



To: Laura Picariello, Texas Sea Grant; Alexis Sabine, Texas Sea Grant

From: Terra Bowling, Research Counsel II, National Sea Grant Law Center,  
University of Mississippi School of Law

Re: Liability for a Weighmaster Training Program (NSGLC-21-04-01)

Date: March 26, 2021

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### **Advisory Summary**

Texas Sea Grant (TSG) is considering establishing a weighmaster training program that would train and certify individuals who would then serve as weighmasters at fishing tournaments in Texas. TSG has asked what liability it would face if tournament participants file a lawsuit related to a weighmaster's decision during the course of the tournament. It is unlikely that TSG would be held vicariously liable for the weighmaster's decisions. Whether TSG is directly liable for negligent training depends on a fact-specific inquiry of whether TSG acted reasonably in providing training. In addition, TSG may have sovereign immunity from liability.

The information below is intended as advisory research only and does not constitute legal representation of the TSG or its constituents. It represents our interpretations of the relevant laws and regulations.<sup>1</sup>

### **Negligence**

If a fishing tournament participant had a monetary loss stemming from a weighmaster's decisions, any liability claim would be based in negligence. Common law defines negligence as "conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm."<sup>2</sup> To prove negligence, a plaintiff must prove three elements: 1) that the defendant owed a duty to the plaintiff; 2) the defendant breached that duty; and 3) the breach proximately caused injury to the plaintiff.

Under vicarious liability, a supervisory party, such as an employer, may be liable for the conduct of a subordinate, such as an employee. It is unlikely that TSG would be vicariously liable for the weighmaster's actions if TSG neither employs the

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<sup>1</sup> This product was prepared by the National Sea Grant Law Center under award

<sup>2</sup> Restat. 2d of Torts § 282.



weighmaster nor runs the tournament. Rather, the plaintiff (the tournament participant) would have to show that TSG was directly liable to the plaintiff—i.e., TSG owed a duty, breached that duty, and proximately caused the damage. This would be a fact-specific inquiry by the court.

The first question would be whether TSG had a duty to appropriately train the weighmasters. A duty is a legal obligation for a person to conform to a certain standard of conduct. In general, people have a duty to exercise reasonable care to avoid foreseeable harm to others. If TSG assumes the duty of training weighmasters, it is likely that the court would use this reasonable care standard.

Generally, a reasonable care standard looks at what a reasonable person would do in a similar situation. Reasonable care would likely require TSG to provide training developed using standard techniques and best available resources. If the programs use reasonable care in providing training to weighmasters, a court would likely find the programs have met their duty and a negligence claim would fail.

In addition, sovereign immunity may provide TSG protection from lawsuits. The State of Texas is immune from suit unless it has consented to be sued. The state has waived immunity under the state Tort Claims Act for specific instances.<sup>3</sup> In Texas, sovereign immunity also applies to its subdivisions, including universities.<sup>4</sup>

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<sup>3</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 101.021. For example, the state may be liable when damage results from an employee negligently acting within his scope of employment results in property damage, personal injury, or death from the operation or use of a motor vehicle.

<sup>4</sup> *City of Westworth Vill. v. City of White Settlement*, 558 S.W.3d 232, 240 (Tex. App. 2018).