WEST VIRGINIA CODE CHAPTER 29 ARTICLE 12A

WV Legislature

§29-12A-1. Short title; purposes.

This article shall be known and may be cited as "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.

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§29-12A-2. Legislative findings.

The Legislature finds and declares that the political subdivisions of this state are unable to procure adequate liability insurance coverage at a reasonable cost due to: The high cost in defending such claims, the risk of liability beyond the affordable coverage, and the inability of political subdivisions to raise sufficient revenues for the procurement of such coverage without reducing the quantity and quality of traditional governmental services. Therefore, it is necessary to establish certain immunities and limitations with regard to the liability of political subdivisions and their employees, to regulate the insurance industry providing liability insurance to them, and thereby permit such political subdivisions to provide necessary and needed governmental services to its citizens within the limits of their available revenues.

WV Legislature

§29-12A-3. Definitions.

As used in this article:

(a) "Employee" means an officer, agent, employee, or servant, whether compensated or not, whether full-time or not, who is authorized to act and is acting with the scope of his or her employment for a political subdivision. "Employee" includes any elected or appointed official of a political subdivision. "Employee" does not include an independent contractor of a political subdivision.

(b) "Municipality" means any incorporated city, town or village and all institutions, agencies or instrumentalities of a municipality.

(c) "Political subdivision" means any county commission, municipality and county board of education; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; any instrumentality supported in most part by municipalities; any public body charged by law with the performance of a government function and whose jurisdiction is coextensive with one or more counties, cities or towns; a combined city- county health department created pursuant to article two, chapter sixteen of this code; public service districts; and other instrumentalities including, but not limited to, volunteer fire departments and emergency service organizations as recognized by an appropriate public body and authorized by law to perform a government function: Provided, That hospitals of a political subdivision and their employees are expressly excluded from the provisions of this article.

(d) "Scope of employment" means performance by an employee acting in good faith within the duties of his or her office or employment or tasks lawfully assigned by a competent authority but does not include corruption or fraud.

(e) "State" means the State of West Virginia, including, but not limited to, the Legislature, the Supreme Court of Appeals, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, colleges, and universities, institutions, and other instrumentalities of the State of West Virginia. "State" does not include political subdivisions.

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§29-12A-4. 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.

(b) (1) Except as provided in subsection (c) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to persons 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: Provided, That this article shall not restrict the availability of mandamus, injunction, prohibition, and other extraordinary remedies.

(2) Subject to statutory limitations upon their venue and jurisdiction, the circuit courts have jurisdiction to hear and determine civil actions governed by or brought pursuant to this article.

(c) Subject to sections five and six of this article, a political subdivision is liable in damages in a civil action for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

(1) Except as otherwise provided in this article, political subdivisions are liable for injury, death, or loss to persons or property caused by the negligent operation of any vehicle by their employees when the employees are engaged within the scope of their employment and authority.

(2) Political subdivisions are liable for injury, death, or loss to persons or property caused by the negligent performance of acts by their employees while acting within the scope of employment.

(3) Political subdivisions are liable for injury, death, or loss to persons or property caused by their negligent failure to keep public roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, or public grounds within the political subdivisions open, in repair, or free from nuisance, except that it is a full defense to such liability, when a bridge within a municipality is involved, that the municipality does not have the responsibility for maintain or inspecting the bridge.

(4) Political subdivisions are liable for injury, death, or loss to persons or property that is caused by the negligence of their employees and that occurs within or on the grounds of buildings that are used by such political subdivisions, including, but not limited to, office buildings and courthouses, but not including jails, places of juvenile detention, workhouses, or any other detention facility.

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(5) In addition to the circumstances described in subsection (c)(1) to (4) of this section, a political subdivision is liable for injury, death, or loss to persons or property when liability is expressly imposed upon the political subdivision by a provision of this code. Liability shall not be construed to exist under another section of this code merely because a responsibility is imposed upon a political subdivision or because of a general authorization that a political subdivision may sue and be sued.

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§29-12A-5. Immunities from liability.

(a) A political subdivision is immune from liability if a loss or claim results from:

(1) Legislative or quasi-legislative functions;

(2) Judicial, quasi-judicial or prosecutorial functions;

(3) Execution or enforcement of the lawful orders of any court;

(4) Adoption or failure to adopt a law, including, but not limited to, any statute, charter provision, ordinance, resolution, rule, regulation or written policy;

(5) Civil disobedience, riot, insurrection or rebellion or the failure to provide, or the method of providing, police, law enforcement or fire protection;

(6) Snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions, unless the condition is affirmatively caused by the negligent act of a political subdivision;

(7) Natural conditions of unimproved property of the political subdivision;

(8) Assessment or collection of taxes lawfully imposed or special assessments, license or registration fees or other fees or charges imposed by law;

(9) Licensing powers or functions including, but not limited to, the issuance, denial, suspension or revocation of or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authority;

(10) Inspection powers or functions, including failure to make an inspection, or making an inadequate inspection, of any property, real or personal, to determine whether the property complies with or violates any law or contains a hazard to health or safety;

(11) Any claim covered by any worker's compensation law or any employer's liability law;

(12) Misrepresentation, if unintentional;

(13) Any court-ordered or administratively approved work release or treatment or rehabilitation program;

(14) Provision, equipping, lawful operation or maintenance of any prison, jail or correctional facility, or injuries resulting from the parole or escape of a prisoner;

(15) Any claim or action based on the theory of manufacturer's products liability or breach of warranty or merchantability or fitness for a specific purpose, either expressed or implied;

(16) The operation of dumps, sanitary landfills, and facilities where conducted directly by a

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political subdivision; or

(17) The issuance of revenue bonds or the refusal to issue revenue bonds.

(b) An employee of a political subdivision is immune from liability unless one of the following applies;

(1) His or her acts or omissions were manifestly outside the scope of employment or official responsibilities;

(2) His or her acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner; or

(3) Liability is expressly imposed upon the employee by a provision of this code.

(c) The immunity conferred upon an employee by subsection (b) of this section does not affect or limit any liability of a political subdivision for an act or omission of the employee.

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§29-12A-6. Limitation of actions; specification of amount of damages not allowed.

(a) An action against a political subdivision to recover damages for injury, death, or loss to persons or property allegedly caused by any act or omission in connection with a governmental or proprietary function, except as provided in subsection (b) of this section, shall be brought within two years after the cause of action arose or after the injury, death or loss was discovered or reasonably should have been discovered, whichever last occurs or within any applicable shorter period of time for bringing the action provided by this code. This section applies to actions brought against political subdivisions by all persons, governmental entities, and the state.

(b) An action against a political subdivision to recover damages for injury, death, or loss to a minor, brought by or on behalf of a minor who was under the age of ten years at the time of such injury, shall be commenced within two years after the cause of action arose or after the injury, death of loss was discovered or reasonably should have been discovered, whichever last occurs, or prior to the minor's twelfth birthday, whichever provides the longer period.

(c) The periods of limitations set forth in this section shall be tolled for any period during which the political subdivision or its representative has committed fraud or collusion by concealing or misrepresenting material facts about the injury.

(d) In the complaint filed in a civil action against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to persons or property allegedly caused by an act or omission of such political subdivision or employee, whether filed in an original action, cross-claim, counterclaim, third-party claim, or claim for subrogation, the complainant shall include a demand for a judgment for the damages that the judge in a nonjury trial or the jury in a jury trial finds that the complainant is entitled to be awarded, but shall not specify in the demand any monetary amount for damages sought.

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§29-12A-7. Punitive damages not allowed; limitation on noneconomic loss; joint and several liability.

Notwithstanding any other provisions of this code or rules of a court to the contrary, in an action against a political subdivision or its employee to recover damages for injury, death, or loss to persons or property for injury, death, or loss to persons or property caused by an act or omission of such political subdivision or employee:

(a) In any civil action involving a political subdivision or any of its employees as a party defendant, an award of punitive or exemplary damages against such political subdivision is prohibited.

(b) There shall not be any limitation on compensatory damages that represent the economic loss of the person who is awarded the damages. However, damages awarded that arise from the same cause of action, transaction or occurrence, or series of transactions or occurrences that represent noneconomic loss shall not exceed $500,000 in favor of any one person. The limitation on damages that do not represent the economic loss of the person who is awarded the damages provided in this subsection does not apply to court costs that are awarded to a plaintiff or to interest on a judgment rendered in favor of a plaintiff in an action against a political subdivision or its employees.

(c) In the trial of an action covered by the provisions of this article involving multiple defendants, the jury shall be required to report its findings to the court on a form provided by the court which contains each of the possible verdicts as determined by the court.

(d) In every such action, the court shall make findings as to the total dollar amount awarded as damages to each plaintiff. The court shall enter judgment of joint and several liability against every defendant who bears twenty-five percent or more of the negligence attributable to all defendants. The court shall enter judgment of several, but not joint, liability against and among all defendants who bear less than twenty-five percent of the negligence attributable to all defendants.

(e) Each defendant against whom a judgment of joint and several liability is entered in an action pursuant to subsection (d) of this section is liable to each plaintiff for all or any part of the total dollar amount awarded regardless of the percentage of negligence attributable to him A right of contribution exists in favor of each defendant who has paid to a plaintiff more than the percentage of the dollar amount awarded attributable to him relative to the percentage of negligence attributable to him. The total amount of recovery for contribution is limited to a the amount paid by the defendant to a plaintiff in excess of the percentage of the total dollar amount awarded attributable to him relative to the percentage of negligence attributable to him No right of contribution exists against any defendant who entered into a good faith settlement with the plaintiff prior to the jury's report of its findings to the court or the court's findings as to total dollar amount awarded as damages.

(f) Where a right of contribution exists in an action pursuant to subsection (e) of this section,

the findings of the court or jury as to the percentage of negligence and liability of the several defendants to the plaintiff shall be binding among such defendants as determining their rights of contribution.

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§29-12A-8. 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.

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§29-12A-9. Settlement or defense of suit; effect of liability insurance.

(a) If a policy or contract of liability insurance covering a political subdivision or its employees is applicable, the terms of the policy govern the rights and obligations of the political subdivision and the insurer with respect to the investigation, settlement, payment and defense of suits against the political subdivision, or its employees, covered by the policy. The insurer may not enter into a settlement for an amount which exceeds the insurance coverage.

(b) A political subdivision, or its employees, are not liable for any costs, judgments or settlements paid through an applicable contract or policy of insurance.

(c) A political subdivision has the right of indemnity against the insurer issuing any applicable contract or policy of insurance to the monetary limit of the contract or policy of insurance.

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§29-12A-10. Enforcement of judgment.

(a) Real or personal property, and moneys, accounts, deposits, or investments of a political subdivision are not subject to execution, judicial sale, garnishment, or attachment to satisfy a judgment rendered against a political subdivision in a civil action to recover damages for injury, death, or loss to persons or property caused by an act or omission of the political subdivision or any of its employees.

(b) Such judgments shall be paid from funds of the political subdivisions that have been appropriated for that purpose. However, if sufficient funds are not currently appropriated for the payment of judgments, the fiscal officer of a political subdivision shall certify the amount of any unpaid judgments to the taxing authority of the political subdivision for inclusion in the next succeeding budget and annual appropriation measure and payment in the next succeeding fiscal year.

(c) If the judgment is obtained against a political subdivision that has procured a contract or policy of liability or indemnity insurance protection, the holder of the judgment may use the methods of collecting the judgment which are provided by the policy or contract or law to the extent of the limits of coverage provided.

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§29-12A-11. Defense and indemnification of employees; settlement.

(a) (1) Except as otherwise provided in this section, a political subdivision shall provide for the defense of an employee, in any state or federal court, in any civil action or proceeding to recover damages for injury, death, or loss to persons or property allegedly caused by an act or omission of the employee if the act or omission occurred or is alleged to have occurred while the employee was acting in good faith and not manifestly outside the scope of his employment or official responsibilities. Amounts expended by a political subdivision in the defense of its employees shall be from funds appropriated for this purpose or pursuant to the contractual agreement between the insurer and the political subdivision. The duty to provide for the defense of an employee specified in this subsection does not apply in a civil action or proceeding that is commenced by or on behalf of a political subdivision.

(2) Except as otherwise provided in this section, a political subdivision shall indemnify and hold harmless an employee in the amount of any judgment 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 persons or property caused by an act or omission of such employee, if at the time of the act or omission the employee was acting in good faith and within the scope of his employment or official responsibilities.

(b) (1) A political subdivision may enter into a consent judgment or settlement and may secure releases from liability for itself or an employee, with respect to any claim for injury, death, or loss to persons or property caused by an act or omission of such political subdivision or employee.

(2) No action or appeal of any kind shall be brought by any person, including any employee or a taxpayer, with respect to the decision of a political subdivision pursuant to subsection (b)(1) of this section whether to enter into a consent judgment or settlement or to secure releases, or concerning the amount and circumstances of a consent judgment or settlement. Amounts expended for any settlement shall be from funds appropriated for this purpose or pursuant to the contractual agreement between the insurer and the political subdivision.

(c) If a political subdivision refuses to provide an employee with a defense in a civil action or proceeding as described in subsection (a)(1) of this section, the employee may file, in the circuit court of the county in which the political subdivision is located, an action seeking a determination as to the appropriateness of the refusal of the political subdivision to provide him or her with a defense under that subsection.

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§29-12A-12. Recovery of payments from employees.

A political subdivision has the right to recover from an employee for any claim or action under this article, or any other claim or action, any payments made by it for any judgment or settlement, or portion thereof, and costs or fees by or on behalf of an employee's defense if it is shown that the conduct or the employee which gave rise to the claim or action was outside the scope of his employment or if the employee fails to cooperate in good faith in the defense of the claim or action. A judgment or settlement in an action or claim under this article constitutes a complete bar to any action by a claimant against an employee whose conduct gave rise to the claim resulting in such judgment or settlement.

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§29-12A-13. Venue; parties; real party in interest; service of process.

(a) Actions against all political subdivisions within the scope of this article shall be brought in the county in which the situs of the political subdivision is located or in the county in which the cause of action arose.

(b) Suits instituted pursuant to the provisions of this article shall name as defendant the political subdivision against which liability is sought to be established. In no instance may an employee of a political subdivision acting within the scope of his employment be named as defendant.

(c) All actions filed against a political subdivision shall be filed in the name of the real party or parties in interest and in no event may any claim be presented or recovery be had under the right of subrogation.

(d) In suits against political subdivisions, the complaint and summons shall be served in the manner prescribed by law for the rules of civil procedure.

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§29-12A-14. Application of West Virginia laws and statutes and rules of procedure.

The laws and statutes of this state and the rules of civil procedure, as promulgated and adopted by the Supreme Court of Appeals, insofar as applicable and to the extent that such rules are not inconsistent with the provisions of this article, apply to and govern all actions brought under the provisions of this article.

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§29-12A-15. Exempt claim.

This article does not apply to any claim against any political subdivision or its employees arising before the effective date of this article. Any such claim may be presented and enforced to the same extent and subject to the same procedures and restrictions as if this article had not been adopted.

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§29-12A-16. Procurement of liability insurance and self-insurance.

(a) A political subdivision may use public funds to secure insurance with respect to its potential liability and that of its employees for damages in civil actions for injury, death or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees, including insurance coverage procured through the State Board of Risk and Insurance Management. The insurance may be at the limits for the circumstances, and subject to the terms and conditions that are determined by the political subdivision in its discretion.

The insurance may be for the period that is set forth in specifications for competitive bids or, when competitive bidding is not required, for the period that is mutually agreed upon by the political subdivision and insurance company. The period does not have to be, but can be, limited to the fiscal cycle under which the political subdivision is funded and operates.

(b)(1) Regardless of whether a political subdivision procures a policy or policies of liability insurance pursuant to subsection (a) of this section or otherwise:

(A) Any political subdivision may establish and maintain a self-insurance program relative to its potential liability and that of its employees for damages in civil actions for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees; or

(B) Any group of two or more political subdivisions may establish and maintain a self-insurance pool relative to their collective potential liability and that of their collective employees for damages in civil actions for injury, death or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees.

(2) Beginning July 1, 2010, any group of two or more political subdivisions may, upon approval of the Insurance Commissioner, establish and maintain a self-insurance pool to insure their workers' compensation risks: Provided, That political subdivisions may not make application to the Insurance Commissioner to operate a risk pool until rules promulgated pursuant to subsection (g) of this section regulating such programs have been made effective.

(3) If it so chooses, the political subdivision or group of political subdivisions may contract with any person, any licensed West Virginia insurance agent, other political subdivision, municipal association, county association or regional council of governments for purposes of the administration of the program or pool.

(c) Political subdivisions that have established self-insurance programs relative to their potential liability and that of their employees, as described in paragraph (A), subdivision (1), subsection (b) of this section, may mutually agree that their self-insurance programs may be jointly administered in a specified manner.

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(d) 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 it may have pursuant to this article or any defense of the political subdivision or its employees.

(e) The authorization for political subdivisions to secure insurance and to establish and maintain self-insurance programs and pools, as set out in subsections (a) and (b) in this section, are in addition to any other authority to secure insurance or to establish and maintain self-insurance that is granted pursuant to this code or the Constitution of this state, and they are not in derogation of any other authorization.

(f) An insurance agent licensed in West Virginia is authorized to establish or write policies for a self-insurance program or pool for political subdivisions, pursuant to the provisions of this section.

(g) The Insurance Commissioner shall propose rules for legislative approval, pursuant to the provisions of chapter twenty-nine-a of this code, setting forth the criteria for establishing and maintaining self-insurance programs and pools for political subdivisions, and may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code.

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§29-12A-17. Liability insurance rates; rate filings; cancellations; group insurance.

(a) Liability insurance coverage for political subdivisions in effect on the effective date of this article shall not be reduced without the written consent of the insured and the policy premiums for such coverage shall not be increased by more than ten percent per annum. Such coverage shall not be cancelled except for:

(1) Failure to make premium payments in accordance with the policy requirements;

(2) Fraud or substantial misrepresentation by the insured in the procurement of the policy; or

(3) Substantial increase in the risk of loss to which the insurer is exposed under the policy.

(b) Each casualty insurance rate filing relating to liability insurance for political subdivisions shall be accompanied by such information as the Insurance Commissioner requires to determine claims payouts, premium income, investment income, loss reserves, federal and state credits, administrative and operating expenses, profits, losses, and such other information deemed necessary by the commissioner to determine the profitability of such insurance business engaged in by the company. Based upon such information, the commissioner may approve or disapprove an increase in premiums charged to the political subdivisions for such coverage or may require that such premiums charged by decreased. The commissioner shall have authority to disapprove any casualty insurance rate filing which includes such coverage to political subdivisions for failure to provide the information prescribed herein.

(c) Any two or more political subdivisions shall have authority to form an organization or association for the purpose of purchasing casualty insurance on a group or pooling basis.

Any insurer licensed to transact casualty insurance in this state may issue group casualty insurance policies to any organization, association or pool which is organized and maintained under this section.

(d) The Insurance Commissioner shall promulgate legislative rules or regulations pursuant to chapter twenty-nine-a of this code setting forth guidelines relating to rate filings, rates and cancellations with respect to insurance companies transacting policies of casualty insurance with political subdivisions and relating to establishment of associations or pools for the purchase of group insurance and the setting of group rates.

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§29-12A-18. Applicability.

This article does not apply to, and shall not be construed to apply to, the following:

(a) Civil actions that seek to recover damages from a political subdivision or any of its employees for contractual liability;

(b) Civil actions by an employee, or the collective bargaining representative of an employee, against his or her political subdivision relative to any matter that arises out of the employment relationship between the employee and the political subdivision;

(c) Civil actions by an employee of a political subdivision against the political subdivision relative to wages, hours, conditions, or other terms of his or her employment;

(d) Civil actions by sureties, and the rights of sureties, under fidelity or surety bonds;

(e) Civil claims based upon alleged violations of the Constitution or statutes of the United States except that the provisions of section eleven of this article shall apply to such claims or related civil actions.

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