

# Governmental Immunity in Texas

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## “Heavy Presumption” of Immunity

- The State and political subdivisions are presumed to be generally immune from suit
  - Ensures government cannot be sued without permission
  - Balances private interests against protection of public funds
- Permission to sue comes from legislative act
  - Development of jurisprudence focuses more and more on statute
  - No waiver of immunity by conduct
    - Except in cases of government initiated suit or counterclaim

# “Heavy Presumption” of Immunity

- Burden is on plaintiff to prove waiver of immunity
  - An issue of subject matter jurisdiction
    - May be raised by any dispositive motion at any time
    - Denial subject to interlocutory appeal under CPRC 51.014(8)
      - Appeal stays all activity in the trial court
- may establish consent to bring suit against a governmental entity only by showing legislative permission to bring suit in “clear and unambiguous language.”

## Waiver of Immunity For Tort Claims Under Chapter 101, Tex. Civ. Prac. & Rem. Code

- Section 101.021 provides only statutory waiver for tort
  - (1) property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if:
    - (A) the property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment; and
    - (B) the employee would be personally liable to the claimant according to Texas law; and
  - (2) personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law.

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