

LA R.S. 13:5106. Limitations on General Damages Against the State and its Political Subdivisions

§5106. Limitations

A. No suit against the state or a state agency or political subdivision shall be instituted in any court other than a Louisiana state court.

B.(1) The total liability of the state and political subdivisions for all damages for personal injury to any one person, including all claims and derivative claims, exclusive of property damages, medical care and related benefits and loss of earnings, and loss of future earnings, as provided in this Section, shall not exceed five hundred thousand dollars, regardless of the number of suits filed or claims made for the personal injury to that person.

(2) The total liability of the state and political subdivisions for all damages for wrongful death of any one person, including all claims and derivative claims, exclusive of property damages, medical care and related benefits and loss of earnings or loss of support, and loss of future support, as provided in this Section, shall not exceed five hundred thousand dollars, regardless of the number of suits filed or claims made for the wrongful death of that person.

(3)(a) In any suit for personal injury against a political subdivision wherein the court, pursuant to judgment, determines that the claimant is entitled to medical care and related benefits that may be incurred subsequent to judgment, the court shall order that a reversionary trust be established for the benefit of the claimant and that all medical care and related benefits incurred subsequent to judgment be paid pursuant to the reversionary trust instrument. The reversionary trust instrument shall provide that such medical care and related benefits be paid directly to the provider as they are incurred. Nothing in this Paragraph shall be construed to prevent the parties from entering into a settlement or compromise at any time whereby medical care and related benefits shall be provided, but with the requirement of establishing a reversionary trust.

(b) Any funds remaining in a reversionary trust that is created pursuant to Subparagraph (3)(a) of this Subsection shall revert to the political subdivision that established the trust, upon the death of the claimant or upon the termination of the trust as provided in the trust instrument. The trustee may obtain the services of an administrator to assist in the administration of the trust. All costs, fees, taxes, or other charges imposed on the funds in the trust shall be paid by the trust. The trust agreement may impose such other reasonable duties, powers, provisions, and dispute resolution clauses as may be deemed necessary or appropriate. Disputes as to the administration of the trust can be appealed to the district court. Nothing in this Paragraph shall preclude the political subdivision from establishing other alternative funding mechanisms for the exclusive benefit of the claimant. The terms and conditions of the reversionary trust instrument or other alternative funding mechanism, prior to its implementation, must be approved by the court. The parties to the case may present recommendations to the court for the terms and conditions of the trust instrument or other funding mechanism to be included in the order. Upon request of either party, the court shall hold a contradictory hearing before granting a final order implementing the reversionary trust or the alternative funding mechanism.

(c) In any suit for personal injury against the state or a state agency wherein the court pursuant to judgment determines that the claimant is entitled to medical care and related benefits that may be incurred subsequent to judgment, the court shall order that all medical care and related benefits incurred subsequent to judgment be paid from the Future Medical Care Fund as provided in R.S. 39:1533.2. Medical care and related benefits shall be paid directly to the provider as they are incurred. Nothing in this Subparagraph shall be construed to prevent the parties from entering into a settlement or compromise at any time whereby medical care and related benefits shall be provided but with the requirement that they shall be paid in accordance with this Subparagraph.

C. If the state or a state agency or political subdivision is held liable for damages for personal injury or wrongful death, the court shall determine:

(1) The amount of general damages exclusive of:

(a) Medical care.

(b) Related benefits.

(c) Loss of earnings and/or support.

(d) Loss of future earnings and/or support.

(2) The amount of medical care, related benefits and loss of earnings and/or support to date of judgment.

(3) Whether the claimant is in need of future medical care and related benefits and the amount thereof; and

(4) Whether there will be a loss of future earnings or support, and the amounts thereof.

D.(1) "Medical care and related benefits" for the purpose of this Section means all reasonable medical, surgical, hospitalization, physical rehabilitation, and custodial services, and includes drugs, prosthetic devices, and other similar materials reasonably necessary in the provision of such services.

(2) "Loss of earnings" and "loss of support" for the purpose of this Section means any form of economic loss already sustained by the claimant as a result of the injury or wrongful death which forms the basis of the claim. "Loss of future earnings" and "loss of future support" means any form of economic loss which the claimant will sustain after the trial as a result of the injury or death which forms the basis of the claim.

(3) "Reversionary trust" means a trust established by a political subdivision for the exclusive benefit of the claimant to pay the medical care and related benefits as they accrue, including without limitation reasonable and necessary amounts for all diagnosis, cure, mitigation, or treatment of any disease or condition from which the injured person suffers as a result of the injuries, and the sequelae thereof, sustained by the claimant on the date the injury was sustained. The trustee shall have the same fiduciary duties as imposed upon a trustee by the Louisiana Trust Code. Nothing herein shall limit the rights of claimants to contract with respect to attorney fees and costs.

(4) "Derivative claims" include but are not limited to claims for survival or loss of consortium.

E. The legislature finds and states:

(1) That judgments against public entities have exceeded ability to pay on current basis.

(2) That the public fisc is threatened by these judgments to the extent that the general health, safety, and welfare of the citizenry may be threatened.

(3) That the limitations set forth in this Section are needed to curb the trend of governmental liability abuses, to balance an individual's claim against the needs of the public interests and the common good of the whole society, and to avoid overburdening Louisiana's economy and its taxpaying citizens with even more new and/or increased taxes than are already needed for essential programs.

(4) That the purpose of this Section is not to reestablish any immunity based on the status of sovereignty but rather to clarify the substantive content and parameters of application of such legislatively created codal articles and laws and also to assist in the implementation of Article II of the constitution.

Acts 1975, No. 434, §1; Acts 1985, No. 452, §1; Acts 1995, No. 828, §2; Acts 1996, 1st Ex. Sess., No. 63, §1, eff. May 9, 1996; Acts 2000, 1st Ex. Sess., No. 20, §1, eff. July 1, 2000; Acts 2005, No. 1, §1, eff. May 27, 2005.

NOTE: See Acts 2005, No. 1, §§1 and 2.