - Damages arising from the same cause of action or transaction or occurrence or series of causes of action or transactions or occurrences shall not exceed \$250,000 in favor of any plaintiff or \$1,000,000 in the aggregate.
  - 42 PA. CONS. STAT. §§ 8549-8553 (2014). Limitations on Damages.

- Any action brought against a local agency's employee for personal or property injury damages in which it is judicially determined (1) the employee's act caused the injury; and (2) the act was or in good faith reasonably believed that the act was within the employee's scope of office or duties shall be limited to the following damages as long as it is not judicially determined that the employee's act constituted a crime, actual fraud, actual malice or willful misconduct:
  - Damages arising from the same cause of action or transaction or occurrence or series of causes of action or transactions or occurrences shall not exceed \$500,000 in the aggregate;
  - Damages shall only be recoverable for:
    - Past and future loss of earnings and earning capacity;
    - Pain and suffering if the injury was death or in cases of permanent loss of bodily function, permanent disfigurement, or permanent dismemberment if the medical and dental expenses are in excess of \$1,500;
    - Medical and dental expenses;
    - Loss of consortium;
    - Loss of support; and
    - Property losses.
  - If a claimant receives or is entitled to receive benefits under a non-life insurance policy, the amount of such benefits shall be deducted from the amount of damages otherwise recoverable by such claimant.
  
- **State-Specific Aspects:**
  - Pennsylvania splits its waiver of immunity for the Commonwealth and other political subdivisions into two separate acts: the Sovereign Immunity Act (42 Pa. C.S. §§ 8521–8528) and the Political Subdivision Tort Claims Act (42 Pa. C.S. §§ 8541–8564).
    - Some of the differences between the two Acts are damage caps, pain and suffering recovery, claimant's status on property, notice requirements, and property conditions.
  - Pennsylvania's waiver of immunity is narrower than most states.
  - For the most part, suits for injuries at an airport would fall under the real estate exception to immunity, which would apply to things fixed to the property such as stairs, carpeting, and tile.
  
- **Waiver of Immunity:**
  - Pennsylvania waives immunity in limited circumstances.
    - The Commonwealth waives it under 42 Pa. C.S. § 8522(b) to claims for damages caused by: (1) vehicle liability; (2) medical-professional liability; (3) care, custody or control of personal property; (4) commonwealth real estate, highway and sidewalks; (5) potholes and other dangerous conditions; (6) care, custody or control of animals; (7) liquor store sales; (8) national guard activities; and (9) toxoids and vaccines.
    - Under the Political Subdivision Tort Claims Act, a local agency or any of its employees may impose liability on the local agency for injuries relating to the following: (1) vehicle liability; (2) care, custody or control of personal property; (3) real property; (4) trees, traffic controls

and street lighting; (5) utility service facilities; (6) streets; (7) sidewalks; and (8) care, custody or control of animals. 42 PA. CONS. STAT. § 8542(b) (2014).

○ **Process:**

- 42 PA. CONS. STAT. § 8523 (2014). Venue and Process.
  - Actions for claims against a Commonwealth party may be brought in and only in a county in which the principal or local office of the Commonwealth party is located or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose.
  - Service of process against a Commonwealth agency shall be made at the principal or local office of the Commonwealth agency that is being sued and at the Attorney General's office.
- 42 PA. CONS. STAT. § 5522 (2014). Six Month Limitation.
  - Any person who is about to commence any civil action or proceeding against a government unit for personal or property injury damages shall file, within 6 months from the date of injury or accrual of the cause of action, in the office of the government unit and in the Attorney General's office for an action against a Commonwealth agency for damage, a signed written statement setting forth:
    - Name and residence address of the person to whom the cause of action has accrued and the person injured;
    - Date, hour, and location of the accident; and
    - Name and residence or office address of any attending physician.
  - If the required written, signed statement is not filed, any civil action commenced against the government unit more than 6 months after the date of injury shall be dismissed and the person to whom any such cause of action accrued for any injury shall be forever barred from proceeding.
    - The court shall excuse failure to comply with the requirement upon a showing of reasonable excuse for failure to file the required statement.
  - For civil actions against a government unit other than the Commonwealth government:
    - The time for notice does not include the time when the injured individual is unable to give notice due to incapacitation or disability from the injury, not to exceed 90 days of incapacity;
    - Time for giving notice shall commence upon death if the individual's injuries resulted in death; and
    - Failure to comply with proper notice shall not be a bar if the government unit had actual or constructive notice of the incident or condition giving rise to the person's claim.
  - An action against any government unit officer for anything done in the execution of his office unless subject to some other specified limitation must be commenced within 6 months.

## RHODE ISLAND

### Summary:

The State of Rhode Island has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$100,000, unless resulting from proprietary functions; then there is no cap. There is a 3-year statute of limitations.

### o Statutory Authority:

- R.I. GEN. LAWS §§ 9-31-1 to 9-31-13 (2014). Rhode Island Tort Claims Act.
  - R.I. GEN. LAWS § 9-31-1 (2014). Tort liability of State. General waiver of sovereign immunity for the State, its subdivisions and agencies; the State, its subdivisions, and agencies “shall hereby be liable in all actions of tort in the same manner as a private individual or corporation.”
  - R.I. GEN. LAWS § 9-31-2 (2014). Limitations of Damages—State. Limits damages in actions against the State to \$100,000; unless actions giving rise to claim were “proprietary function.”
- R.I. GEN. LAWS §§ 42-64-1 to 42-64-41 (2014). [Note: The Rhode Island Airport Corporation (RIAC) was created in 1993 and replaced the Division of Airports].
  - R.I. GEN. LAWS § 42-64-4 (2014). Creation.
    - o (a) creates the Rhode Island Economic Development Corporation (EDC) as a public entity, distinct from the State, but still a government agency; its purpose is to acquire and develop real and personal property to foster economic development. The EDC established the RIAC, which maintains the six state-owned airports.
  - R.I. GEN. LAWS § 42-64-6 (2014). General Powers.
    - o (a)(1) The EDC and its subsidiaries have the power to sue and be sued.
  - R.I. GEN. LAWS § 42-64-7.1 (2014). Subsidiaries.
    - o (a)(1) The EDC has the power to act through any subsidiaries that the General Assembly approves
    - o (d) The EDC is not legally responsible for the debts/obligations or actions/inactions of the RIAC, unless otherwise agreed
    - o (h) Outlines the procedures for appointing the Board of Directors of the RIAC.

### o Relevant Case Law:

- *In re Advisory Op. to the Governor*, 627 A.2d 1246 (R.I. 1993).
  - Rhode Island Supreme Court held that, according to Section 42-64-4 of the Rhode Island General Laws, RIAC is a government agency. Thus, as a government agency it is subject to all the rules governing Sovereign Immunity in Rhode Island. *Id.* at 1249.



its construction and operation.”

- **Process:**
  - R.I. GEN. LAWS § 9-1-25 (2014). A claimant must bring suit against the State or political subdivision within 3 years of the accrual of the cause of action.
  - R.I. GEN. LAWS § 45-15-9(a) (2014). Notice of a claim involving injury on a highway or bridge must be provided within 60 days to the town responsible for the highway or bridge.

## SOUTH CAROLINA

### Summary:

The State of South Carolina has partially abrogated sovereign immunity for airports, which are treated differently from other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$300,000 (per person) or \$600,000 (per occurrence). Airport districts (as opposed to county airport commissions) may be sued without limitation. There is a 2-year statute of limitations.

- **Statutory Authority:**
  - S.C. CODE ANN. §§ 15-78-10 to 15-78-220 (2014). South Carolina Tort Claims Act.
    - S.C. CODE ANN. § 15-78-60 (2013). Establishes exemption for discretionary functions.
    - S.C. CODE ANN. § 15-78-120(b) (2013). Prohibits punitive damages.
    - S.C. CODE ANN. § 15-78-120(a) (2013). Sets liability limits at \$300,000 per occurrence when only one agency is involved, and \$600,000 if more than one agency is involved.
  - S.C. CODE ANN. § 55-11-110 (2013). Creates Greenville-Spartanburg Airport District.
  - S.C. CODE ANN. § 55-11-310 (2013). Creates Lexington-Richland Airport District.
  - S.C. CODE ANN. § 55-11-610 (2013). Creates Pee Dee Regional Airport District.
  - S.C. CODE ANN. § 15-78-40 (2013). South Carolina Tort Claims Act.
  - S.C. CODE ANN. § 15-78-60 (2013). Exceptions to Waiver of Immunity.
- **Relevant Case Law:**
  - *Willis Constr. Co. v. Sumter Airport Comm’n*, 419 S.E.2d 240 (S.C. Ct. App. 1992).
    - A city–county airport commission was not a “political subdivision of the state,” a “special purpose district,” or a “state agency” within the meaning of the statute. Airport authorities operate airports in their private or proprietary capacity. Accordingly, when it acts in a proprietary manner and does not carry on a governmental function, it



- S.D. CODIFIED LAWS §§ 21-32-1 to 21-32-21 (2014). Remedies Against the State.
  - S.D. CODIFIED LAWS § 21-32-17 (2014). Immunity of State Officers, Employees, and Agents. Except as provided in § 21-32-16, any employee, officer, or agent of the State, while acting within the scope of his employment or agency, whether such acts are ministerial or discretionary, is immune from suit or liability for damages brought against him in either his individual or official capacity.
- **Relevant Case Law:**
- L.R. Foy Constr. Co.. v. S.D. Cement Plant Comm’n, 399 N.W.2d 340 (S.D. 1987).
    - “In *People v. Superior Court*, 178 P.2d 1 (Cal. 1947), the sovereign immunity of the state from liability for tort, (as distinguished from its immunity from suit), was not extended to acts of its agents performed in a proprietary, as contrasted with a governmental enterprise.” *Id.* at 347.
  - *In re Request for Op. of the Sup. Ct. Relating to the Constitutionality of SDCL*, 379 N.W.2d 822 (S.D. 1985).
    - “Generally, the sovereign immunity of a state cannot be waived by defending a suit unless there is clear constitutional and statutory authority to effect such a waiver.” *Id.* at 826 (citations omitted). “Likewise, we have held that in the absence of an express statutory waiver, the doctrine of sovereign immunity expressed in our constitution will not be abrogated.” *Id.* at 826–27.
  - *Cromwell v. Rapid City Police Dep’t.*, 632 N.W.2d 20 (S.D. 2001).
    - “Waiver of immunity and consent to be sued occurs by operation of statute. We find no similar statute which allows a public entity to reassert sovereign immunity for a claim once it has been waived by operation of law.” *Id.* at 27.
- **Monetary Limits and Caps:**
- S.D. CODIFIED LAWS § 50-7-14.1 (2014). Maximum Liability of Municipality for Accidents or Occurrences. “The maximum liability of any municipality operating an airport shall be five million dollars for any accident or occurrence at or in connection with the operation of such airport resulting in bodily injury or death to any person, or damage to property, or any combination thereof.”
- **Waiver of Immunity:**
- S.D. CODIFIED LAWS § 21-32-20 (2014). Sovereign Immunity not Waived. “Neither §§ 21-32-19 to 21-32-21, inclusive, nor any rules promulgated thereunder may be deemed a waiver or alteration of the doctrine of governmental or sovereign immunity.”
  - S.D. CODIFIED LAWS § 21-32-16 (2014). Waiver of Immunity to Extent of Insurance Coverage—Consent to Suit. To the extent such liability insurance is purchased pursuant to § 21-32-15 and to the extent coverage is afforded

thereunder, the State shall be deemed to have waived the common law doctrine of sovereign immunity and consented to suit in the same manner that any other party may be sued.

- **Process:**
  - S.D. CODIFIED LAWS § 21-32-2 (2014). Limitation of Actions on Claims Against the State. “Action on any claim on contract or tort against the state shall be commenced within one year after same has arisen.”
  - S.D. CODIFIED LAWS §§ 21-32-1 to 21-32-21 (2014). Remedies Against the State. Establishes procedure for filing with court and filing with Attorney General; appointment of Commissioner of Claims.

## TENNESSEE

### Summary:

The State of Tennessee has not abrogated sovereign immunity for airports, which are treated similarly to other governmental entities with regard to tort liability. Contractual claims immunity is waived and such claims are heard before the Tennessee Claims Commission, which may compromise and settle the claim, subject to a cap of \$300,000 per claimant or \$1,000,000 per occurrence. If the airport purchases insurance, the cap can rise only to the level of that insurance. If a claim is denied, and the action is one for which immunity is waived, there is a 12-month statute of limitations.

- **Statutory Authority:**
  - TENN. CONST. art. I, § 17. “That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay. Suits may be brought against the state in such manner and in such courts as the Legislature may by law direct.”
  - TENN. CODE ANN. §§ 29-20-101 to 29-20-408 (2014). Tennessee Governmental Tort Liability Act.
    - TENN. CODE ANN. § 29-20-102(3)(A) (2014). “‘Governmental entity’ means any political subdivision of the state 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.”
  - TENN. CODE ANN. §§ 9-8-301 to 9-8-310 (2014). Tennessee Claims Commission.

- TENN. CODE ANN. § 9-8-108 (2014). Establishes the Board of Claims, which “[h]as the authority, but is not required, to investigate and hear claims and make awards when appropriate in cases based on acts or omissions of state officers or employees where a claim does not fall within the jurisdiction of the claims commission under § 9-8-307(a).”
- TENN. CODE ANN. § 9-8-307 (2014). The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the State based on the acts or omissions of "state employees," as defined in § 8-42-101 for specified acts.
- TENN. CODE ANN. §§ 20-13-101 to 20-13-110 (2014). Actions by and Against the State.
  - TENN. CODE ANN. § 20-13-102 (2013). Actions Against State Prohibited.
    - “No court in the state shall have any power, jurisdiction or authority to entertain any suit against the state, or against any officer of the state acting by authority of the state, with a view to reach the state, its treasury, funds or property, and all such suits shall be dismissed as to the state or such officers, on motion, plea or demurrer of the law officer of the state, or counsel employed for the state.”
  - TENN. CODE ANN. § 20-13-103 (2013). Compromise and Settlement of Litigation.
    - “The attorney general and reporter may compromise and settle, insofar as the state is concerned, any civil litigation to which the state may be a party, upon such terms as in the attorney general and reporter's opinion may seem to be in the best interest of the state, and may enter into such agreements in connection with the compromise and settlement as may be necessary to effectuate the purposes of this section. Written approval of the comptroller of the treasury and governor shall be required for any compromise and settlement greater than twenty-five thousand dollars (\$25,000).”
- TENN. CODE ANN. § 42-5-107 (2013). Public Purpose of Airports.
  - “Any airport so acquired, owned, leased, controlled or occupied by municipalities shall be and is declared to be acquired, owned, leased, controlled or occupied for a public purpose.”
- **Relevant Case Law:**
  - *Sears v. Metro. Nashville Airport Auth.*, 01A01-9703-CV-00138 (Tenn. Ct. App. 1999).
    - “The Airport Authority is a ‘governmental entity’ as defined in Tenn. Code Ann. § 29-20-102(3) (Supp. 1998) because it is an instrumentality of government created by act of the General Assembly and the Metropolitan Government of Nashville and Davidson County.”
  - *City of Knoxville, Tenn. v. Bailey*, 222 F.2d 520 (Tenn. 1955).

- “The Tennessee Supreme Court in the Stocker case stated that it was not there confronted with any such difficulty, for the clear and unmistakable terms of the Act under which the City of Nashville operated its airport left no room for construction or debate, and no valid reason existed for refusing to give effect to the immunity provision of the legislative Act exempting the municipality from suit arising out of its exercise of a public governmental function.” *Id.* at 525.
- *All-American Cab Co. v. Metro. Knoxville Airport Auth.*, 547 F. Supp. 509 (E.D. Tenn. 1982).
  - “A state exercising its sovereign powers may impose certain anti-competitive restraints.” *Id.* at 511 (citing *Parker v. Brown*, 317 U.S. 341 (1943)). It may therefore be exempt from Sherman Act liability. *Id.* at 511. “State instrumentalities, however, do not enjoy such far-reaching immunity.” *Id.* (citations omitted).
  - “An instrumentality is only exempt if ‘it constitutes the action of the state...itself in its sovereign capacity’ or if ‘it constitutes municipal action in furtherance or implementation of clearly articulated and affirmatively expressed state policy.’” *Id.* at 511 (citation omitted).
  - “Like the Pueblo Memorial Airport, the McGhee Tyson Airport is operated for the benefit of the general public and not for the particular advantage of Knoxville residents. We therefore conclude that the Airport Authority and its contract for the provision of a dispatching service are exempt from antitrust scrutiny.” *Id.* at 511.
- *Sutton v. Barnes*, 78 S.W.3d 908 (Tenn. Ct. App. 2002).
  - “[T]he Legislature, acting within its power under Article 1, § 17 of the Tennessee Constitution, has provided for the waiver of the absolute immunity afforded governmental entities, but only within certain limitations.” *Id.* at 913.
  - “The GTLA’s waiver of immunity ‘is narrowly confined in its scope.’” *Id.* (citation omitted).
  - “[T]he savings statute does not apply to GTLA actions ...[and] cannot be used to extend the period within which to file suit against a governmental entity.” *Id.* at 913–14.
- *Burchfiel v. Gatlinburg Airport Auth.*, No. E2005-02023-COA-R3-CV (Tenn. Ct. App., Nov. 28, 2006).
  - “[T]he provisions of the GTLA, although they grant immunity to governmental entities under certain circumstances, do not in any way shield the Airport Authority from the injunctive relief ordered by the trial court. The case law interpreting the application of the GTLA makes an important distinction between actions for *damages* against a governmental entity and actions for *injunctive relief* against a governmental entity.” [emphasis in original]. *Id.* at \*20–21.

- **Monetary Limits and Caps:**
  - TENN. CODE ANN. § 9-8-307(e) (2014). “For causes of action arising in tort, the state shall only be liable for damages up to the sum of three hundred thousand dollars (\$300,000) per claimant and one million dollars (\$1,000,000) per occurrence. The board of claims is authorized to purchase insurance, on a per claimant or per occurrence basis, for any class of claim. Any recovery covered by such a policy may exceed the monetary limits of this subsection (e), but only up to the policy limit.”
  
- **Waiver of Immunity:**
  - TENN. CODE ANN. § 20-13-102(a) (2014). Actions Against State Prohibited. No court in the State shall have any power, jurisdiction or authority to entertain any suit against the State, or against any officer of the State acting by authority of the State, with a view to reach, its treasury, funds or property, and all such suits shall be dismissed as to the State or such officers, on motion, plea or demurrer of the law officer of the State, or counsel employed for the State.
  
- **Process:**
  - TENN. CODE ANN. § 9-8-108(a) (2014). Powers and Duties. “The board of claims: (1) Has the authority, but is not required, to investigate and hear claims and make awards when appropriate in cases based on acts or omissions of state officers or employees where a claim does not fall within the jurisdiction of the claims commission under § 9-8-307(a).”
  - TENN. CODE ANN. § 9-8-307 (2014). Jurisdiction—Claims—Waiver of Actions—Standard for Tort Liability—Damages—Immunities—Definitions—Transfer of Claims.
    - (a)(1) “The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of ‘state employees,’ as defined in § 8-42-101, falling within one (1) or more...” of specified categories of causes.
    - (e) For causes of action arising in tort, the state shall only be liable for damages up to the sum of \$300,000 per claimant and \$1,000,000 per occurrence. The board of claims is authorized to purchase insurance, on a per claimant or per occurrence basis, for any class of claim. Any recovery covered by such a policy may exceed the monetary limits of this subsection (e), but only up to the policy limit.
  - TENN. CODE ANN. § 29-20-305 (2014). Action in Circuit Court Generally—General Sessions Court in Certain Counties. “If the claim is denied, a claimant may institute an action in the circuit court against the governmental entity in those circumstances where immunity from suit has been removed as provided for in this chapter. (b) The action must be commenced within twelve (12) months after the cause of action arises.”

**TEXAS****Summary:**

The State of Texas has abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$250,000 (monetary damages per individual), \$500,000 (occurrence of bodily injury), and \$100,000 (each single occurrence of property damage) for state government and slightly different limits (\$100,000, \$300,000, and \$100,000, respectively) for local governments. If the airport purchases insurance, the cap can rise to the level of that insurance. There is a 6-month statute of limitations.

- **Statutory Authority:**

- TEX. CIV. PRAC. & REM. CODE ANN. §§ 101.001 to 101.109 (2013).
  - TEX. CIV. PRAC. & REM. CODE ANN. § 101.001 (2013). Definitions.
    - Employee—a person in paid service of a governmental unit.
    - Governmental unit—state and its agencies, and political subdivisions.
    - Scope of employment—performance for a governmental unit of the duties and tasks of employee’s office or employment.
  - TEX. CIV. PRAC. & REM. CODE ANN. § 101.21 (2013). Governmental Liability.
    - A governmental unit is liable for actions arising from the use or operation of a publicly owned motor-driven vehicle or equipment, premises defects, and the use or condition of tangible property.
  - TEX. CIV. PRAC. & REM. CODE ANN. § 101.211 (2013). No Liability for Joint Enterprise.
    - There is no vicarious liability for airports in joint enterprises engaged in space flight activities.
  - TEX. CIV. PRAC. & REM. CODE ANN. § 101.0215 (2013). Liability of a Municipality.
    - Municipalities are liable for damages arising from their governmental functions, including operating an airport.
  - TEX. CIV. PRAC. & REM. CODE ANN. § 101.022 (2013). Duty Owed, Premise and Special Defects.
    - For premises defects, the governmental unit owes the same duty as a private owner would to a licensee on private property.
  - TEX. CIV. PRAC. & REM. CODE ANN. § 101.025 (2013). Waiver of Governmental Immunity; Permission to Sue.
    - To the extent that liability is created in this chapter, sovereign immunity is waived and abolished.
    - A person having a claim under this chapter may sue a governmental unit for damages so allowed.
  - TEX. CIV. PRAC. & REM. CODE ANN. § 101.027 (2013). Liability Insurance.

- Each governmental unit, except unit of the State government, may purchase liability insurance.
- TEX. CIV. PRAC. & REM. CODE ANN. § 101.056 (2013). Discretionary Powers.
  - This chapter does not apply to
    - Failure of a governmental unit to perform an act that it is not required to perform by law; or
    - Unit's decision not to perform or act on its failure to decide on performance/non-performance of an act if the law leaves such conduct to the discretion of the unit.
- TEX. CIV. PRAC. & REM. CODE ANN. § 104.001 (2013). State Liability; Persons Covered.
  - State will indemnify employees and former employees for conduct during their employment.
- TEX. CIV. PRAC. & REM. CODE ANN. § 104.002 (2013). State Liability; Conduct Covered.
  - State will indemnify persons for conduct in the course and scope of their employment, but only for negligence and not for intentional or grossly negligent actions.
- TEX. TRANSP. CODE ANN. § 21.001 (2013).
  - TEX. TRANSP. CODE ANN. § 21.001 (2013). Definitions.
    - The Department under this chapter is the Texas Department of Transportation (TxDOT).
  - TEX. TRANSP. CODE ANN. § 21.002 (2013). Aviation Division.
    - Powers granted to TxDOT over aviation activities shall be performed by Aviation Division.
  - TEX. TRANSP. CODE ANN. § 21.005 (2013). Suit Against Department.
    - A party adversely affected by an administrative act of TxDOT that does not receive relief may file a petition for relief in Travis County district court.
- TEX. TRANSP. CODE ANN. § 22.002(a)(2) (2013). Public Purpose; County or Municipal Purpose.
  - Subject to Chapter 101, activities related to the operation and maintenance of airports are government functions exercised for a public purpose.
- **Relevant Case Law:**
  - *Mogayzel v. Tex. Dep't of Transp.*, 66 S.W.3d 459 (Tex. App. 2d Dist. 2001).
    - The Texas Tort Claims Act waives immunity in only three distinct areas—use of publicly owned vehicles, premises defect, and conditions or use of tangible/real property. If a claim does not fall into one of these categories, then the government remains immune from suit and liability.
  - *City of Irving v. Seppy*, 301 S.W.3d 435 (Tex. App. 5th Dist. 2009).
    - “Section 101.056’s discretionary function exception is designed to ‘avoid judicial review of governmental policy decisions.’” *Id.* at 441 (citation omitted).
  - *Tompkins v. City of El Paso*, 449 F.2d 842 (5th Cir. 1971).

- “In Texas airports are considered governmental functions and retain the cloak of sovereign immunity from suit sounding in tort.” *Id.* at 843.
  - *Richardson v. Dallas/Fort Worth Airport*, No. 11-03-00033-CV (Tex. App. 11th Dist. July 17, 2003).
    - “[U]nder the doctrine of sovereign immunity, a governmental unit is protected from suit unless immunity has been specifically waived by the legislature by clear and unambiguous language.” *Id.* at \*3–4.
    - “Immunity is retained under Section 101.056 for discretionary acts if the laws leaves the performance or nonperformance of the act to the discretion of the governmental unit.” *Id.* at \*5.
  - *Tex. v. City of Galveston*, 175 S.W.3d 1 (Tex. 2004).
    - “[W]e hold that governmental immunity does not shield a municipality from the State’s suit asserting tort claims for actual damages because any immunity that a municipality enjoys derives from the State’s own immunity.” *Id.* at 7.
  - *AN Collision Ctr. of Addison, Inc. v. Town of Addison*, 310 S.W.3d 191 (Tex. App. 5th Dist. 2010).
    - “A nuisance claim can only be brought against a governmental entity if that nuisance rises to the level of a constitutional taking or unless governmental immunity is specifically waived by the Texas Tort Claims Act.” *Id.* at 194 (citations omitted).
    - “Absent an intentional act resulting in the taking of private property for public use, claims for inverse condemnation and non-negligent nuisance under the takings clause of the Texas Constitution are barred by governmental immunity.” *Id.* at 196 (citations omitted).
  - *Mission Consol. Indep. Sch. Dist. v. Garcia*, 253 S.W.3d 653 (Tex. 2008).
    - “Sovereign immunity and its counterpart, governmental immunity, exist to protect the State and its political subdivisions from lawsuits and liability for money damages.” *Id.* at 655 (citation omitted).
    - “We interpret statutory waivers of immunity narrowly, as the Legislature’s intent to waive immunity must be clear and unambiguous.” *Id.* at 655 (citation omitted).
- **Monetary Limits and Caps:**
- TEX. CIV. PRAC. & REM. CODE ANN. § 101.023 (2013). Limitation on Amount of Liability.
    - Liability of state government is limited to money damages of \$250,000 for each person, \$500,000 each single occurrence of bodily injury or death, and \$100,000 for each single occurrence for injury or destruction of property.
    - For local governments, the limits are \$100,000, \$300,000, and \$100,000, respectively.
    - For municipalities, the limits are \$250,000, \$500,000, and \$100,000, respectively.



- UTAH CODE ANN. § 63G-7-201 (2014). Immunity of governmental entities from suit. “(1) Except as may be otherwise provided in this chapter, each governmental entity and each employee of a governmental entity are immune from suit for any injury that results from the exercise of a governmental function.”
  - UTAH CODE ANN. § 63G-7-902 (2014). Authorizes a governmental entity to defend actions brought against an employee “arising from act or omission occurring (a) during the performance of the employee’s duties, (b) within the scope of the employee’s employment, or (c) under color or authority.”
- **Relevant Case Law:**
    - *AIG Aviation Ins. Servs., Inc. v. United States*, 885 F. Supp. 1496 (D. Utah 1995).
      - “The discretionary function exception does not apply ‘when a federal statute, regulation, or policy specifically prescribes a course of action for an [agency] to follow.’” *Id.* at 1498 (quoting *Berkovitz v. United States*, 486 U.S. 531, 536 (1988)).
    - *Standiford v. Salt Lake City Corp.* 605 P.2d 1230 (Utah 1980).
      - Historical note: The *Standiford* case provided extensive discussion of the definitions for governmental functions and the distinctions between governmental and proprietary functions. It has, however, been superseded by Utah Code Ann. § 63-30-2(4)(a) (1987).
    - *Bellonio v. Salt Lake City Corp.*, 911 P.2d 1294 (Utah Ct. App. 1996).
      - Notice of claim is a statutory prerequisite to suit and failure to follow the procedural requirements will result in a dismissal or bar of the suit.
  - **Monetary Limits and Caps:**
    - UTAH CODE ANN. § 63G-7-604 (2014). Limitation of Judgments Against Governmental Entity or Employee—Process for Adjustment of Limits. Subject to adjustments. Currently \$583,900 for one person in any one occurrence, or \$233,600 for property damage in any one occurrence, with a \$2,000,000 limit to the aggregate amount of individual awards that may be awarded in relation to a single occurrence.
    - UTAH CODE ANN. § 63G-7-603 (2014). Exemplary or Punitive Damages Prohibited—Governmental Entity Exempt from Execution, Attachment, or Garnishment. (1)(a) “A judgment may not be rendered against a governmental entity for exemplary or punitive damages.”
    - UTAH CODE ANN. § 63G-7-703 (2014). Political subdivisions may purchase insurance to protect against claims brought under Chapter 63G-7.
  - **Waiver of Immunity:**
    - UTAH CODE ANN. § 63G-7-301 (2014). Waivers of immunity—Exceptions.
      - (1)(a). Immunity is waived as to any contractual obligation.
      - (5)(a). Immunity is not waived for injuries resulting from exercise or failure to exercise a discretionary function.

- UTAH CODE ANN. § 63G-7-702 (2014). If immunity is waived, liability is determined as if the entity were a private person.
- **Process:**
  - UTAH CODE ANN. § 63G-7-402 (2014). Time for Filing Notice of Claim. One year from date of occurrence.
  - UTAH CODE ANN. § 63G-7-401 (2014). When a Claim Arises—Notice of Claim Requirements—Governmental Entity Statement—Limits on Challenging Validity or Timeliness of Notice of Claim.
    - (1) (a) Except as provided in Subsection (1)(b), a claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.
    - (b) The statute of limitations does not begin to run until a claimant knew, or with the exercise of reasonable diligence should have known:
      - (i) that the claimant had a claim against the governmental entity or its employee; and
      - (ii) the identity of the governmental entity or the name of the employee.
    - (c) The burden to prove the exercise of reasonable diligence is upon the claimant.
    - (2) Any person having a claim against a governmental entity, or against its employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless of whether or not the function giving rise to the claim is characterized as governmental.
    - Further explicit instructions apply regarding filing of notice of claim.
  - UTAH CODE ANN. § 63G-7-402 (2014). Notice of claim must be filed within 1 year after claim arises.
  - UTAH CODE ANN. § 63G-7-501 (2014). Jurisdiction of district courts over actions. Gives exclusive original jurisdiction to the district courts and prohibits filing as a small claims action.
  - UTAH CODE ANN. § 63G-7-502 (2014). Venue of actions against the State shall be in the county in which it occurred or in Salt Lake County. Actions against a county may be brought in the county in which it occurred or in the defendant county. Other actions may be brought in the political subdivision or county in which the claim arose.

## VERMONT

### Summary:

The State of Vermont has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$500,000 for an individual claim and \$2,000,000 in the aggregate. There is a 6-year statute of limitations.

- **Statutory Authority:**
  - VT. STAT. ANN. tit. 12, §§ 5601 to 5606 (2013). Tort Claims Against the State.
  - VT. STAT. ANN. tit. 12, § 5601 (2013). Liability of State.
    - (a)—creates a limited waiver of sovereign immunity analogous to vicarious liability. If a state employee commits a tort in the scope of his employment and the cause of action has a private analog, then a plaintiff may sue the State.
    - (b)—limitations on damages; individual’s claims are limited at \$500,000 and aggregate claims are limited at \$2,000,000 per occurrence.
    - (e) Statute does not apply to:
      - (1) Claims arising from employee actions with due care in execution of statute or regulation, or in performance of discretionary functions.
      - (6) Claims arising out of alleged assault, battery, abuse of process, misrepresentation, deceit, fraud, or interference with contractual rights.
        - In cases of intentional torts, the suit proceeds against the employee individually.
  - VT. STAT. ANN. tit. 5, §§ 201 to 212 (2013). “State Aeronautics Act.”
    - VT. STAT. ANN. § 205 (2013). Duties of Agency Generally
      - (a)—The Agency of Transportation shall have general supervision over aeronautics in the State of Vermont.
        - This means that the Agency of Transportation through its State Aviation Program is the relevant government entity under § 5601 for purposes of sovereign immunity, and its employees are the relevant employees under the governmental vicarious liability.
- **Relevant Case Law:**
  - *Kane v. Lamothe*, 936 A.2d 1303 (Vt. 2007).
    - State sovereign immunity must be expressly waived by statute, otherwise it bars claims against the State; in Vermont, “the State remains immune for governmental functions for which no private analog exists” and “waives its immunity only to the extent a plaintiff’s cause of action is comparable to a recognized cause of action against a private person.” *Id.* at 1307 (citation omitted).
  - *Johnson v. Agency of Transp.*, 904 A.2d 1060 (Vt. 2006).
    - “The discretionary function exception is designed to ensure that courts do not second-guess legislative or administrative policy judgments through tort law.” *Id.* at 1063 (citation omitted).
- **Monetary Limits and Caps:**
  - VT. STAT. ANN. tit. 12, § 5601(b) (2013). Limitations on Damages. Individual’s claims are limited at \$500,000, and aggregate claims are limited at \$2,000,000 per occurrence.

- **State-Specific Aspects:**
  - Vermont has an interesting statutory waiver of sovereign immunity in that it creates a limited avenue of governmental vicarious liability. If a government employee commits a tort within the scope of his employment and it is not a statutory or discretionary function, then the plaintiff's suit may proceed against the Agency of Transportation.
- **Process:**
  - General statutes of limitation apply.
  - VT. STAT. ANN. tit. 12, § 511 (2013). A civil action, except one brought upon the judgment or decree of a court of record of the United States or of this or some other state, and except as otherwise provided, shall be commenced within 6 years after the cause of action accrues and not thereafter.

## VIRGINIA

### Summary:

The State of Virginia has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$100,000. If the airport purchases insurance, the cap can rise to the level of that insurance. There is a 1-year or 18-month statute of limitations depending upon the party subject to suit. The Metropolitan Washington Airports Authority (MWAA) was created by statute to operate and manage National and Dulles Airports. Although it is independent of Virginia, local governments, the District of Columbia, and the United States government, it is liable for its contracts and torts, and those of its members and agents that are committed in any proprietary function. MWAA is not liable for any discretionary governmental functions.

- **Statutory Authority:**
  - VA. CODE ANN. § 5.1-173(B) (2014). MWAA is treated as a municipality; liable for contracts, and torts of proprietary functions, but immune when acting as a governmental function.
  - VA. CODE ANN. §§ 8.01-192 to 8.01-195 (2014). Virginia Tort Claims Act.
  - VA. CODE ANN. § 8.01-195.3 (2014). Virginia Tort Claims Act is a limited waiver of governmental immunity from tort claims.
- **Relevant Case Law:**
  - Gray v. Va. Sec'y of Transp., 662 S.E.2d 66 (Va. 2008).
    - "Sovereign immunity is 'a rule of social policy, which protects the state from burdensome interference with the performance of its governmental functions and preserves its control over state funds, property, and instrumentalities.'" *Id.* at 70 (citation omitted).
    - "The Commonwealth and its agencies are immune from liability...in the absence of an express constitutional or statutory waiver of sovereign immunity." *Id.* at 71 (citation omitted).

- Virginia courts have considered the MWAA to be the equivalent of a municipality for immunity purposes.
  - *Cnty. of York v. Peninsula Airport Comm’n*, 369 S.E.2d 665 (Va. 1988).
    - “[W]e hold that PAC is a municipal corporation (a political subdivision) and that its tax exemption extends to all its property necessary to accomplish the public purposes for which it was created.” *Id.* at 668.
  - *Couplin v. Payne*, 613 S.E.2d 592 (Va. 2005).
    - “The Authority shall be liable for its contracts and for its torts and those of its members, officers, employees, and agents committed in the conduct of any proprietary function, in accordance with the law of the Commonwealth of Virginia but shall not be liable for any torts occurring in the performance of a governmental function.” *Id.* at 593.
    - Operation of “emergency public services,” such as ambulance responses to emergency calls, constitutes an exercise of governmental functions that confers immunity to MWAA. *Id.* at 594.
  - *Alpine Air, Inc. v. Metro. Washington Airports Auth.*, 62 Va. Cir. 215 (Va. Cir. Ct. 2003).
    - MWAA must be treated like a municipality, as it performs governmental functions, for which it is immune. The statutory grant of immunity is equivalent to the immunity that municipalities enjoy under Virginia common law. *Id.* at 217.
    - A governmental function may be characterized as the exercise of an entity’s discretionary or legislative authority regarding a matter directly tied to the health, safety, and welfare of the citizens. *Id.*
    - Routine maintenance of streets is considered to be a proprietary function—the court did not distinguish between routine maintenance of a street and routine maintenance of a runway. The court found negligent inspection and maintenance of a runway (not connected to a snow storm or other emergency situation) was a proprietary function. MWAA was subject to liability. *Id.*
- **Monetary Limits and Caps:**
  - VA. CODE ANN. § 8.01-195.3 (2014). Amount recoverable by any claimant shall not exceed \$100,000 or the maximum limits of any liability policy maintained to insure against such negligence or other tort, whichever is greater, exclusive of interests and costs.
- **State-Specific Aspects:**
  - MWAA was created by statute to manage and operate the Ronald Reagan Washington National Airport and Washington Dulles International Airport. VA. CODE ANN. §§ 5.1-153; 5.1-156 (2014).
    - History: Prior to MWAA, Dulles and Reagan were operated by the federal government. Congress transferred full authority and responsibility for operating these two airports under the Federal Transfer Act, 49 U.S.C. §§ 49101–49112 (2014).
    - MWAA is independent of Virginia and its local governments, the District of Columbia, and the United States government. 49 U.S.C. § 49106(a)(2) (2014); VA. CODE ANN. §§ 5.1-153; 5.1-156 (2014).

- MWA is liable for its contracts and torts, and torts of members, officers, employees, and agents committed in the conduct of any proprietary function. VA. CODE ANN. § 5.1-173(B) (2014).
    - Proprietary functions are ministerial.
  - MWA is not liable for any torts occurring in the performance of a governmental function. VA CODE ANN. § 5.1-173(B) (2014).
    - Governmental functions are discretionary.
- **Waiver of Immunity:**
    - The limited waiver in the Tort Claims Act of the Commonwealth’s sovereign immunity “will be strictly construed because the Act is in derogation of the common law.” *The Rector and Visitors of The University of Virginia v. Carter*, 271 Va. 242, 244 (2004).
  - **Process:**
    - VA. CODE ANN. § 8.01-195.7 (2014). Claims against the Commonwealth or transportation district are barred unless commenced within 18 months of the filing of the notice of the claim.
    - VA. CODE ANN. § 8.01-195.6(A) (2014). Notice of a claim must be provided to the Commonwealth or transportation district within 1 year after accrual of the cause of action.

## WASHINGTON

### Summary:

The State of Washington has abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. Airports are subject to liability to the same extent as if they were a private person or corporation. There is no cap on damages. Suit cannot be commenced until 60 calendar days after notice of the claim is presented, during which time any applicable statute of limitations is tolled. Statutes of limitations vary according to the type of claim and the applicable statute.

- **Statutory Authority:**
  - WASH. CONST. art. II, § 26, Suits Against the State. “The legislature shall direct by law, in what manner, and in what courts, suits may be brought against the state.”
  - WASH. REV. CODE ANN. §§ 4-92.005 to 4-92.280 (2014). Actions and Claims Against the State.
  - WASH. REV. CODE ANN. § 4-92.090 (2014). Tortious Conduct of State—Liability for Damages. “The state of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation.”
  - WASH. REV. CODE ANN. § 4-96.010 (2014). “All local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good

faith purporting to perform their official duties, to the same extent as if they were a private person or corporation.”

- WASH. REV. CODE ANN. §§ 14.08.120; 14.08.330 (2014). Municipalities operate airports.
  - WASH. REV. CODE ANN. § 4.16.160 (2014). Codifies “*nullum tempus occurit regi*,” so that statutes of limitations do not run against the state unless otherwise specifically provided by statute.
- **Relevant Case Law:**
- *Shirey v. Port of Seattle*, 133 Wash. App. 1038 (Wash Ct. App. 2006).
    - Section 4.96.010 requires comparable treatment for governmental entities as if they were a private person or corporation. In a slip and fall case, the plaintiff was deemed a business invitee to the Port’s premises. The duty of care to a business invitee is to exercise reasonable care to protect invitees from dangers that are known to the owner and that are not open and obvious to the invitee. Plaintiff failed to establish that the Port had knowledge of the situation or that the condition existed for a sufficient period of time that it should have been discovered.
  - *Ruff v. Cnty. of King*, 865 P.2d 5 (Wash. Ct. App. 1993), *review granted*, 877 P.2d 1287 (Wash. 1994), *rev’d on other grounds*, 877 P.2d 886 (Wash. 1995).
    - Nature of Activity: Governmental entity’s exercise of discretionary acts at basic policy level is immune from suit, but such discretion exercised at the operational level is not.
  - *Bodin v. City of Stanwood*, 927 P.2d 240, 253 (Wash. 1997), “A waiver of sovereign immunity does not render the governmental entity liable for every harm flowing from governmental action or inaction, but only that harm resulting from tortious misconduct.” *Id.* at 253 (citation omitted).
- **Monetary Limits and Caps:**
- Wash. Rev. Code. Ann. § 4.92.090 (2014). Tortious Conduct of State—Liability for Damages. “The state of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation.”
- **Waiver of Immunity:**
- Wash. Rev. Code Ann. § 4.96.010 (2014).
    - “All local government entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation.”
- **Process:**
- WASH. REV. CODE § 4.92.050 (2014). All provisions of law relating to the limitation of personal actions apply to claims against the State.

- WASH. REV. CODE § 4.92.100 (2014). Notice of claims against the State must be presented within the applicable period of limitations within which an action must be commenced.
- WASH. REV. CODE § 4.96.020(2) (2014). Notice of claims against local governmental entities must be presented within the applicable period of limitations within which an action must be commenced.
- WASH. REV. CODE §§ 4.92.110, 4.96.020(4) (2014). Suit cannot be commenced until 60 calendar days after notice of the claim is presented, during which time any applicable statute of limitations is tolled.

## WEST VIRGINIA

### Summary:

The State of West Virginia has not abrogated sovereign immunity for the State; however, that does not extend to all political subdivisions, including airports, which are treated similarly to other political subdivisions. When performing discretionary functions, such as making policy decisions, airports are not granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$500,000 for noneconomic losses, and there is no limitation for compensatory damages for economic losses for any person awarded damages. Punitive damages are not allowed. General statutes of limitations apply.

### o Statutory Authority:

- W. VA. CONST. art. VI, § 35, State Not to be Made Defendant in Any Court. “The State of West Virginia shall never be made defendant in any court of law or equity, except the State of West Virginia, including any subdivision thereof or any municipality therein, or any officer, agent or employee thereof, may be made defendant in any garnishment or attachment proceeding, as garnishee or suggestee.”
- W. VA. CODE §§ 29-12A-1 to 29-12A-18 (2014). The Governmental Tort Claims and Insurance Reform Act. “Its purposes are to limit liability of political subdivisions and provide immunity to political subdivisions in certain instances and to regulate the costs and coverage of insurance available to political subdivisions for such liability.”
- W. VA. CODE § 29-12A-4 (2014). Governmental and Proprietary Functions of Political Subdivisions; Liability for Damages. (a) The distinction existing between governmental functions and proprietary functions of political subdivisions is not affected by the provisions of this article; however, the provisions of this article shall apply to both governmental and proprietary functions.
- W. VA. CODE § 29-12A-5 (2014). Immunities from liability for discretionary and other acts.
- W. VA. CODE § 29-12A-16 (2014). Political subdivisions may purchase liability insurance, which does not constitute a waiver of any immunity or any defense.

- **Relevant Case Law:**
  - *Van Gilder v. City of Morgantown*, 68 S.E.2d 746 (W. Va. 1949).
    - Historical Note: This has been superseded by statute. See W. VA. CODE §§ 29-12A-1 to 29-12A-18 (2014). See also *Long v. City of Weirton*, 214 S.E.2d 832 (W. Va. 1975).
    - “The rental of hangar space for the storage of a privately owned airplane at an airport operated by a municipality under the control and supervision of The West Virginia State Aeronautics Commission as provided by Section 3 of Chapter 12 of the Acts of 1947 is the performance of a governmental function under Section 10 of that Act. The sovereign immunity of the State from suit under Section 35 of Article VI of our Constitution extends to such municipality in the performance of that function.” *Van Glider*, 68 S.E.2d at 746.
  - *Skaff v. Pridemore*, 490 S.E.2d 787 (W. Va. 1997).
    - “It is clear that ‘the constitutional immunity of the State of West Virginia from suit by Article VI, Section 35 of the Constitution of this State can not be waived by the Legislature or any other instrumentality of the State.’” *Id.* at 791–92 (quoting *City of Morgantown v. Ducker*, 168 S.E.2d 298, 303 (1969)). Therefore, the appellant did not waive the defense of sovereign immunity by failing to raise it below.”
  - *Ward v. Cnty. Court of Raleigh*, 93 S.E.2d 44 (W. Va. 1956).
    - “[T]he constitutional provisions relating to immunity of the State, and its agencies, cannot be waived by the Legislature. That immunity is absolute.” *Id.* at 47 (citations omitted).
- **Monetary Limits and Caps:**
  - W. VA. CODE § 29-12A-7(a) (2014). No punitive or exemplary damages allowed.
  - W. VA. CODE § 29-12A-7(b) (2014). Noneconomic loss shall not exceed \$500,000 to any one person arising from the same transaction or occurrence. There is no limitation on compensatory damages that represent economic loss for any person awarded damages.
- **Waiver of Immunity:**
  - W. VA. CODE § 29-12-5 (2014). Immunity may be waived to the extent of liability insurance purchased.
- **Process:**
  - W. VA. CODE § 29-12A-6 (2014). Limitation of actions; specification of amount of damages not allowed. Must be filed within 2 years of occurrence or 2 years from discovery.
  - W. VA. CODE § 29-12A-8 (2014). Suits. “Any person having a claim against a political subdivision within the scope of this article may sue such political subdivision for any appropriate relief including the award of money damages within the liability limitations established in section seven of this article.”
  - W. VA. CODE §§ 55-17-1 to 55-17-6 (2014). Procedures for Certain Actions Against the State.

- W. VA. CODE § 55-17-3 (2014). A notice of claim against the State or a governmental agency must be provided to that agency at least 30 days prior to filing suit.

## WISCONSIN

### Summary:

The State of Wisconsin has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions within the scope of employment, such as making policy decisions, airports are granted immunity. When performing proprietary functions such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$50,000. There is a 120-day statute of limitations after occurrence.

- **Statutory Authority:**
  - WIS. CONST. art. IV, § 27. Legislative. Suits Against State.
    - “The legislature shall direct by law in what manner and in what courts suits may be brought against the state.”
  - WIS. STAT. §§ 893.01 to 893.99 (2014). Limitations of Commencement of Actions and Proceedings and Procedure for Claims against Governmental Units.
  - WIS. STAT. § 775.01 (2014). Actions Against State; Bond.
    - A claimant may commence an action against a State upon the refusal of the legislature to allow a claim against the State.
    - The claimant shall deliver a copy of the summons and complaint to the attorney general or leave them at the attorney general’s office in the capitol with an assistant or clerk.
    - The claimant shall file with the clerk of court a bond, up to \$1,000, with at least two sureties to be approved by the attorney general.
      - The bond is to be used to the effect that the claimant will indemnify the State against all costs that may accrue in such action and shall pay to the clerk of courts all costs, in case the claimant fails to obtain judgment against the State.
  - WIS. STAT. § 893.80 (2014). Claims Against Governmental Bodies or Officers. Agents, or Employees; Notice of Injury; Limitation of Damages and Suits.
    - (1p) No action may be brought or maintained against any political corporation, governmental subdivision or agency thereof; nor against any officers, official, agent or employee of the corporation, subdivision, or agency for any acts done in their official capacity or in the course of their agency or employment upon a claim or cause of action.
    - (4) No suit may be brought against any political corporation, governmental subdivision or agency or against its officers, officials, agents or employees for acts done in the exercise of legislative, quasi-legislative, judicial or quasi-judicial functions.
    - (5) These provisions and limitations shall be exclusive and shall apply to all claims against a political corporation, governmental subdivision or agency or against any officer, official, agent or employee thereof for

acts done in an official capacity or in the course of his or her agency or employment.

- Unless another statute provides rights or remedies against any political corporation, governmental subdivision or agency or any officer, official, agent or employee for injury, damages or death.
  - (6) A 1st class city, its officers, officials, agents or employees shall not be liable for any claims for damages to person or property arising out of any act or omission in providing or failing to provide police services upon any grounds, building or other improvement owned by a county and designated for airport purposes and appurtenant uses.
  - (7) No suit may be brought against the State or any governmental subdivision or agency or against its officers, officials, agents or employees, who in good faith, acts or fails to act to provide notice to a property owner that a public nuisance exists.
  - (8) The procurement or maintenance of insurance or self-insurance, irrespective of the extent or type of coverage or the persons insured shall not constitute a waiver of this section nor shall it be relied upon to deny a person status as an officer, official, agent, or employee.
- WIS. STAT. § 114.11 (2014). Local Airports and Spaceports; Interstate Reciprocity.
    - The governing body of any county, city, village or town in Wisconsin is authorized to acquire, establish, construct, own, control, lease, equip, improve, maintain and operate airports or landing fields or landing and take-off strips for the use of airplanes and other aircrafts within or without the limits of such counties, cities, villages, and towns.
    - The governing body may use the airports, landing fields, or landing and take-off strips for such purpose or purposes any property suitable therefore that is now or may at any time hereafter be owned or controlled by such county, city, village or town.
    - The governing body may regulate the airports, landing fields, or landing and take-off strips, provided such regulations shall not be in conflict with federal government rules and regulations.
  - WIS. STAT. § 114.69 (2014). Liability Limited.
    - Neither the State nor any political subdivision nor any officer, employee, or agent of the State or a political subdivision acting within the scope of employment or agency is liable for any debt, obligation, act, or omission of the Wisconsin Aerospace Authority.
- **Relevant Case Law:**
    - *Showers Appraisals, LLC v. Musson Bros.*, 835 N.W.2d 226 (Wis. 2013).
      - “We conclude that where a third party’s claim against a governmental contractor is based on the allegation that the contractor negligently performed its work under a contract with a governmental entity, the governmental contractor must prove both that the contractor meets the definition of “agent” under Wis. Stat. § 893.80(4), as set forth in [*Estate of Lyons*], and that the contractor’s act is one for which immunity is available under § 893.809(4).” *Id.* at 229.
        - “(1) the governmental authority approved reasonably precise specifications; (2) the contractor’s actions conformed to those

specifications; and (3) the contractor warned the supervising governmental authority about the possible dangers associated with those specifications that were known to the contractor but not to the governmental officials.” *Id.* at 247–48 (citing *Estate of Lyons v. CNA Ins. Cos.*, 558 N.W.2d 658, 663 (Wis. Ct. App. 1996)).

- “Specifically, we conclude that for a contractor to come within § 893.80(4)’s shield of immunity, the contractor must prove it was acting as the governmental entity’s agent in accordance with reasonably precise specifications, as set forth in [*Estate of Lyons*].” *Id.* at 229.
- “Moreover, pursuant to the plain language of Wis. Stat. § 893.80(4), we also conclude that a governmental contractor seeking to assert the defense of immunity should clearly allege in the pleadings why the injury-causing conduct comes within a legislative, quasi-legislative, judicial or quasi-judicial function as set out in § 893.80(4).” *Id.* at 229–30.
- “In the context of this case, a governmental contractor would be required to assert that it was implementing a decision of a governmental entity that was made within the scope of the governmental entity’s legislative, quasi-legislative, judicial or quasi-judicial functions.” *Id.* at 230.
- “Adherence to these statutory requirements for immunity under § 893.80(4) will avoid extending blanket immunity for claims of negligently performed work against governmental contractors when the sole basis for immunity is that the work was performed pursuant to a contract with a governmental entity.” *Id.*
- “Legislative and quasi-legislative functions generally refer to those policy choices made in an official capacity, e.g., when a governmental entity choose one project design over another.” *Id.* at 235 (citation omitted).
- “Quasi-judicial functions generally refer to those acts that involve the exercise of discretion in coming to a judgment; the availability of a public hearing on the judgment before a specialized board; and the imposition by a board of an appropriate final decision.” *Id.* at 235 (citation omitted).
- *Umansky v. ABC Ins. Co.*, 769 N.W.2d 1 (Wis. 2009).
  - “Immunity for public officers and employees is grounded in common law...and is based largely on ‘public policy considerations that spring from an interest in protecting the public purse and a preference for political rather than judicial redress’ for actions.” *Id.* at 6 (quoting *Lodl v. Progressive N. Ins. Co.*, 646 N.W.2d 314, 320 (Wis. 2001)).
  - “The general rule is that state officers and employees are immune from personal liability for injuries resulting from acts performed within the scope of their official duties.” *Id.* at 6 (citation omitted).
    - “The rule, however, is subject to exceptions, representing a ‘judicial balanc[e] [struck between] the needs of public

officers to perform their functions freely [and] the right of an aggrieved party to seek redress.” *Id.* at 6 (quoting *Lister v. Bd. of Regents*, 240 N.W.2d 610, 621 (Wis. 1976)).

- “The exception at issue in this case is that a state employee ‘is not shielded from liability for the negligent performance of a purely ministerial duty.’” *Id.* at 6 (quoting *Kimps v. Hill*, 546 N.W.2d 151, 156 (Wis. 1996)).
- “[A] duty is ministerial only when it is absolute, certain and imperative, involving merely the performance of a specific task when the law imposes, prescribes and defines the time, mode and occasion of its performance with such certainty that nothing remains for judgment or discretion.” *Id.* at 6 (quoting *C.L. v. Olson*, 422 N.W. 2d 614, 617 (Wis. 1988)).
- “The defense of discretionary act immunity for public officers and employees assumes negligence and focuses on whether the action or inaction upon which liability is premised is entitled to immunity.” *Id.* at 6 (citation omitted).
- *Rouse v. Theda Clark Med. Ctr., Inc.*, 735 N.W.2d 30 (Wis. 2007). *See also* *Wis. v. Beaver Dam Area Development Authority*, 752 N.W.2d 295 (Wis. 2008).
  - “The legislature has not provided a definition of ‘political corporation.’” *Id.* at 37 (citation omitted).
    - “The term ‘political corporation’ is synonymous with the term ‘public corporation.’” *Id.* at 37 (citation omitted).
  - “A ‘public corporation’ is ‘[a] corporation that is created by the state as an agency in the administration of civil government.’” *Id.* at 37 (quoting *BLACK’S LAW DICTIONARY* 344 (7th ed. 1999)).
  - “An ‘agency’ is ‘[a] governmental body with the authority to implement and administer particular legislation.’” *Id.* at 37 (quoting *BLACK’S LAW DICTIONARY* 63 (7th ed. 1999)).
  - “Stated another way, a ‘political corporation’ is an entity created by the legislature that is authorized to implement enactments of the legislature. Determining whether [an entity] constitutes a ‘political corporation’ requires an assessment of the nature of the entity. Assessing the nature of an entity requires a consideration of the power and structure of it, as conferred by the legislature.” *Id.* at 37.
- *Scott v. Savers Prop. & Cas. Ins. Co.*, 663 N.W.2d 715 (Wis. 2003).
  - “Further decisions of this court have recognized limitations to governmental immunity where the activities performed are (1) ministerial duties imposed by law, (2) duties to address a known danger, (3) actions involving professional discretion, and (4) actions that are malicious, willful, and intentional.” *Id.* at 721.
- *Thorp v. Town of Lebanon*, 612 N.W.2d 59 (Wis. 2000).
  - “A governmental entity must affirmatively plead that a plaintiff did not comply with Wis. Stat. § 893.80(1)(a).” *Id.* at 69 (citation omitted).

- “A plaintiff then needs to prove that the plaintiff gave formal notice or actual notice and the governmental entity was not prejudiced by actual, rather than formal, notice.” *Id.* at 69.
  - *Miesen v. Dep’t of Transp.*, 594 N.W.2d 821 (Wis. Ct. App. 1999).
    - “[T]he State of Wisconsin, including its arms and agencies, is immune from suit except when the legislature has consented to be sued.”
    - “Such consent must be clearly and expressly stated.” *Id.* at 852 (citation omitted).
    - “This immunity rule is procedural in nature, and if properly raised, deprives the court of personal jurisdiction over the State and its agencies.” *Id.* at 852 (citation omitted).
  - *Brown v. Wis.*, 602 N.W.2d 79 (Wis. Ct. App. 1999).
    - “Section 775.01 is limited to claims which, if valid, would render the State a debtor to the claimant.” *Id.* at 84 (citation omitted).
  - *Scarpaci v. Milwaukee Cnty.*, 292 N.W.2d 816 (Wis. 1980).
    - “As applied, the terms ‘quasi-judicial or quasi-legislative’ and ‘discretionary’ are synonymous.” *Id.* at 826.
- **Monetary Limits and Caps:**
  - WIS. STAT. § 893.80 (2014). Claims Against Governmental Bodies or Officers, Agents, or Employees; Notice of Injury; Limitation of Damages and Suits.
    - The amount recoverable by any person for damages, injuries or death in any action founded on tort against any political subdivision or agency and against their officers, officials, agents, or employees for acts done in their official capacity or in the course of their agency or employment shall not exceed \$50,000.
    - No punitive damages may be allowed or recoverable in any action under this section.
- **State-Specific Aspects:**
  - Wisconsin’s system of airports are primarily owned, controlled, and operated by municipalities.
    - The Wisconsin Department of Transportation does not own, operate, or license public airports in Wisconsin.
  - Since the Wisconsin courts have interpreted “quasi-legislative” and “quasi-judicial” under Section 893.80(4) to be synonymous with “discretionary” acts, the statute provides broad tort immunity protections to the State’s governmental subdivisions, agencies, and political corporations.
- **Waiver of Immunity:**
  - Wisconsin waives immunity (1) if the legislature expressly waives immunity, (2) for malicious, willful, or intentional actions, (3) for negligently performed ministerial duties, (4) actions involving professional discretion, and (5) duties to address a known danger.

- **Process:**
  - WIS. STAT. § 893.80 (2014). Claims Against Governmental Bodies or Officers, Agents, or Employees; Notice of Injury; Limitation of Damages and Suits.
    - A signed, written notice of the circumstances of a claim must be served within 120 days after the occurrence on the political corporation, governmental subdivision, or agency, and on the officer, official, agent, or employee.
      - Failure to give notice shall not bar the claim if the corporation, subdivision, or agency had actual notice of the claim and the claimant satisfactorily shows the court that the delay or failure to provide notice did not prejudice the corporation, subdivision, or agency.
      - Unless the claim is for negligent inspection of any property, premises, place of employment, or construction site for the violation of any statute, rule, ordinance, or health and safety code, then the time period shall be 1 year after discovery of the negligent act or omission or on the date on which, in the exercise of reasonable diligence, the negligent act or omissions should have been discovered.
    - A claim containing the address of the claimant and an itemized statement of the relief sought must be presented to the appropriate clerk or person performing duties as clerk or secretary for the corporation, subdivision, or agency.
    - No action may be brought until the claim is disallowed.
      - Notice of disallowance of the claim shall be served on the claimant by registered or certified mail, with the receipt signed by the claimant or returned registered letter being proof of service.
      - Failure to disallow a claim by the appropriate body within 120 days after presentation of the written notice of claim is a disallowance.
    - No action on a claim may be brought after 6 months from the date of service of the notice of disallowance, and the notice of disallowance shall contain a statement to that effect.
  - WIS. STAT. § 893.82 (2014). Claims Against State Employees; Notice of Claim; Limitation of Damages.
    - No civil action or proceeding may be brought against any state officer, employee, or agent for or on account of any act growing out of or committed in the course of the discharge of the officer's, employee's, or agent's duties unless within 120 days of the event causing the injury, damage, or death giving rise to the civil action or proceeding, the claimant in the action or proceeding serves upon the attorney general written notice of the claim stating the time, date, location, and circumstances of the event giving rise to the claim and the names of persons involved, including the name of the state officer, employee, or agent.
      - The notice must be sworn to by the claimant and shall be served upon the attorney general by certified mail.
  - The notice must (1) state the claimant's address; (2) include an itemized statement of the relief sought; (3) be presented to the appropriate clerk; and (4) be disallowed in order for an action to be brought or maintained by the claimant.

## WYOMING

### Summary:

The State of Wyoming has partially abrogated immunity for tort liability caused by the negligence of public employees within the scope of their duties while operating airports, which are treated differently than most other governmental entities. When performing discretionary functions, such as compliance with state or federal regulations, airports are not granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$250,000 to a single claimant arising out of a single occurrence and \$500,000 for all claims out of a single occurrence. There is a 1-year statute of limitations in most cases.

### o Statutory Authority:

- WYO. CONST. art. 1, § 8: Courts Open to All; Suits Against State.
  - All courts shall be open and every person for an injury done to person, reputation, or property shall have justice administered without sale, denial, or delay. Suits may be brought against the State in such manner and in such courts as the legislature may by law direct.
- WYO. STAT. ANN. §§ 1-39-101 to 1-39-121 (2014). Wyoming Governmental Claims Act.
  - WYO. STAT. ANN. § 1-39-102 (2014). Purpose.
    - o Balances the interests of those injured by government actions and Wyoming taxpayers, whose funds the government uses on behalf of the taxpayers.
    - o For the State of Wyoming, the act abolishes “governmental, proprietary, discretionary, or ministerial” functions or actions used to determine liability or immunity.
  - WYO. STAT. ANN. § 1-39-103 (2014). Definitions.
    - o Government entity means the State, the University of Wyoming, or any local government.
    - o Local government means cities, towns, counties, airport boards, public corporations, and all political subdivisions of the State and their agencies.
    - o Public employee means any officer, employee, or person acting on behalf or in service of a government entity.
    - o Scope of duties means any duties requested, required, or authorized by a government entity, regardless of time and place.
    - o State or state agency means the State of Wyoming or any branch, agency, department, etc.
  - WYO. STAT. ANN. § 1-39-104 (2014). Granting Immunity from Tort Liability; Liability on Contracts; Exceptions.
    - o Government entities and their employees are granted immunity while acting in the scope of their duties, except as provided in Sections 1-39-105–1-39-122 of the Wyoming Statutes, and as limited by Section 1-39-121 of the Wyoming Statutes.

- The government may include an immunity clause in its contracts.
  - Government entities must defend their employees for torts committed in the scope of their duties, regardless of the type of claim.
- WYO. STAT. ANN. § 1-39-105 (2014). Liability; Operation of Motor Vehicles, Aircraft and Watercraft.
  - Government entities are liable for tort damage caused by the negligence of public employees within the scope of their duties while operating aircraft, inter alia.
- WYO. STAT. ANN. § 1-39-107 (2014). Liability; Airports.
  - Government entities are liable for the tort damage caused by the negligence of public employees within the scope of their duties in the operation of airports.
  - This does not include any liability resulting from compliance with any state or federal regulation relating to operation of airports.
- WYO. STAT. ANN. § 1-39-116 (2014). Exclusiveness of Remedy.
  - Remedies provided by this act are exclusive; no other claim or proceeding for damages relating to the same transaction occurrence is allowed.
  - Judgment or settlement constitutes complete bar to any future actions related to the same claim.
- WYO. STAT. ANN. §§ 1-42-201 to 1-42-207 (2014). Local Government Self Insurance Program—Local Administration.
  - WYO. STAT. ANN. § 1-42-201. Definitions.
    - (iv) “Local government” means as defined by WYO. STAT. ANN. § 1-39-103(a)(ii) (2014).
  - WYO. STAT. ANN. § 1-42-202. Local Government Self-Insurance Program; Creation; Authorized Payments.
    - Local governments may participate in a collective self-insurance program for claims brought under the WGCA.
    - Payments are limited to \$500,000 per occurrence.
    - No punitive damages.
  - WYO. STAT. ANN. § 1-42-204 (2014). Claims Procedures; Compromise or Settlement of Claims; No Extension of Liability.
    - Nothing in this act changes the requirements in Section 1-39-113 of the Wyoming Statutes.
    - Participation in this program does not constitute the purchase of insurance under Section 1-39-118(b) of the Wyoming Statutes.
- WYO. STAT. ANN. §§ 10-5-101 to 10-5-302 (2014). Municipal and County Airports.
  - WYO. STAT. ANN. § 10-5-101 (2014). Powers of Municipalities and Counties Generally; Rules and Regulations.
    - Municipalities and counties are authorized to establish, maintain, and operate airports.



o **Process:**

- WYO. STAT. ANN. § 1-39-114 (2014). Actions against a governmental entity must be brought within 1 year after the date that notice of the claim was provided.
- WYO. STAT. ANN. § 1-39-113 (2014). Notice of the claim must be presented to the appropriate governmental entity within 2 years of the date of the alleged act, error, or omission.
- WYO. STAT. ANN. § 1-39-117 (2014). Jurisdiction; Appeals; Venue; Trial by Jury; Liability Insurance.
  - Actions are to be brought in district courts of Wyoming; appeals may be taken by law.
  - Venue is in the county where public employee resides, cause of action arose, or Laramie County; county defendant's residence; or location of government office.
  - Right to trial by jury preserved.
  - If a government entity has purchased insurance, this may be brought to court's attention in a bench trial.

### III. PART B: TERRITORIES

#### AMERICAN SAMOA

##### Summary:

The Territory of American Samoa has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$5,000 for property damage and \$20,000 for personal injury. Punitive damages are available for claims involving death. There is a strict notice requirement to the Attorney General prior to making a claim, and there is a 2-year statute of limitations.

- **Statutory Authority:**
  - AM. SAMOA CODE ANN. § 43.1201 to 43.1235 (2011). Governmental Tort Liability.
  - AM. SAMOA CODE ANN. § 43.1205 (2011). The America Samoa Government is liable in the same manner and to the same extent as a private person would be under the circumstances. But it is not liable for punitive damages in most cases.
  - AM. SAMOA CODE ANN. § 43.1203 (2011). Claims may not be brought for:
    - Acts or omissions of employees pursuant to any law.
    - Exercise of discretionary functions.
    - Intentional torts.
- **Relevant Case Law:**
  - *K.M.J.D.C. v. Marine Railway*, ASR (Am. Samoa 1979).
    - Discretionary function exemption designed for policy decisions.
  - *Tauiliili v. Am. Sam. Gov't*, 13 A.S.R. 2d 61 (Am. Samoa 1989).
    - In a civil action for personal injury caused by the negligent or wrongful act or omission of a government employee acting within the scope of his office or employment, the government is liable in the same manner and to the same extent as a private individual under like circumstances, subject to a number of specific exceptions. AM. SAMOA CODE ANN. § 43.1203(a) (2011).
  - *Randall v. Am. Sam. Gov't*, 19 A.S.R. 2d 111 (Am. Samoa 1991).
    - Tort Liability Act provides that no tort action may be instituted against the America Samoa Government unless the claimant has first presented the claim in writing to the Attorney General, and the claim has been finally denied by the Attorney General.
    - A prospective plaintiff's "claim" under the Government Tort Liability Act does not accrue, and therefore the 2-year limitation period does not begin to run, until after the claim has been finally denied by the Attorney General.
    - Because an injured person cannot sue until he has exhausted his administrative remedy, the right to sue under the Government Tort Liability Act is absolutely barred by failure to bring an administrative

claim within a 2-year period from the date of injury, and the Attorney General has a reasonable time in which to review such claim. AM.

SAMOA CODE ANN. §§ 43.1204-43.1205 (2011).

- The America Samoa Government waived the statute of limitations applicable to the Government Tort Liability Act when it [filed an answer admitting jurisdiction, proceeded with pre-trial matters and full discovery, and obtained limited relief from the court]. AM. SAMOA CODE ANN. § 43.1204 (2011).
  - *Utu v. Nat'l Pac. Ins. Co.*, 9 A.S.R. 2d 88 (Am. Samoa 1988).
    - Under statute providing that minors shall have 1 year after the termination of their disability to commence any action, a claim by a minor against the government is not barred so long as action is begun within 1 year after attainment of majority or appointment of a guardian ad litem, notwithstanding the 2-year statute of limitations otherwise applicable to actions against the government. AM. SAMOA CODE ANN. § 43.0126, 43.1204 (2011).
  - *In re Faoato v. Gov't of Am. Sam.*, ASR (Am. Samoa 1979).
    - Prerequisite to tort liability action against the government of American Samoa is presentation of claim to Attorney General.
  - *Mataipule v. Tifaimoana P'ship, Ltd.* (Mem), 14 A.S.R. 2d 100 (Am. Samoa 1990).
    - For a trial court to have subject matter jurisdiction over actions arising under the Government Tort Liability Act, an administrative claim must first be made and either denied or ignored for 3 months. AM. SAMOA CODE ANN. § 43.1205(a) (2011).
  - *Bryant v. Sw. Marine of Sam., Inc.*, 23 A.S.R. 2d 55 (Am. Samoa 1992).
    - Although the Attorney General's decision on an administrative claim is final and conclusively binding on all America Samoa Government officers, except when procured by fraud, his action cannot result in a waiver or estoppel preventing the America Samoa Government from raising a jurisdictional issue at any stage of future litigation.
  - *Lutu v. Am. Sam. Gov't*, 7 A.S.R. 2d 61 (Am. Samoa 1988).
    - Statute immunizing government employees from personal liability for wrongful acts committed within the scope of their employment bars suit against employee only after it has been established that the wrongful conduct underlying the claim was committed within the scope of employment.
- **Monetary Limits and Caps:**
    - There are caps on damages at \$5,000 for property damage and \$20,000 for personal injury.
    - AM. SAMOA CODE ANN. § 43.1203 (2011). Moreover, punitive damages are allowed only when there is a death and the law specifically provides for punitive damages.
  - **State-Specific Aspects:**
    - Samoa actually has a rather strict and rigid method for bringing suits against the government. Claims must first be presented to the Attorney General for review. If he decides to settle or otherwise dispose of the claim, it can be handled out of court. However, if the Attorney General denies or ignores the claim, then and only then can a claimant proceed to court against the government.

- All airports in Samoa are owned by the ASG.
- **Waiver of Immunity:**
  - The America Samoa Government is liable both directly and vicariously for tortious conduct. Since, all the airports in American Samoa are owned by the America Samoa Government, then the government becomes liable for tortious activity at airports, whether the result of a dangerous condition or an employee's actions.
- **Other:**
  - There is a noticeable lack of case law on the issue of airports. This most likely results from the strict notice requirements—the Attorney General likely decides to settle most of these claims against the government. Insurance settlements may also be a contributing factor.
- **Process:**
  - AM. SAMOA CODE ANN. § 43.1205 (2011). Claims must first be presented to the Atty. General for review. If the Attorney General so decides, the case may be settled. If denied, then the cause may proceed to court.
  - AM. SAMOA CODE ANN. § 43.1204 (2011). There is a 2-year statute of limitations on claims against the government
  - AM. SAMOA CODE ANN. § 43.1212 (2011). There are caps on damages at \$5,000 for property damage and \$20,000 for personal injury.

## DISTRICT OF COLUMBIA

### Summary:

The District of Columbia has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. There are no statutory caps on damage awards. There is a 3-year statute of limitations.

- **Statutory Authority**
  - D.C. CODE §§ 2-401 to 2-431 (2014). Claims Against the District.
  - D.C. CODE § 2-402 (2014). Settlement of Claims Against District. Empowers the Mayor to settle claims up to the statutory limits.
  - D.C. CODE § 9-801 (2014). Construction and Operation of Airport Authorized.
 

"The Administrator of the Federal Aviation Agency (hereinafter referred to as the 'Administrator') is hereby authorized and directed to construct, protect, operate, improve, and maintain within or in the vicinity of the District of Columbia, a public airport (including all buildings and other structures necessary or desirable therefor)."
  - D.C. CODE § 1-206.01 (2014). Retention of Constitutional Authority.
 

"Notwithstanding any other provision of this chapter, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted

to the Council by this chapter, including legislation to amend or repeal any law in force in the District prior to or after enactment of this chapter and any act passed by the Council.

- **Relevant Case Law:**
  - *LaShawn A. v. Barry*, 87 F.3d 1389 (D.C. Cir. 1996).
    - The District of Columbia is not a state for the purposes of the 11th Amendment. *Id.* at 1394 n.4.
  - *McKethean v. Wash. Metro. Area Transit Auth.*, 588 A.2d 708 (D.C. 1991).
    - “Whether an activity is proprietary or governmental is a question of federal law because the WMATA Compact is an Act of Congress.” *Id.* at 712.
    - “[T]he issue of WMATA's immunity comes down to a question of whether its alleged acts of negligence are characterized as discretionary decisions or ministerial execution of those decisions.” *Id.* at 713.
    - “[T]he design and planning of a transportation system are governmental activities because they involve quasi-legislative policy decisions which are discretionary in nature and should not be second-guessed by a jury.” *Id.* at 714.
    - There is a difference when the function was discretionary versus ministerial. Negligent operation of transportation system and implementation of system design are proprietary functions for which the Washington Metropolitan Area Transit Authority (WMATA) is not immune. *Id.* at 715.
- **Monetary Limits and Caps:**
  - There are no statutory limits.
- **Waiver of Immunity:**
  - D.C. CODE § 1-109(d) (2014). Limitations. “Nothing in this section shall be construed as a waiver of sovereign immunity, or as limiting any other defense or immunity that would otherwise be available to the United States, the District of Columbia, their agencies, officers, employees, or agents.”
  - *Wade v. D.C.*, 310 A.2d 857, 860 (1973). District of Columbia is “immune from suit [for torts of agents under doctrine of municipal immunity] only if act complained of was committed in exercise of discretionary function, if committed in the exercise of a ministerial function.”
- **Process:**
  - D.C. CODE ANN. § 2-401 (2014). Service of Process. In suits commenced after June 20, 1874, against the District of Columbia, process may be served on the Mayor of the District of Columbia, until otherwise provided by law.
  - D.C. CODE ANN. § 2-402 (2014). Settlement of Claims and Suits Against District. (a) The Mayor of the District of Columbia is empowered to settle, in his discretion, claims and suits, either at law or in equity, against the District of Columbia.
  - D.C. CODE ANN. § 12-301 (2014). Limitation of time for bringing actions.

Generally, statutes of limitations are 3 years from the time that the right to maintain the action accrues. There is no limitation on actions brought by the District.

- D.C. CODE ANN. § 12-309 (2014). *Actions Against District of Columbia for Unliquidated Damages; Time for Notice*. “An action may not be maintained against the District of Columbia for unliquidated damages to person or property unless, within six months after the injury or damage was sustained, the claimant, his agent, or attorney has given notice in writing to the Mayor of the District of Columbia of the approximate time, place, cause, and circumstances of the injury or damage. A report in writing by the Metropolitan Police Department, in regular course of duty, is a sufficient notice under this section.”

## GUAM

### Summary:

The Territory of Guam has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. Immunity does not apply to contracts or tort actions. Even if subject to liability, there is a cap of \$100,000 in an action for wrongful death and not more than \$300,000 in any other tort action. There is no liability for tort damages that exceed insurance coverage. All claims must be filed with the Claims Officer, and action may be made after claimant is notified of rejection of claim and 30 days has elapsed since claim was filed.

### o **Statutory Authority:**

- 1 GUAM CODE ANN. § 405, *Immunity to Suit*. “The authority and power to waive the immunity to suit of the government of Guam, or any of its authorities, departments, agencies, or instrumentalities is vested solely in the Guam Legislature.”
- 5 GUAM CODE ANN. §§ 6101 to 6404 (2014). *Governmental Claims Act*.
  - 5 GUAM CODE ANN. § 6102 (2014). *Coverage of Chapter*. Applies to Airport.
  - 5 GUAM CODE ANN. § 6105(c) (2014). *Waiver of Immunity*. “The Government of Guam shall not be liable for claims arising from an exercise of discretion in making policy.”
- 12 GUAM CODE ANN. §§ 1105(a), (c) (2014). *The Guam Airport Authority operates and maintains the airports*.

### o **Relevant Case Law:**

- *Sumitomo Constr., Inc. v. Gov’t of Guam*, 2001 Guam 23 (Guam 2001).
  - “The government of Guam enjoys broad sovereign immunity.” *Id.* at \*8.
- *Pac. Rock Corp. v. Perez*, 2005 Guam 15 (Guam 2005).
  - Sovereign immunity is an unwaivable jurisdictional issue.

### o **Monetary Limits and Caps:**

- 5 GUAM CODE ANN. § 6301 (2014). Maximum Limits of Governmental Liability. “The government of Guam, in the case of line agencies, shall be liable in tort for not more than \$100,000 in an action for wrongful death, nor for more than \$300,000 in any other tort action.”
  - 5 GUAM CODE ANN. § 6401 (2014). Claims Fund Created. “The Government Claims Fund is hereby created and established...for the purpose of paying tort claims.”
  - 12 GUAM CODE ANN. § 1113(a) (2014). Government is not liable for tort damages that exceed insurance coverage.
- **Waiver of Immunity:**
    - 5 GUAM CODE ANN. § 6105(a), (b) (2014). Waiver of Immunity. “The Government of Guam hereby waives immunity from suit” except for contracts and torts.
  - **Process:**
    - 5 GUAM CODE ANN. § 6201 (2014). Procedure for Filing Claims.
      - All claims shall be filed in duplicate with the Claims Officers responsible for the department or agency against which the claim is made.
    - 5 GUAM CODE ANN. § 6206 (2014). Settlement of Claim Before Action. May be settled by Attorney General, up to claims limits.
    - 5 GUAM CODE ANN. § 6208 (2014). Action Against the Government. Action may be made after claimant is notified of rejection of claim, and 30 days has elapsed since claim was filed.

## NORTHERN MARIANA ISLANDS

### Summary:

The Commonwealth of the Northern Mariana Islands has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. Even if subject to liability, there is a cap of \$50,000 in an action for wrongful death, and in other torts, the cap is \$100,000 per person, or \$200,000 per occurrence. There is a 2-year statute of limitations.

- **Statutory Authority:**
  - 7 N. MAR. I. CODE § 2201 (2013). Government Liability Act.
  - 7 N. MAR. I. CODE § 2204 (2013). Exceptions. No liability for discretionary functions.
  - 7 N. MAR. I. CODE § 2208(a) (2013). Exclusiveness of Remedy. “The authority of any Commonwealth agency to sue or be sued in its own name shall not be construed to authorize suits against such agency or its employees on claims which are cognizable under this Title and the remedies provided by this Title in

such cases shall be exclusive for claims against all branches of the Commonwealth government.”

- 7 N. MAR. I. CODE § 2211(a) (2013). Extension of Limitation on Tort Liability. “7 CMC §§ 2202, 2203, 2204, 2206, 2207, 2251, 2252, and 2253 shall apply to public corporations, boards, and commissions organized and existing under and pursuant to the laws of the Commonwealth, to the same extent as the sections apply to the Commonwealth itself. (b) 7 CMC § 2202(a) shall apply to government employees acting within the scope of their office or employment, to the same extent that the subsection applies to the Commonwealth government, regardless of whether the employee is sued in his official capacity or as an individual.”
- **Relevant Case Law:**
  - *Marine Revitalization Corp. v. Dep’t. of Land and Nat’l Res.*, No. 2009-SCC-0016-CIV (N. Mar. I. 2011).
    - “[T]he government cannot waive its sovereign immunity and become liable for interest.”
  - *Fleming v. Dep’t. of Public Safety*, 837 F.2d 401, 402 (9th Cir. 1988).
    - “[T]he Commonwealth does not enjoy eleventh amendment immunity from suits.”
  - *Norita v. Commonwealth of the N. Mar. Islands*, 331 F.3d 690 (9th Cir. 2003).
    - Court provides an extended discussion of the Fleming case and the inapplicability of the 11th Amendment to N. Mariana Islands.
  - *Sablan Constr. Co. v. Gov’t. of the Trust Territory of the Pac. Islands*, 526 F. Supp. 135 (D. N. Mar. I. 1981).
    - Foreign Sovereign Immunities Act does not apply to Territories.
  - *Oden v. N. Marianas College*, 6 N. Mar. I 601 (N. Mar. I. 2003).
    - Limitations period runs from the date the district court dismisses the supplemental claims and not the date of final disposition of the entire action.
  - *Bank of Saipan v. Carlsmith Ball Wichman Case and Ichiki*, No. 98-0973 (N. Mar. I. Commw. Super. Ct. 1999).
    - Plane crash case established that 2-year statute of limitations applies to attorney malpractice.
- **Monetary Limits and Caps:**
  - 7 N. MAR. I. CODE § 2202(a) (2013). Limitation of Tort Liability. The Commonwealth government shall be liable in tort for damages arising from the negligent acts of employees of the Commonwealth acting within the scope of their office or employment; provided that:
    - (1) The Commonwealth and any employees engaged in the performance of services on behalf of the Commonwealth shall not be liable in tort for more than \$50,000 in an action for wrongful death. Liability in other tortious occurrences shall be limited to \$100,000 per person, or \$200,000 per occurrence.
    - (2) The Commonwealth shall not be liable for interest prior to judgment, court fees, witness fees, or for punitive damages.

- (3) If the Commonwealth is insured for a greater amount, the governmental liability shall be the same as the insurance coverage.
- **Waiver of Immunity:**
    - 7 N. MAR. I. CODE § 2201 (2013). Government Liability Act.
  - **Process:**
    - 7 N. MAR. I. CODE § 1101 (2013). Application of Chapter. “This chapter applies to service of process in all actions and proceeding properly before or in a court of jurisdiction within the Commonwealth including the Commonwealth Trial Court, a Commonwealth appeals court, and the United States District Court for the Northern Mariana Islands.”
    - 7 N. MAR. I. CODE § 1104(a) (2013). Manner of Service. Service shall be made by leaving a certified copy with the Attorney General, then to the defendant.
    - 7 N. MAR. I. CODE § 2202(e) (2013). “There shall be no jury trials of tort actions against the Commonwealth or its employees unless requested, or assented to, by the Commonwealth.”
    - 7 N. MAR. I. CODE § 2205 (2013). Settlement of Claims and Payment of Judgments. The Attorney General may compromise or settle any claim.
    - 7 N. MAR. I. CODE § 2503 (2013). Establishes a 2-year statute of limitations for actions involving injury or death.

## PUERTO RICO

### Summary:

The Commonwealth of Puerto Rico has partially abrogated sovereign immunity; however, immunity does not extend to the Puerto Rico Ports Authority. When performing discretionary functions, such as making policy decisions, airports are granted immunity. If subject to liability, there is a cap of \$75,000 or \$150,000 in the aggregate. Notice must be made to the Secretary of Justice within 90 days following the date in which the claimant became aware of the damages claimed. Otherwise, the same statutes of limitations apply as set forth in the relevant applicable law, which varies from 2 to 12 years depending on specific aspects of the matter.

- **Statutory Authority:**
  - P.R. LAWS ANN. tit. 23, § 336 (2011). Powers. The purposes of the Authority shall be to develop and improve, own, operate, and manage any and all types of air and marine transportation facilities and services...” and include the right “to sue and be sued.”
  - P.R. LAWS ANN. tit. 32, § 3077 (2011). Claims and Suits Against the Commonwealth; Authorization. For actions for damages to real property and civil claims up to \$75,000 or \$150,000 in the aggregate. [Note: This does not apply to the Ports Authority; see Canadian Transp. Co. case below.]
  - P.R. LAWS ANN. tit. 32, § 3077(a) (2011). Claims and Suits Against the Commonwealth. Notices required within 90 days of accrual, to the Secretary of Justice.

- P.R. LAWS ANN. tit. 32, § 3081 (2011). Claims and Suits Against the Commonwealth—Unauthorized Activities. Exempts actions for discretionary functions from suit.
  - P.R. LAWS ANN. tit. 32, § 3082 (2011) No punitive damages and no interest.
  - P.R. LAWS ANN. tit. 32, § 3085 (2011). Suits against Commonwealth Officers and Employees. “Every official, ex-official, employee or ex-employee of the Commonwealth of Puerto Rico who is sued for damages in his personal capacity, when the cause of action is based on alleged violations of the plaintiff’s civil rights, due to acts or omissions committed in good faith, in the course of his employment and within the scope of his functions, may request the Commonwealth of Puerto Rico to provide him with legal representation, and to subsequently assume the payment of any judgment that may be entered against his person.”
- **Relevant Case Law:**
- Canadian Transp. Co. v. P.R. Ports Auth., 333 F. Supp. 1295 (D. P.R. 1971).
    - “The Puerto Rico Ports Authority is not the alter ego of the Commonwealth of Puerto Rico and the Commonwealth’s sovereign immunity does not extend to it.” *Id.* at 1299.
    - In determining if the sovereign immunity of the Commonwealth applies to a government agency, no one factor prevails over all others, but two of the most important are the source of the funds to pay a judgment favorable to the plaintiff and whether the agency has power to sue and be sued. *Id.* at 1296.
  - P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139 (1993).
    - “States and state entities that claim to be ‘arms of the State’ may take advantage of the collateral order doctrine to appeal a district court order denying a claim of Eleventh Amendment immunity.” *Id.* at 147.
  - P.R. v. Heckler, 745 F.2d 709 (D.C. Cir. 1984).
    - “The EAJA [Equal Access to Justice Act], as the government acknowledges, Brief for Appellants at 14-15, waived the federal government’s sovereign immunity for attorney’s fee awards encompassed under common law exceptions to the American rule, including the ‘common fund’ exception.” *Id.* at 711 (citing 28 U.S.C. § 2412(b) (1982)).
  - Attallah v. United States, 758 F. Supp. 81 (D. P.R. 1991).
    - “[T]he nature and extent of personnel supervision and airport security are discretionary determinations for which the sovereign immunity of the United States has not been waived.” *Id.* at 88.
  - Orocovis Petroleum Corp. v. P.R. Ports Auth., 2010 U.S. Dist. LEXIS 106318 (D. P.R. 2010).
    - “[T]he Eleventh Amendment protected both ‘the state’s dignitary interest’ in conferring its immunity on certain entities and the state’s interest in shielding its purse.” *Id.* at \*2.

- **Monetary Limits and Caps:**
  - P.R. LAWS ANN. tit. 32, § 3077 (2011). Claims and Suits Against the Commonwealth; Authorization. Cap of \$75,000 for damages to persons or property, or \$150,000 if more than one party is injured.
- **Waiver of Immunity:**
  - P.R. LAWS ANN. tit. 26, § 2004 (2011). Liability Insurance on Public Bodies. “The obtaining of liability insurance by the Commonwealth of Puerto Rico, its agencies or entities, and by municipalities and other political subdivisions, shall not constitute or be deemed to constitute a waiver of governmental immunity.”
- **Process:**
  - P.R. LAWS ANN. tit. 32, § 3077 (2011). Claims and Suits Against the Commonwealth; Authorization. “Authorization is hereby granted to sue the Commonwealth of Puerto Rico before the Court of First Instance of Puerto Rico for”...limited causes.
  - P.R. LAWS ANN. tit. 32, § 3077(a) (2011). Claims and Suits Against the Commonwealth—Notices.
    - Notice must be made to the Secretary of Justice within 90 days following the date in which the claimant became aware of the damages claimed.
    - “No judicial action of any kind may be brought against the Commonwealth of Puerto Rico for damages caused by a culpable or negligent act of the Commonwealth, unless the written notice has been served in the form and manner and within the terms prescribed in this section, unless there is just cause therefor. This provision shall not be applicable to those cases in which the liability of the Commonwealth is covered by an insurance policy.”
  - P.R. LAWS ANN. tit. 32, § 3080 (2011). Claims and Suits Against the Commonwealth—Procedure. “The summons and all subsequent proceedings shall be governed by the provisions of the Rules of Civil Procedure.”
  - P.R. LAWS ANN. tit. 32, § 3083 (2011). Claims and Suits against the Commonwealth—Statute of Limitation; Interest; Punitive Damages; Costs; Actions to which Applicable; Compromise; Effect of Judgment. Neither pre-judgment interest nor punitive damages are permitted.
  - P.R. LAWS ANN. tit. 32, § 3083 (2011). Claims and Suits Against the Commonwealth—Statute of Limitation; Interest; Punitive Damages; Costs; Actions to Which Applicable; Compromise; Effect of Judgment. “The statute of limitations fixed in the applicable laws shall prevail for the actions authorized herein.”

## U.S. VIRGIN ISLANDS

### Summary:

The U.S. Virgin Islands has partially abrogated sovereign immunity for airports, which are treated similarly to other governmental entities. When performing discretionary functions, such as making policy decisions, airports are granted immunity. When performing proprietary functions, such as business-related leases or commercial activities, airports do not have immunity. If subject to liability, there is no cap on damages. There is a 2-year statute of limitations; however, a claim must be presented to the Attorney General within 6 months after the accrual of the claim. This time limit for presenting the claim may be extended upon good cause shown.

### o Statutory Authority:

- 48 U.S.C. § 1541 (2013). Powers and Legal Status of Government; Capital and Seat of Government. “The government of the Virgin Islands shall have...the right to sue by such name and in cases arising out of contract, to be sued: Provided, That no tort action shall be brought against the government of the Virgin Islands or against any officer or employee thereof in his official capacity without the consent of the legislature constituted by subchapter III of this chapter.”
- V.I.C. Rev. Org. Act of 1954 § 3, 48 U.S.C. § 1561 (2013).
  - “The following provisions of and amendments to the Constitution of the United States are hereby extended to the Virgin Islands to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States or in any State of the United States: article I, section 9, clauses 2 and 3; article IV, section 1 and section 2, clause 1; article VI, clause 3; the first to ninth amendments inclusive; the thirteenth amendment; the second sentence of section 1 of the fourteenth amendment; and the fifteenth and nineteenth amendments; Provided, That all offenses against the laws of the United States and the laws of the Virgin Islands which are prosecuted in the district court pursuant to sections 22(a) and (c) of this Act may be had by indictment by grand jury or by information, and that all offenses against the laws of the Virgin Islands which are prosecuted in the district court pursuant to section 22(b) of this Act or in the courts established by local law shall continue to be prosecuted by information, except such as may be required by local law to be prosecuted by indictment by grand jury.”
  - Noticeably absent from this provision is a reference to the 11th Amendment, which has been interpreted to mean that the sovereign immunity otherwise expressed in that Amendment does not apply to the Virgin Islands.
- V.I.C. Rev. Org. Act of 1954 § 2(b), 48 U.S.C. § 1541(b). “The government of the Virgin Islands shall have the powers set forth in this Act and shall have the right to sue by such name and in cases arising out of contract, to be sued: Provided, That no tort action shall be brought against the government of the

Virgin Islands or against any officer or employee thereof in his official capacity without the consent of the legislature constituted by this Act.”

- V.I. CODE ANN. tit. 33, §§ 3401–3417 (2013). Tort Claims.
- **Relevant Case Law:**
  - Commr. of the Dep’t of Planning & Natural Res. v. Century Alumina Co., No. 05-0062 (D. V.I. 2010).
    - “The Virgin Islands Legislature has waived the Government's immunity for certain torts under the Virgin Islands Tort Claims Act.”
  - Brunn v. Dowdye, S. Ct. Civ. No. 2011-0085 (Super. Ct. of V.I. 2013).
    - n.1. Although the Virgin Islands is not a sovereign entity in the same manner as a state, Congress has provided that “no tort action shall be brought against the government of the Virgin Islands or against any officer or employee thereof in his official capacity without the consent of the legislature.” V.I.C. Rev. Org. Act of 1954 § 2(b), 48 U.S.C. § 1541 (2013). The Virgin Islands Legislature later waived this grant of immunity to the extent set forth in the VITCA. V.I. CODE ANN. tit. 33, § 3408 (2011).
  - Cestonaro v. United States, 211 F.3d 749 (3d Cir. 2000).
    - Applied the *Berkovitz* test to discretionary functions of V.I. governmental employees. See *Berkovitz v. United States*, 486 U.S. 531 (3d Cir. 1988).
- **Monetary Limits and Caps:**
  - V.I. CODE ANN. tit. 33, § 3402 (2011). Settlement of Tort Claims of \$3,000 or Less.
    - Power of Governor
      - (a) The Attorney General, acting on behalf of the Government of the Virgin Islands, considers, ascertains, adjusts, determines, and settles any claim for money damages of \$6,000 or less against the Government of the United States Virgin Islands accruing on or after July 1, 1961, for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an employee of the Government while acting within the scope of his office or employment, under circumstances where the Government of the Virgin Islands, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.
    - Presentation of claims; Time Limit.
      - (b) Such claim shall be presented to the Attorney General in writing by the claimant or his agent within 6 months after the act or omission constituting the basis of the claim. For reasonable cause shown, the Attorney General may extend such time limit. For property damage claims, the claim or notice of intention must be accompanied by two estimates.
- **Waiver of Immunity:**

- V.I. CODE ANN. tit. 33, § 3408(a) (2011). Waiver of Immunity from Liability. “Subject to the provisions of section 3416 of this chapter, the Government of the United States Virgin Islands hereby waives its immunity from liability and action and hereby assumes liability with respect to injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an employee of the Government of the United States Virgin Islands while acting within the scope of his office or employment, under circumstances where the Government of the United States Virgin Islands, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The Government consents to have the liability determined in accordance with the same rule of law as applied to actions in the courts of the Virgin Islands against individuals or corporations; Provided, That the claimant complies with the provisions of this chapter.”
- **Process:**
  - V.I. CODE ANN. tit. 33, § 3404 (2011). Creation of Tort Claims Fund; Annual Appropriations. “A special fund to be known as the ‘Tort Claims Fund’ shall be set aside...to pay claims in accordance with the provisions of this chapter.”
  - V.I. CODE ANN. tit. 33, § 3409 (2011). Time of Filing Claims and Notices of Intention to File Claims. Requires claims to be filed within 2 years of time of accrual.

**APPENDIX A—TABLE OF CASES**

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 503 (N.Y. Super. Ct. 2011).  
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 Arizona  
 Nebraska  
 Washington  
 Maryland  
 Colorado  
 Wisconsin  
 West Virginia  
 Georgia
- Illinois  
 Mississippi  
 Pennsylvania  
 Missouri  
 Utah  
 Texas  
 Georgia  
 Mississippi  
 Guam  
 Tennessee  
 Pennsylvania  
 Alaska  
 American Samoa  
 Texas
- Maryland  
 Pennsylvania  
 Wisconsin  
 Maine  
 Idaho  
 Texas  
 Nevada  
 New York  
 Wisconsin  
 American Samoa  
 West Virginia  
 North Carolina  
 Oregon  
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 Oregon  
 Iowa
- New York  
 West Virginia  
 Minnesota  
 Kansas  
 Massachusetts  
 Arkansas
- South Carolina  
 Kentucky  
 Georgia

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Zank v. Larson, 552 N.W.2d 719 (Minn. 1996).

Illinois

Florida

Minnesota

**APPENDIX B—CHART OF AUTHORITIES**

<b>Jurisdiction</b>	<b>Legislative Authority</b>	<b>Discretionary/ Governmental Function Exceptions</b>	<b>Other Exceptions</b>	<b>Punitive Damages</b>	<b>Damage Caps</b>	<b>Process for Claims</b>
Alabama	Ala. Const. art. I, § 14. Ala. Code §§ 4-3-7, 4-3-11. <i>See also</i> Scotti v. City of Birmingham, 337 So. 2d 350 (Ala. 1976) and Gaines v. Huntsville-Madison Cnty. Airport Auth., 581 So. 2d 444 (Ala. 1991). <i>But see</i> Wilson v. Thomas (In re Thomas), 110 So. 3d 363 (Ala. 2012).	Ala. Code § 4-4-4.		Ala. Code § 6-11-26.	Ala. Code § 11-93-2.	Ala. Code §§ 41-9-60 to 41-9-74. Ala. Code § 41-9-65.
Alaska	Alaska Const. art. II, § 21 Alaska Stat. § 9.65.070 <i>See also</i> Adams v. Alaska, 555 P.2d 235 (Alaska 1976).	Alaska Stat. § 9.50.250. <i>See also</i> DOT & Pub. Facilities v. Sanders, 944 P.2d 453 (Alaska 1997).	Taranto v. N. Slope Borough, 909 P.2d 354 (Alaska 1996).	Alaska Stat. § 9.50.280.	No cap.	Alaska Stat. §§ 44.77.010, 44.77.040, 44.77.070.
Arizona	Ariz. Rev. Stat. Ann. §§ 12-820 to 12-826. <i>See also</i> Tucson Airport Auth. v. General Dynamic Corp., 136 F.3d 641 (C.A. 9 Ariz. 998)	Ariz. Rev. Stat. Ann. § 12-820.01.		Ariz. Rev. Stat. Ann. § 12-820.04; Ariz. Rev. Stat. Ann. § 12-823.	Ariz. Rev. Stat. Ann. § 12-820.04.	Ariz. Rev. Stat. Ann. § 12-821.
Arkansas	Ark. Const. art. V, § 20. Ark. Code Ann. § 21-9-301. <i>See also</i> Fuqua v. Flowers, 20 S.W.3d 388 (Ark. 2000).		Loge v. United States, 494 F. Supp. 883 (W.D. Ark. 1980).	Ark. Code Ann. § 21-9-203.	Ark. Code Ann. § 21-9-203.	
California	Cal. Const. art. III, § 5 Cal. Gov't Code §§ 815 – 818.9.	Cal. Gov't Code § 820.2.	Cal. Gov't Code § 818.8.	Cal. Gov't Code § 818.	No cap.	Cal. Gov't Code § 911.2.
Colorado	Colo. Rev. Stat. §§ 24-10-101 to 24-10-220.		<i>See, e.g.,</i> Shootman v. DOT, 926 P.2d 1200 (Colo. 1996).	Colo. Rev. Stat. Ann. § 24-10-114(4).	Colo. Rev. Stat. Ann. § 24-10-114(1), (3).	Colo. Rev. Stat. Ann. § 24-10-109.
Connecticut	Conn. Gen. Stat. § 4-160. Conn. Gen. Stat. § 4-165. <i>See also</i> Columbia Air Servs., Inc. v. Dep't of Transp., 977 A.2d 636 (Conn. 2009); Fidelity Bank v. Conn., 348 A.2d 633 (Conn. 1974).	Conn. Gen. Stat. § 4-165c.				Conn. Gen. Stat. § 52-64.
Delaware	Del. Const. art. I, § 9. <i>See also</i> Roberts v. Delmarva Power & Light Co., 2 A.3d 131 (2009).	Del. Code Ann. tit. 10, § 4011.			Del. Code Ann. tit. 10, § 4013.	Del. Code Ann. tit. 10, § 4013.

Jurisdiction	Legislative Authority	Discretionary/ Governmental Function Exceptions	Other Exceptions	Punitive Damages	Damage Caps	Process for Claims
Florida	Fla. Const. art. X, § 13. Fla. Stat. § 768.28. <i>See also</i> Commercial Carrier Corp. v. Indian River Cnty., 371 So. 2d 1010 (Fla. 1979).	Seguine v. City of Miami, 627 So. 2d 14 (Fla. 1993).	Fla. Stat. § 379.2293.	Fla. Stat. § 768.28(5).	Fla. Stat. § 768.28(5).	Fla. Stat. § 768.28(6).
Georgia	Ga. Code Ann. §§ 50-21-20 to 51-21-37. <i>See also</i> Stryker v. City of Atlanta, 738 F. Supp. 1423 (N.D. Ga. 1990).	S. Airways Co. v. DeKalb Cnty., 118 S.E.2d 234 (Ga. Ct. App. 1960).	Ga. Code Ann. § 50-21-21.	Ga. Code Ann. § 50-21-30.	Ga. Code Ann. § 50-21-29(b).	Ga. Code Ann. § 50-21-26.
Hawaii	Haw. Rev. Stat. §§ 662-1 to 662-19. <i>See also</i> Awakuni v. Awana, 165 P.3d 1027 (2007).	Haw. Rev. Stat. § 662-15. Julius Rothschild & Co. v. Haw., 655 P.2d 877 (Haw. 1982). Awakuni v. Awana, 165 P.3d 1027 (Haw. 2007).	Haw. Rev. Stat. § 662-15.	Haw. Rev. Stat. § 662-2.		Haw. Rev. Stat. § 662-4.
Idaho	Idaho Code Ann. § 6-904.	Tomich v. City of Pocatello, 901 P.2d 501 (Idaho 1995). Dunbar v. United Steelworkers of Am., 602 P.2d 21 (Idaho 1979).			Idaho Code Ann. § 6-926.	Idaho Code Ann. § 6-911.
Illinois	Ill. Const. art. XIII, § 4. 745 Ill. Comp. Stat. 10/9-101 to 10/9-107. 705 Ill. Comp. Stat. 505/1 to 505/29. <i>See also</i> Village of Bloomingdale v. CDG Enterprises, Inc., 752 N.E.2d 1090 (Ill. 2001).	Harinek v. 161 N. Clark St. Ltd. P'ship, 692 N.E.2d 1177 (Ill. 1998). Wrobel v. City of Chicago, 742 N.E.2d 401 (Ill. 2000).			705 Ill. Comp. Stat. 505/8(d).	705 Ill. Comp. Stat. 505/22.
Indiana	Ind. Const. art. IV, § 24. Ind. Code §§ 34-13-3-1 to 34-13-3-25.	Ind. Code § 34-13-3(7). <i>See also</i> City of Indianapolis v. Duftitt, 929 N.E.2d 231 (Ind. Ct. App. 2010).		Ind. Code § 34-13-3-4.	Ind. Code § 34-13-3-3.	Ind. Code § 34-13-3-6(a). Ind. Code § 34-13-3-8(a). Ind. Code § 34-13-1-1.
Iowa	Iowa Code Ann. §§ 669.1 to 669.25. <i>See also</i> Walker v. Iowa, 801 N.W.2d 548 (Iowa 2011).	Iowa Code Ann. § 669.14.	Iowa Code Ann. § 669.14.	Iowa Code Ann. § 670.4(e).		
Kansas	Kan. Stat. Ann. §§ 75-6101 to 75-6120. <i>See also</i> Cessna Aircraft Co. v. Metro. Topeka Airport Auth., 940 P.2d 84 (Kan. Ct. App. 1997).	Kan. Stat. Ann. § 75-6104. <i>See also</i> Robertson v. City of Topeka, 644 P.2d 458 (Kan. 1982).		Kan. Stat. Ann. § 6109.	Kan. Stat. Ann. § 75-6105.	Kan. Stat. Ann. § 75-6106.

Jurisdiction	Legislative Authority	Discretionary/ Governmental Function Exceptions	Other Exceptions	Punitive Damages	Damage Caps	Process for Claims
Kentucky	Ky Const. § 231. Ky. Rev. Stat. §§ 44.070 et seq.	Ky. Rev. Stat. § 44.073.				Ky. Rev. Stat. § 44.070.
Louisiana	La. Const. art. XII, § 10. <i>See also</i> Hebert v. Adcock, 55 So. 3d 1007 (La. App. 3 Cir. 2011).	La. Rev. Stat. Ann. § 9:2798.1.	La. Rev. Stat. Ann. § 13:5101.		La. Rev. Stat. Ann. § 13:5106.	La. Rev. Stat. Ann. § 13:5105.
Maine	Me. Rev. Stat. Ann. tit. 14, §§ 8101 to 8118. Me. Rev. Stat. Ann. tit. 14, § 8104-A. <i>See also</i> Estate of Fortier v. City of Lewiston, 997 A.2d 84 (Me. 2010).	Me. Rev. Stat. Ann. tit. 14, § 8104-B. <i>See also</i> Tolliver v. Dep't of Transp., 948 A.2d 1223 (Me. 2008).		Me. Rev. Stat. Ann. tit. 14, § 8105.	Me. Rev. Stat. Ann. tit. 14, § 8105.	Me. Rev. Stat. Ann. tit. 14, §§ 8106, 8107, 8108, 8110.
Maryland	Md. Code Ann. State Gov't §§ 12-101 to 12-110. <i>See also</i> Gardner v. Md., 549 A.2d 1172 (Md. Ct. Spec. App. 1988).	Md. Code Ann. State Gov't § 12-104.	Md. Code Ann. State Gov't § 12-201.	Md. Code Ann. State Gov't § 12-201.	Md. Code Ann. State Gov't § 12-104.	Md. Code Ann. State Gov't §§ 12-106, 12-107, 12-108.
Massachusetts	Mass. Gen. Laws Ann. ch. 258, §§ 1–14. <i>But see</i> Karlin v. Mass. Turnpike Auth., 506 N.E.2d 1149 (Mass. 1987).	Mass. Gen. Laws Ann. ch. 258, § 10.		Mass. Gen. Laws Ann. ch. 258, § 2.	Mass. Gen. Laws Ann. ch. 258, § 2.	Mass. Gen. Laws Ann. ch. 258, §§ 3, 4, 6.
Michigan	Mich. Const. art. VII, §§ 1-17. Mich. Comp. Laws Ann. §§ 691.1401 to 691.1419. <i>See also</i> Codd v. Wayne Cnty., 537 N.W.2d 453 (Mich. Ct. App. 1995).	Mich. Comp. Laws § 691.1413.	Mich. Comp. Laws § 691.1413.	<i>See</i> Casey v. Auto-Owners Ins. Co., 729 N.W.2d 277 (Mich. 2006).		Mich. Comp. Laws § 691.1411.
Minnesota	Minn. Stat. §§ 3.732-3.756. Minn. Stat. § 3.736. Watson v. Metro. Transit Comm'n, 553 N.W.2d 406 (Minn. 1996).	Minn. Stat. § 466.03. Minn. Stat. § 466.07. Minn. Stat. § 3.736(3).	Minn. Stat. § 3.736.	Minn. Stat. § 3.736(4).	Minn. Stat. § 3.736(4).	Minn. Stat. § 3.736(11).
Mississippi	Miss. Code Ann. §§ 11-46-1 to 11-46-23. <i>See</i> Miss. Transp. Comm'n v. Montgomery, 80 So. 3d 789 (Miss. 2012).	Miss. Code Ann. § 11-46-3. Miss. Code Ann. § 61-3-83. <i>See also</i> Pratt v. Gulfport Biloxi Reg'l Airport Auth., 97 So. 3d 68 (Miss. 2012).	Miss. Code Ann. § 11-46-17.	Miss. Code Ann. § 11-46-15.	Miss. Code Ann. § 11-46-15.	Miss. Code Ann. § 11-46-7.
Missouri	Mo. Rev. Stat. § 537.600. <i>See also</i> Allen v. City of St. Louis, 117 S.W.3d 707 (Mo. Ct. App. 2003).		<i>See, e.g.,</i> St. Louis Flying Club v. St. Louis Cnty., 866 S.W.2d 929 (Mo. Ct. App. 1993).	Mo. Rev. Stat. § 537.610(5).	Mo. Rev. Stat. § 537.610(5).	Mo. Rev. Stat. § 33.120(1).

Jurisdiction	Legislative Authority	Discretionary/ Governmental Function Exceptions	Other Exceptions	Punitive Damages	Damage Caps	Process for Claims
Montana	Mont. Const. art. II, § 18. Mont. Code Ann. §§ 2-9-101 to 2-9-114.	Mont. Code Ann. § 2-9-111.		Mont. Code Ann. § 2-9-105.	Mont. Code Ann. § 2-9-108.	Mont. Code Ann. §§ 2-9-301 to 2-9-318.
Nebraska	Neb. Const. art. V, § 22. Neb. Rev. Stat. §§ 81-8,209 to 81-8,239.11. Neb. Rev. Stat. Ann. § 13-908.	Neb. Rev. Stat. Ann. § 13.910(2). <i>See also Shipley v. Dep't of Rds.</i> , 813 N.W.2d 455 (Neb. 2012).	Neb. Rev. Stat. § 13-910.		Neb. Rev. Stat. § 13-919. Neb. Rev. Stat. § 13-905.	Neb. Rev. Stat. § 13-919. Neb. Rev. Stat. § 13-905.
Nevada	Nev. Const. art. IV, § 22. Nev. Rev. Stat. §§ 41.0305 to 41.0309.	Nev. Rev. Stat. § 641.0322.	<i>See Granite Oil Secs. v. Douglas Cnty.</i> , 219 P.2d 191 (Nev. 1930).	Nev. Rev. Stat. § 41.035(1).	Nev. Rev. Stat. § 41.035.	Nev. Rev. Stat. § 41.036.
New Hampshire	N.H. Rev. Stat. Ann. §§ 541-B:1 to 541-B:23. N.H. Rev. Stat. § 541-B:1. N.H. Rev. Stat. § 491-8. <i>See also Op. of the Justices</i> , 126 N.H. 554 (N.H. 1985).	N.H. Rev. Stat. Ann. § 541-B:19.		N.H. Rev. Stat. Ann. § 541-B:14.	N.H. Rev. Stat. Ann. § 541-B:14(1).	N.H. Rev. Stat. § 541-B:1. N.H. Rev. Stat. § 541-B:19.
New Jersey	N.J. Rev. Stat. §§ 59:1-1 to 59:14-14.	N.J. Rev. Stat. § 59:2-3.	N.J. Rev. Stat. § 59:2-3.			N.J. Rev. Stat. § 59:8-9. N.J. Rev. Stat. § 59:8-8.
New Mexico	N.M. Stat. Ann. §§ 41-4-1 to 41-4-30. N.M. Stat. Ann. § 41-4-7(A).	N.M. Stat. Ann. § 41-4-7(A).	N.M. Stat. Ann. § 41-4-7(B). N.M. Stat. Ann. § 41-4-5.	N.M. Stat. Ann. § 41-4-19(D).	N.M. Stat. Ann. § 41-4-19.	N.M. Stat. Ann. § 41-4-16.
New York	N.Y. Ct. Cl. Act § 8.	<i>See, e.g., In re World Trade Center Bombing Litig.</i> , 957 N.E.2d 733 (N.Y. 2011).		<i>Wang v. N.Y. State Dep't of Health</i> , 933 N.Y.S.2d 503 (Super. Ct. 2011); <i>Barrington v. N.Y.</i> , 806 F. Supp. 2d 730 (S.D.N.Y. 2011).		N.Y. Unconsol. Law § 7107. N.Y. Ct. Cl. Act § 10.3, 10.4. N.Y. Gen. Mun. Law § 50.
North Carolina	N.C. Gen. Stat. § 63-50. N.C. Gen. Stat. § 143-291. <i>See also Rhodes v. City of Asheville</i> , 52 S.E.2d 3711 (N.C. 1949).	<i>See, e.g., Vaughn v. Cnty. of Durham</i> , 240 S.E.2d 456 (N.C. Ct. App. 1977).			N.C. Gen. Stat. § 143-299.2(a).	N.C. Gen. Stat. § 143-293. N.C. Gen. Stat. § 143-295. N.C. Gen. Stat. § 143-299. N.C. Gen. Stat. § 143-299.1.
North Dakota	N.D. Const. art. I, § 9. N.D. Cent. Code §§ 32-12.2-01 to 32-12.2-18. N.D. Cent. Code § 2-02-09. N.D. Cent. Code § 2-02-06.	N.D. Cent. Code § 32-12-1-03(3)(d). <i>See also Lang v. N.D.</i> , 622 N.W.2d 238 (N.D. Ct. App. 2001).	N.D. Cent. Code § 2-06-17.		N.D. Cent. Code § 2-02-09.	N.D. Cent. Code § 32-12.1-10.

Jurisdiction	Legislative Authority	Discretionary/ Governmental Function Exceptions	Other Exceptions	Punitive Damages	Damage Caps	Process for Claims
Ohio	Ohio Const. art. I, § 16. Ohio Rev. Code Ann. §§ 2743.01 to 2743.01.	Ohio Rev. Code Ann. § 2744.01. Ohio Rev. Code Ann. § 2744.02.		Ohio Rev. Code Ann. § 2744.05.		Ohio Rev. Code Ann. § 2743.02. Ohio Rev. Code Ann. § 2743.16. Ohio Rev. Code Ann. § 2744.04.
Oklahoma	Okla. Stat. tit. 51, §§ 151– 172. Okla. Stat. tit. 51, § 162(B). <i>See also Ex Parte Hous.</i> , 224 P.2d 281 (Okla. Crim. App. 1957).	Okla. Stat. tit. 51, § 155.	Okla. Stat. tit. 51, § 155.	Okla. Stat. tit. 51, § 162(D). Okla. Stat. tit. 51, § 154.	Okla. Stat. tit. 51, § 154.	Okla. Stat. tit. 51, § 157.
Oregon	Or. Const. art. IV, § 24. Or. Rev. Stat. §§ 30.260 to 30.300. <i>But see Norgaard v. Port of Portland</i> , 196 P.3d 67 (Or. 2008).	Or. Rev. Stat. § 30.265.		Or. Rev. Stat. § 30.269(a).	Or. Rev. Stat. § 30.271.1.	Or. Rev. Stat. § 30.275. Or. Rev. Stat. § 30.370.
Pennsylvania	Pa. Const. art. 11, § 11. 1 Pa. Cons. Stat. § 2310. 35 Pa. Cons. Stat. § 7704. <i>See also Page v. City of Phila.</i> , 25 A.3d 471 (Pa. Commw. Ct. 2011).	42 Pa. Cons. Stat. § 8524. 42 Pa. Cons. Stat. § 8546.			42 Pa. Cons. Stat. § 8528.	42 Pa. Cons. Stat. §§ 8523, 5522.
Rhode Island	R.I. Gen. Laws §§ 9-31-1 to 9-31-13. R.I. Gen. Laws § 37-22-11.				R.I. Gen. Laws § 9-31-2.	R.I. Gen. Laws § 9- 1-25.
South Carolina	S.C. Const. art. X, § 10. S.C. Code Ann. §§ 15-78- 10 to 15-72-220. <i>See also Multimedia Publ'g Co. of S.C., Inc. v. Greenville-Spartanburg Airport Dist.</i> , 774 F. Supp. 977 (D. S.C. 1991).	S.C. Code Ann. § 15- 78-60.		S.C. Code Ann. § 15- 78-120(b).	S.C. Code Ann. § 15-78- 120(a).	S.C. Code Ann. § 15-78-100. S.C. Code Ann. § 15-78-110.
South Dakota	S.D. Const. art. III, § 27. S.D. Codified Laws §§ 21- 32-1 to 21-32-21. S.D. Codified Laws § 21- 32-20.	<i>See, e.g.</i> , L.R. Foy Constr. Co. v. S.D. Cement Plant Comm'n, 399 N.W.2d 340 (S.D. 1987).	S.D. Codified Laws § 21-32- 16.		S.D. Codified Laws § 50-7- 14.1.	S.D. Codified Laws § 21-32-2.
Tennessee	Tenn. Const. art. I, § 17. Tenn. Code Ann. §§ 9-8- 301 to 9-8-310.	Tenn. Code Ann. § 42-4-102. Tenn. Code Ann. § 42-5-107.		Tenn. Code Ann. § 9-8- 307.	Tenn. Code Ann. § 9-8- 307.	Tenn. Code Ann. § 9-8-108. Tenn. Code Ann. § 9-9-307.

Jurisdiction	Legislative Authority	Discretionary/ Governmental Function Exceptions	Other Exceptions	Punitive Damages	Damage Caps	Process for Claims
Texas	Tex. Civ. Prac. & Rem. Code Ann. §§ 101.001 to 101.109. <i>See also</i> Mogayzel v. Tex. Dep't of Transp., 66 S.W.3d 459 (Tex. App. 2d Dist. 2001).	Tex. Civ. Prac. & Rem. Code Ann. § 101.215.		Tex. Civ. Prac. & Rem. Code Ann. § 101.023.	Tex. Civ. Prac. & Rem. Code Ann. § 101.023.	Tex. Civ. Prac. & Rem. Code Ann. §§ 101.101, 101.102, 101.106.
Utah	Utah Code Ann. §§ 63G-7-101 to 63G-7-201. Utah Code Ann. § 63G-7-201.	<i>See, e.g.</i> , AIG Aviation Ins. Servs., Inc. v. United States, 885 F. Supp. 1496 (D. Utah 1995).		Utah Code Ann. § 63G-7-603.	Utah Code Ann. § 63G-7-604.	Utah Code Ann. §§ 63G-7-401, 63G-7-401, 63G-7-501, 63G-7-502.
Vermont	Vt. Stat. Ann. tit. 12, §§ 5601 to 5606. Vt. Stat. Ann. tit. 5, § 201.	<i>See, e.g.</i> , Johnson v. Agency of Transp., 904 A.2d 1060 (Vt. 2006).			Vt. Stat. Ann. tit. 12, § 5601(b).	
Virginia	Va. Code Ann. § 8.01-195.1. <i>See also</i> Gray v. Va. Sec'y of Transp., 662 S.E.2d 66 (Va. 2008).			Va. Code Ann. § 8.01-195.3.	Va. Code Ann. § 8.01-195.3.	Va. Code Ann. § 8.01-195.6. Va. Code Ann. § 8.01-195.7.
Washington	Wash. Const. art. II, § 26. Wash. Rev. Code Ann. §§ 4-92.005 to 4-92.280. Wash. Rev. Code Ann. §§ 4.96.010 to 4.96.050. Wash. Rev. Code Ann. §§ 14.08.120, 14.08.330 <i>See also</i> Afoa v. Port of Seattle, 296 P.3d 800 (Wash. 2013).				Wash. Rev. Code Ann. § 4.92.090.	Wash. Rev. Code Ann. § 4.92.050. Wash. Rev. Code Ann. § 4.92.100. Wash. Rev. Code Ann. § 4.92.110. Wash. Rev. Code Ann. § 4.96.020(2). Wash. Rev. Code Ann. § 4.96.020(4).
West Virginia	W. Va. Const. art. VI, § 35. W. Va. Code §§ 29-12A-1 to 29-12A-18. W. Va. Code §§ 14-2-1 to 14-2-29. W. Va. Code §§ 55-17-1. <i>See also</i> Van Gilder v. City of Morgantown, 68 S.E.2d 746 (W. Va. 1952).	W. Va. Code § 29-12A-4.		W. Va. Code § 29-12A-7(a).	W. Va. Code § 29-12A-7(b).	W. Va. Code § 29-12A-6. W. Va. Code § 29-12A-8. W. Va. Code § 55-17-3.
Wisconsin	Wisc. Const. art. IV, § 27. Wisc. Stat. § 114.11. <i>See also</i> Scott v. Savers Prop. & Cas. Ins. Co., 663 N.W.2d 715 (Wis. 2003).				Wisc. Stat. § 893.80(6). Wisc. Stat. § 775.05(4).	Wisc. Stat. § 893.82(3). Wisc. Stat. § 893.80(1)(a). Wisc. Stat. § 893.80(1)(p).
Wyoming	Wyo. Const. art. I, § 8. Wyo. Stat. Ann. §§ 1-39-101 to 1-39-121.	Wyo. Stat. Ann. § 1-39-102.	Wyo. Stat. Ann. § 1-39-104.		Wyo. Stat. Ann. § 1-39-118.	Wyo. Stat. Ann. §§ 1-39-113, 1-39-114, 1-39-116.

Jurisdiction	Legislative Authority	Discretionary/ Governmental Function Exceptions	Other Exceptions	Punitive Damages	Damage Caps	Process for Claims
American Samoa	Am. Samoa Code Ann. tit. 43, §§ 43.1201 to 43.1235. <i>See also</i> Tauilili v. Am. Sam. Gov't, 13 A.S.R. 2d 61 (Am. Samoa 1989).	Am. Samoa Code Ann. § 43-1201.				
District of Columbia	D.C. Code §§ 2-401 to 2-431. D.C. Code § 2-401. D.C. Code § 9-801. D.C. Code § 1-206.1.	<i>See, e.g.,</i> McKethan v. Wash. Metro. Area Transit Auth., 588 A.2d 708 (D.C. 1991).				D.C. Code Ann. §§ 2-401, 2-402, 12-301, 12-309.
Guam	5 Guam Code Ann. §§ 6101 to 6106. 1 Guam Code Ann. § 405. 5 Guam Code Ann. § 6102. <i>See, e.g.,</i> Sumitomo Constr. Inc. v. Gov't of Guam, 2001 Guam 23 (Guam 2001).	5 Guam Code Ann. § 6105(a), (b).			5 Guam Code Ann. § 6301.	5 Guam Code Ann. § 6401. 5 Guam Code Ann. § 6201. 5 Guam Code Ann. § 6206. 5 Guam Code Ann. § 6208.
Northern Mariana Islands	7 N. Mar. I. Code § 2201. 7 N. Mar. I. Code § 2208. 7 N. Mar. I. Code § 2211. <i>See, e.g.,</i> Fleming v. Dep't. of Pub. Safety, 837 F.2d 401 (9th Cir. 1988).	7 N. Mar. I. Code § 2204.		7 N. Mar. I. Code § 2202.	7 N. Mar. I. Code § 2202.	7 N. Mar. I. Code § 1101. 7 N. Mar. I. Code § 1104. 7 N. Mar. I. Code § 2202(e). 7 N. Mar. I. Code § 2205.
Puerto Rico	P.R. Laws Ann. tit. 23, § 336. P.R. Laws Ann. tit. 32, § 3085. <i>But see</i> Canadian Transp. Co. v. P.R. Ports Auth., 333 F. Supp. 1295 (D. P.R. 1971).	P.R. Laws Ann. tit. 32, § 3081.			P.R. Laws tit. 32, § 3077.	P.R. Laws tit. 32, § 3077. P.R. Laws tit. 32, § 3080. P.R. Laws tit. 32, § 3083.
U.S. Virgin Islands	V.I.C. Rev. Org. Act of 1954 § 3, 48 U.S.C. § 1541. V.I.C. Rev. Org. Act of 1954 § 2(b).	33 V.I. Code Ann. § 3408. <i>See, e.g.,</i> Centenaro v. United States, 211 F.3d 749 (3d Cir. 2000).			33 V.I. Code. § 3402.	33 V.I. Code § 3404 33 V.I. Code § 3409.



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