

West's Tennessee Code Annotated
Title 9. Public Finances
Chapter 8. Board of Claims
Part 1. Establishment and Operation of Board

T. C. A. § 9-8-108

§ 9-8-108. Powers of board

Effective: July 1, 2013

[Currentness](#)

(a) 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\(a\)](#). The board of claims shall not have jurisdiction over any claim arising under [§ 9-8-307\(a\)](#), even though the claimant requests punitive damages and/or damages in excess of those set forth in [§ 9-8-307\(e\)](#). No award shall be made unless the board determines that the facts would entitle the claimant to a judgment in action at law. Where the board determines to hear a claim, it may refer the claim to a designee for a hearing and written recommendation to the board on whether or not to make an award. If the recommendation by the designee is against an award or less than the amount requested by the claimant, the claimant shall have the right to an appeal to the board. The board may, in its discretion, hold a hearing or decide the claim on the record. All decisions of the board shall be final;

(2) Is authorized to pay final judgments in civil lawsuits against state employees as provided in [§ 9-8-112](#);

(3) Shall review and make recommendations to the commissioner of finance and administration and the general assembly regarding the following:

(A) The required funding of the risk management fund;

(B) The required funding of the claims commission administrative costs; and

(C) Appropriate levels of self-insurance, purchased insurance or any combination thereof for the protection of the state and/or its employees and the required funding for such insurance policies. The recommendation made by the board of claims to the general assembly for excess coverage for the ensuing calendar year pursuant to [§ 9-8-307\(e\)](#) may include

self-insurance, purchased insurance or any combination of the two (2);

(4) Shall review and approve insurance policies designed to pay claims against the state or its employees arising from contract or tort. This responsibility includes the authority to coordinate the purchase of insurance between the various departments, agencies, and institutions, and all other entities created by the state other than counties and municipal corporations in order that adequate protection be given at the least possible cost;

(5) Has jurisdiction to hear disputes between the various departments and agencies of the state involving the assignment of losses to individual departments, as well as general responsibility to establish policies governing the administration of the state's contract and tort insurance program;

(6) Shall retain consultants as necessary to fully discharge the duties assigned to the board;

(7) Shall hear claims for compensation by persons wrongfully imprisoned and granted exoneration pursuant to § 40-27-109. Any award made by the board pursuant to this subdivision (a)(7) shall be subject to the following conditions:

(A) Compensation payable to such persons shall be determined by the board considering all factors the board considers relevant including, but not limited to, the person's physical and mental suffering and loss of earnings; provided, however, that the maximum aggregate total of such compensation shall not exceed one million dollars (\$1,000,000);

(B) Any amount awarded shall be payable in equal monthly installments until paid in full, unless the person dies prior to receipt of the full amount. The amount of the monthly installments payable under this subdivision (a)(7) shall be calculated by dividing the noncommuted amount, determined pursuant to subdivision (a)(7)(D), by the estimated number of months the claimant will live based upon the claimant's life expectancy at the time of the award as determined from the mortality tables last adopted by the board of trustees of the Tennessee consolidated retirement system pursuant to § 8-34-503, or based on such shorter period of time as the board, in its discretion, determines appropriate;

(C) If the person dies without leaving a surviving spouse or surviving minor children, the payments shall cease. Upon the death of the claimant, any monthly installments left remaining shall be paid to the claimant's surviving spouse and surviving minor children in equal portions. The amount payable to the surviving spouse, if any, shall be paid until the surviving spouse's death or remarriage. If the surviving spouse dies or remarries, then the amount that was payable to the surviving spouse shall be divided equally among the claimant's surviving minor children. Each child shall receive such child's share until reaching majority status or death, whichever occurs first, at which time the amount shall be redistributed equally among the remaining minor children. For purposes of this subdivision (a)(7)(C), "minor" means any person who has not attained eighteen (18) years of age;

(D) Upon motion of the claimant or in the discretion of the board, all or a portion of the compensation payable monthly

under this subdivision (a)(7) may be commuted to a lump sum payment. In determining whether to commute the compensation, the board shall consider whether there exist special needs warranting such commutation, whether the commutation will be in the best interest of the person and whether that person has the ability to wisely manage and control the commuted award irrespective of whether there exist special needs. The claimant has the burden of proving that a lump sum payment is warranted;

(E)(i) In the event compensation is awarded to a claimant pursuant to this subdivision (a)(7), the board, at the request of the claimant, may fund on behalf of such claimant an annuity contract to be secured by the claimant; provided, however, that:

(a) Such contract shall only be secured from an insurance company licensed under the laws of the state of Tennessee whose claims paying ability is rated as superior or excellent by at least two (2) nationally recognized rating services;

(b) The contract, by its terms, cannot be sold, transferred, assigned, discounted or used as security for a loan; and

(c) The contract provides for survivor benefits;

(ii) The cost of any such annuity contract shall be paid from the compensation awarded to the claimant under this subdivision (a)(7);

(F) Any claim for compensation under this subdivision (a)(7) must be filed with the board no later than one (1) year from the date that the claimant is granted exoneration pursuant to [§ 40-27-109](#);

(G) The state of Tennessee shall have a right of subrogation as provided by law for any amount awarded pursuant to this subdivision (a)(7) against any person who willfully and intentionally committed an act or engaged in conduct that directly resulted in or contributed to the wrongful conviction and imprisonment of the claimant; and

(H)(i) Any claimant awarded compensation pursuant to this subdivision (a)(7) that did not involve the funding of an annuity contract pursuant to subdivision (a)(7)(E) may, after three (3) years from the initial award and once every three-year period thereafter, file a petition with the board requesting the board to:

(a) Reconsider the period of time over which the monthly installments shall be paid;

(b) Commute to a lump sum payment all or a portion of the compensation left remaining to be paid monthly under subdivision (a)(7)(B); or

(c) Both subdivisions (a)(7)(H)(i)(a) and (b).

(ii) In determining whether to grant all or any portion of the claimant's request, the board shall consider whether there exists special needs warranting the request, whether the granting of the request will be in the best interest of the claimant and, if the request involves a commutation to a lump sum, whether the claimant has the ability to wisely manage and control the commuted amount irrespective of whether there exists special needs. The claimant has the burden of proving that the request is warranted;

(8) Shall certify the per occurrence limit to the claims commission;

(9) Has the authority to hear claims and make awards for property damage caused by an escapee from a state correctional facility; provided, that:

(A) The claimant has the burden of proving that the escapee caused the damage, that the proximate cause of the escape was the negligence of a state employee, that the incident giving rise to the loss occurred in the county in which the escape occurred or in a county contiguous to the county in which the escape occurred, that the damage occurred within seventy-two (72) hours of the escape and that the amount requested is not reimbursable from any other source;

(B) No award shall be paid if the state correctional facility from which the individual causing such damage escaped is classified as a community service center, a work release center or a nonsecured juvenile facility;

(C) No award shall be paid to any individual who aided in the escape of the inmate causing such damage;

(D) For purposes of this subdivision (a)(9), negligence shall exist when an employee of the department of correction is disciplined as a result of acts or omissions related to the occurrence of escape; and

(E) Claim awards are limited to five thousand dollars (\$5,000) per claimant.

(F) Deleted by [2013 Pub.Acts, c. 164, § 3, eff. July 1, 2013](#).

(10) Is authorized to establish incentive programs for state departments, agencies and institutions, including public institutions of higher education, for the purpose of reducing liabilities to the risk management fund created pursuant to [§ 9-8-109](#). Such incentive programs may include, but are not limited to, differential premium rates based on participation in loss control programs established by the board of claims, increased or decreased deductibles based on participation in loss control programs established by the board, and the imposition of fines and penalties. Any such premiums, deductibles, fines, or penalties shall be paid from the budget of the respective department, agency or institution and deposited into the risk management fund; and

(11) Is authorized to adopt and publish rules and regulations necessary for the proper performance of its duties.

(b) The board of claims may not consider a claim filed more than one (1) year after the occurrence of the incident giving rise to the claim.

(c) Prior to the acquisition of any commercial grade motor vehicle that is to be used primarily for transporting nonstudents by any state department, agency, or institution, including any public institution of higher education, such department, agency or institution shall procure bids for obtaining appropriate levels of insurance on such motor vehicle as shall be determined by the board of claims. This subsection (c) shall only apply to commercial grade motor vehicles that are intended to be used ten percent (10%) or more of the time for travel outside the state of Tennessee. The board of claims shall determine by policy the type motor vehicles that shall be considered commercial grade motor vehicles for purposes of this subsection (c). The department, agency or institution shall maintain such insurance coverage during the time the department, agency or institution owns the motor vehicle. The board of claims is authorized, at its discretion, to review and approve the insurance company from which the insurance shall be procured, the amount of the premiums and the period of the insurance policy. For purposes of this section, “acquisition” means by purchase, devise, gift or otherwise.

Credits

1984 Pub.Acts, c. 972, § 16; 1986 Pub.Acts, c. 626, § 6; 1986 Pub.Acts, c. 911, § 5; 1988 Pub.Acts, c. 467, § 1; 1988 Pub.Acts, c. 701, § 1; [2003 Pub.Acts, c. 212, § 4, eff. July 1, 2003](#); [2004 Pub.Acts, c. 880, § 1, eff. June 7, 2004](#); [2010 Pub.Acts, c. 946, § 1, eff. May 26, 2010](#); [2010 Pub.Acts, c. 993, § 1, eff. June 2, 2010](#); [2012 Pub.Acts, c. 1055, §§ 1, 2, eff. May 21, 2012](#); [2013 Pub.Acts, c. 164, § 3, eff. July 1, 2013](#).

[Notes of Decisions \(6\)](#)T. C. A. § 9-8-108, TN ST § 9-8-108
Current through end of the 2014 Second Reg. Sess.
