

KANSAS

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STATE/LOCAL

Sovereign Immunity

Kansas Stat. Ann. § 75-6101 (1999) Citation of act; claims to which act applicable; act applicable to municipalities.

(a) K.S.A. 75-6101 to 75-6115, inclusive, shall be known and may be cited as the Kansas tort claims act.

(b) The Kansas tort claims act shall be applicable to claims arising from acts or omissions occurring on and after the effective date of this act.

(c) Municipalities may not exempt themselves from the provisions of the Kansas tort claims act by charter ordinance, charter resolution or other action.

K.S.A. § 75-6102a (2001). Definitions

As used in K.S.A. 75-6101 through 75-6118, and amendments thereto, unless the context clearly requires otherwise:

(a) "State" means the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof.

(b) "Municipality" means any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof.

(c) "Governmental entity" means state or municipality.

(d) "Employee" means any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation and a charitable health care provider. Employee includes any steward or racing judge appointed pursuant to K.S.A. 74-8818, and amendments thereto, regardless of whether the services of such steward or racing judge are rendered pursuant to contract as an independent contractor, but does not otherwise include any independent contractor under contract with a governmental entity except (1) employees of the United States marshal's service engaged in the transportation of inmates on behalf of the secretary of corrections, (2) a person who is an employee of a nonprofit independent contractor, other than a municipality, under contract to provide educational or vocational training to inmates in the custody of the secretary of corrections and who is engaged in providing such service in an institution under the control of the secretary of corrections provided that such employee does not otherwise have coverage for such acts and omissions within the scope of their employment through a liability insurance contract of such independent contractor; and (3) a person who is an employee of a nonprofit program, other than a municipality, who has contracted with the commissioner of juvenile justice or with another nonprofit program that has contracted with the commissioner of juvenile justice to provide a juvenile justice program for juvenile offenders in a judicial district provided that such employee does not otherwise have coverage for such acts and omissions within the scope of their employment through a liability insurance contract of such nonprofit program. "Employee" also includes an employee of an indigent health care clinic. "Employee" also includes former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity.

(e) "Community service work" means public or community service performed by a person (1) as a result of a contract of diversion entered into by such person as authorized by law, (2) pursuant to the assignment of such person by a court to a community corrections program, (3) as a result of suspension of sentence or as a condition of probation pursuant to court order, (4) in lieu of a fine imposed by court order or (5) as a condition of placement ordered by a court pursuant to K.S.A. 38-1663, and amendments thereto.

(f) "Charitable health care provider" means a person licensed by the state board of healing arts as an exempt licensee or a federally active licensee, a person issued a limited permit by the state board of healing arts, a physician assistant licensed by the state board of healing arts or a health care provider as the term "health care provider" is defined under K.S.A. 65-4921, and amendments thereto, who has entered into an agreement with:

(1) The secretary of health and environment under K.S.A. 75-6120, and amendments thereto, who,

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pursuant to such agreement, gratuitously renders professional services to a person who has provided information which would reasonably lead the health care provider to make the good faith assumption that such person meets the definition of medically indigent person as defined by this section or to a person receiving medical assistance from the programs operated by the department of social and rehabilitation services, and who is considered an employee of the state of Kansas under K.S.A. 75-6120, and amendments thereto;

(2) the secretary of health and environment and who, pursuant to such agreement, gratuitously renders professional services in conducting children's immunization programs administered by the secretary; or

(3) a local health department or indigent health care clinic, which renders professional services to medically indigent persons or persons receiving medical assistance from the programs operated by the department of social and rehabilitation services gratuitously or for a fee paid by the local health department or indigent health care clinic to such provider and who is considered an employee of the state of Kansas under K.S.A. 75-6120 and amendments thereto. Professional services rendered by a provider under this paragraph (3) shall be considered gratuitous notwithstanding fees based on income eligibility guidelines charged by a local health department or indigent health care clinic and notwithstanding any fee paid by the local health department or indigent health care clinic to a provider in accordance with this paragraph (3).

(g) "Medically indigent person" means a person who lacks resources to pay for medically necessary health care services and who meets the eligibility criteria for qualification as a medically indigent person established by the secretary of health and environment under K.S.A. 75-6120, and amendments thereto.

(h) "Indigent health care clinic" means an outpatient medical care clinic operated on a not-for-profit basis which has a contractual agreement in effect with the secretary of health and environment to provide health care services to medically indigent persons.

(i) "Local health department" shall have the meaning ascribed to such term under K.S.A. 65-241 and amendments thereto.

Kan.. Stat. Ann. Section 75-6103 (2001). Liability of governmental entities for damages caused by employee acts or omissions, when; applicable procedure.

(a) Subject to the limitations of this act, each governmental entity shall be liable for damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment under circumstances where the governmental entity, if a private person, would be liable under the laws of this state.

(b) (1) Except as otherwise provided in this act, either the code of civil procedure or, subject to provision (2) of this subsection, the code of civil procedure for limited actions shall be applicable to actions within the scope of this act. Actions for claims within the scope of the Kansas tort claims act brought under the code of civil procedure for limited actions are subject to the limitations provided in K.S.A. 2000 Supp. 61-2802, and amendments thereto.

(2) Actions within the scope of the Kansas tort claims act may not be brought under the small claims procedure act.

Kan.. Stat. Ann. Section 75-6104 (2000). Liability of governmental entities for damages caused by employee acts or omissions, when; exceptions from liability.

A governmental entity or an employee acting within the scope of the employee's employment shall not be liable for damages resulting from:

(a) Legislative functions, including, but not limited to, the adoption or failure to adopt any statute, regulation, ordinance or resolution;

(b) judicial function;

(c) enforcement of or failure to enforce a law, whether valid or invalid, including, but not limited to, any statute, rule and regulation, ordinance or resolution;

(d) adoption or enforcement of, or failure to adopt or enforce, any written personnel policy which protects persons' health or safety unless a duty of care, independent of such policy, is owed to the specific individual injured, except that the finder of fact may consider the failure to comply with any written personnel policy in determining the question of negligence;

(e) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee, whether or not the

- discretion is abused and regardless of the level of discretion involved;
- (f) the assessment or collection of taxes or special assessments;
 - (g) any claim by an employee of a governmental entity arising from the tortious conduct of another employee of the same governmental entity, if such claim is (1) compensable pursuant to the Kansas workers compensation act or (2) not compensable pursuant to the Kansas workers compensation act because the injured employee was a firemen's relief association member who was exempt from such act pursuant to K.S.A. 44-505d, and amendments thereto, at the time the claim arose;
 - (h) the malfunction, destruction or unauthorized removal of any traffic or road sign, signal or warning device unless it is not corrected by the governmental entity responsible within a reasonable time after actual or constructive notice of such malfunction, destruction or removal. Nothing herein shall give rise to liability arising from the act or omission of any governmental entity in placing or removing any of the above signs, signals or warning devices when such placement or removal is the result of a discretionary act of the governmental entity;
 - (i) any claim which is limited or barred by any other law or which is for injuries or property damage against an officer, employee or agent where the individual is immune from suit or damages;
 - (j) any claim based upon emergency management activities, except that governmental entities shall be liable for claims to the extent provided in article 9 of chapter 48 of the Kansas Statutes Annotated;
 - (k) the failure to make an inspection, or making an inadequate or negligent inspection, of any property other than the property of the governmental entity, to determine whether the property complies with or violates any law or rule and regulation or contains a hazard to public health or safety;
 - (l) snow or ice conditions or other 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 the governmental entity;
 - (m) the plan or design for the construction of or an improvement to public property, either in its original construction or any improvement thereto, if the plan or design is approved in advance of the construction or improvement by the governing body of the governmental entity or some other body or employee exercising discretionary authority to give such approval and if the plan or design was prepared in conformity with the generally recognized and prevailing standards in existence at the time such plan or design was prepared;
 - (n) failure to provide, or the method of providing, police or fire protection;
 - (o) any claim for injuries resulting from the use of any public property intended or permitted to be used as a park, playground or open area for recreational purposes, unless the governmental entity or an employee thereof is guilty of gross and wanton negligence proximately causing such injury;
 - (p) the natural condition of any unimproved public property of the governmental entity;
 - (q) any claim for injuries resulting from the use or maintenance of a public cemetery owned and operated by a municipality or an abandoned cemetery, title to which has vested in a governmental entity pursuant to K.S.A. 17-1366 through 17-1368, and amendments thereto, unless the governmental entity or an employee thereof is guilty of gross and wanton negligence proximately causing the injury;
 - (r) the existence, in any condition, of a minimum maintenance road, after being properly so declared and signed as provided in K.S.A. 68-5,102, and amendments thereto;
 - (s) any claim for damages arising from the performance of community service work other than damages arising from the operation of a motor vehicle as defined by K.S.A. 40-3103, and amendments thereto;
 - (t) any claim for damages arising from the operation of vending machines authorized pursuant to K.S.A. 68-432 or K.S.A. 75-3343a, and amendments thereto;
 - (u) providing, distributing or selling information from geographic information systems which includes an entire formula, pattern, compilation, program, device, method, technique, process, digital database or system which electronically records, stores, reproduces and manipulates by computer geographic and factual information which has been developed internally or provided from other sources and compiled for use by a public agency, either alone or in cooperation with other public or private entities;
 - (v) any claim arising from providing a juvenile justice program to juvenile offenders, if such juvenile justice program has contracted with the commissioner of juvenile justice or with another nonprofit program that has contracted with the commissioner of juvenile justice; or
 - (w) performance of, or failure to perform, any activity pursuant to K.S.A. 2000 Supp. 74-8922, and amendments thereto, including, but not limited to, issuance and enforcement of a consent decree agreement, oversight of contaminant remediation and taking title to any or all of the federal enclave

described in such statute.

The enumeration of exceptions to liability in this section shall not be construed to be exclusive nor as legislative intent to waive immunity from liability in the performance or failure to perform any other act or function of a discretionary nature.

Bradley v. Board of Butler County Comm'rs, 853 F.Supp 1360 (1995). Whether cities and counties are immune from liability for failure to warn citizens of approaching severe weather examined.

Kan.. Stat. Ann. Section 75-6110 (1990). Costs of Defense

Liability of governmental entities for damages caused by employees acts or omissions; costs for defense of municipalities or its employees; special liability expense fund, establishment and maintenance; tax levy.

(a) Payments by municipalities for the cost of providing for its defense and the defense of employees pursuant to this act and for the payment of claims and other direct and indirect costs resulting from the implementation of this act may be paid from the general or other existing fund of such municipality or from a special liability expense fund established for such purpose pursuant to subsection (b).

(b) Whenever the governing body of any municipality shall determine that it is advisable to establish a special fund for the payment of such costs and to establish a reserve therefor, in lieu of paying the same out of the general or other existing fund of the municipality, such governing body may create and establish a special liability expense fund for the payment of such costs and may place therein any moneys received by the municipality from any source whatsoever which may be lawfully utilized for such purpose including the proceeds of tax levies hereinafter authorized and provided. Such fund shall not be subject to the provisions of K.S.A. 79-2925 to 79-2937, inclusive, and any acts amendatory thereof or supplemental thereto, except that in making the budget of such municipality, the amounts credited to and the amount on hand in such special fund, and the amount expended therefrom, shall be included in the annual budget for the information of the residents of such municipality.

(c) Whenever the governing body of any municipality which is authorized by law to levy taxes upon property has established a special liability expense fund under the provisions of this section and shall determine that moneys from other sources will be insufficient to pay such costs, the governing body is hereby authorized to levy an annual tax upon all taxable tangible property within the municipality in an amount determined by the governing body to be necessary for such purpose and in the case of cities, counties and school districts, to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located in such county or such school district.

Kan.. Stat. Ann. Section 60-606. Location of claim actions

Provides that personal injury actions against utilities, common carriers or transportation systems must be brought:

1. in the county in which the injury occurred
2. in the county in which the plaintiff resided at the time of the injury.

Kan. Stat. Ann. Section 75-6115 (1993). Claims for damages against health care providers.

(a) The Kansas tort claims act shall not be applicable to claims arising from the rendering of or failure to render professional services by a health care provider other than:

- (1) A charitable health care provider;
- (2) a hospital owned by a municipality and the employees thereof;
- (3) a local health department and the employees thereof;
- (4) an indigent health care clinic and the employees thereof; or
- (5) a district coroner or deputy district coroner appointed pursuant to K.S.A. 22a-226 and amendments thereto.

(b) Claims for damages against a health care provider that is a governmental entity or an employee of a governmental entity other than those health care providers enumerated in subsection (a), arising out of the rendering of or failure to render professional services by such health care provider, may be recovered in the same manner as claims for damages against any other health care provider.

(c) As used in this section:

- (1) "Indigent health care clinic" shall have the meaning ascribed to such term under K.S.A. 75-6102, and amendments thereto.
- (2) "Charitable health care provider" shall have the meaning ascribed to such term under K.S.A. 75-6102, and amendments thereto.
- (3) "Health care provider" shall have the meaning ascribed to such term under K.S.A. 40-3401, and amendments thereto.
- (4) "Hospital" means a medical care facility as defined in K.S.A. 65-425, and amendments thereto, and includes within its meaning any clinic, school of nursing, long-term care facility, child-care facility and emergency medical or ambulance service operated in connection with the operation of the medical care facility.
- (5) "Local health department" shall have the meaning ascribed to such term under K.S.A. 65-241 and amendments thereto.

Kansas Stat. Ann. Section 75-6119. Exception from liability for members of governing body, appointive board, commission, committee or council of a municipality.

- (a) A member of a governing body of a municipality who is acting within the scope of such member's office and without actual fraud or actual malice shall not be liable for damages caused by the negligent or wrongful act or omission of such member or governing body.
- (b) A member of any appointive board, commission, committee or council of a municipality who is acting within the scope of such member's office and without actual fraud or actual malice shall not be liable for damages caused by the negligent or wrongful act or omission of such member or board, commission, committee or council.
- (c) Nothing in this section shall be construed to affect the liability of a municipality for damages caused by the negligent or wrongful act or omission of the governing body, or any appointive board, commission, committee or council, of the municipality, or any member thereof, and the negligence or wrongful act or omission of any member of such a governing body, board, commission, committee or council, when acting as such, shall be imputed to the municipality for the purpose of apportioning liability for damages to a third party pursuant to K.S.A. 60-258a and amendments thereto.
- (d) This section shall be part of and supplemental to the Kansas tort claims act.

Kan.. Stat. Ann. Section 75-6120 (1991). Medical services to indigent persons

A charitable health care provider for purposes of any claim for damages arising as a result of rendering professional services to a medically indigent person, which professional services were rendered gratuitously at a time when an agreement entered into by the charitable health care provider with the secretary of health and environment under this section was in effect, shall be considered an employee of the state under the tort claims act.

(c) Any claim arising from the rendering of or failure to render professional services by a charitable health care provider brought pursuant to the Kansas tort claims act shall not be considered by an insurance company in determining the rate charged for any professional liability insurance policy for health care providers or whether to cancel any such policy.

Insurance

Kan.. Stat. Ann. Section 75-6111 (1987). Same; purchase of insurance; interlocal agreements for purchase of insurance or pooling arrangements.

(a) A governmental entity may obtain insurance to provide for (1) its defense, (2) for its liability for claims pursuant to this act, including liability for civil rights actions as provided in K.S.A. 75-6116 and amendments thereto, (3) the defense of its employees, and (4) for medical payment insurance when purchased in conjunction with insurance authorized by (1), (2) or (3) above. Any insurance purchased under the provisions of this section may be purchased from any insurance company or association. In the case of municipalities any such insurance may be obtained by competitive bids or by negotiation. In the case of the state, any such insurance shall be purchased in the manner and subject to the limitations prescribed by K.S.A. 75-4114, and amendments thereto, except as provided in K.S.A. 76-749, and

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amendments thereto. With regard to claims pursuant to the Kansas tort claims act, insurers of governmental entities may avail themselves of any defense that would be available to a governmental entity defending itself in an action within the scope of this act, except that the limitation on liability provided by subsection (a) of K.S.A. 75-6105 and amendments thereto shall not be applicable where the contract of insurance provides for coverage in excess of such limitation in which case the limitation on liability shall be fixed at the amount for which insurance coverage has been purchased or, where the governmental entity has entered into a pooling arrangement or agreement pursuant to subsection (b)(2) and has provided for coverage in excess of such limitation by ordinance or resolution of its governing body, in which case the limitation on liability shall be fixed at the amount specified in such ordinance or resolution.

(b) Pursuant to the interlocal cooperation act, municipalities may enter into interlocal agreements providing for:

- (1) The purchase of insurance to provide for the defense of employees and for liability for claims pursuant to this act; or
- (2) pooling arrangements or other agreements to share and pay expenditures for judgments, settlements, defense costs and other direct or indirect expenses incurred as a result of implementation of this act including, but not limited to, the establishment of special funds to pay such expenses.

Kan.. Stat. Ann. Section 75-6112 (1979). Same; judgments against municipalities, payment; periodic payments, conditions; interest; structured annuities.

(a) Upon motion of a municipality against whom final judgment has been rendered for a claim within the scope of this act, the court in accordance with subsection (b) may include in such judgment a requirement that the judgment be paid in whole or in part by periodic payments. Periodic payments may be ordered paid over any period of time not exceeding 10 years. Any periodic payment upon becoming due and payable under the terms of the judgment shall constitute a separate judgment. Any judgment ordering any such payments shall specify the total amount awarded, the amount of each payment, the interval between payments and the number of payments to be paid under the judgment. Judgments paid pursuant to this section shall bear interest as provided in K.S.A. 16-204 and amendments thereto. For good cause shown, the court may modify such judgment with respect to the amount of such payments and the number of payments to be made or the interval between payments, but the total amount of damages awarded by such judgment shall not be subject to modification in any event and periodic payments shall not be ordered paid over a period in excess of 10 years. Nothing herein shall be construed to prohibit the use of structured annuities to satisfy judgments.

(b) A court may order periodic payments only if the court finds that:

- (1) Payment of the judgment is not totally covered by insurance coverage obtained therefor; and
- (2) funds for the current budget year and other funds of the municipality which lawfully may be utilized to pay judgments are insufficient to finance both the adopted budget of expenditures for the year and the payment of that portion of the judgment not covered by insurance obtained therefor.

Kan.. Stat. Ann. Section 75-6113 (1990). Moneys for payment of judgments or settlements against municipalities, sources.

Payment of any judgments, compromises or settlements for which a municipality is liable pursuant to K.S.A. 75-6101 et seq., and amendments thereto, may be made from any funds or moneys of the municipality which lawfully may be utilized for such purpose or if the municipality is authorized by law to levy taxes upon property such payment may be made from moneys received from the issuance of no-fund warrants, temporary notes or general obligation bonds. Warrants or temporary notes issued under the authority of this section may mature serially at such yearly dates as to be payable by not more than 10 tax levies. Bonds issued under the authority of this section shall be issued in accordance with the provisions of the general bond law and shall be in addition to and not subject to any bonded debt limitation prescribed by any other law of this state.

Kan.. Stat. Ann. Section 75-6117 (1995). Tort claims fund

There is hereby established in the state treasury the tort claims fund which shall be administered by the attorney general. All expenditures from such fund shall be made upon warrants of the director of

accounts and reports pursuant to vouchers approved by the attorney general or by a designee of the attorney general.

(b). Money in the tort claims fund shall be used only for the purpose of paying compromises, settlements and final judgments arising from claims against the state or an employee of the state under the tort claims act. or under the civil rights laws of the United States.

(2) costs of defending the state or an employees of the state.

Damages

Kan.. Stat. Ann. Section 75-6105. Maximum liability for claims

Same; maximum liability for claims; apportionment of multiple claims; no liability for punitive or exemplary damages or interest.

(a) Subject to the provisions of K.S.A. 75-6111 and amendments thereto, the liability for claims within the scope of this act shall not exceed \$ 500,000 for any number of claims arising out of a single occurrence or accident.

(b) When the amount awarded to or settled upon multiple claimants exceeds the limitations of this section, any party may apply to the district court which has jurisdiction of the cause to apportion to each claimant the proper share of the total amount limited herein. The share apportioned to each claimant shall be in the proportion that the ratio of the award or settlement made to the claimant bears to the aggregate awards and settlements for all claims arising out of the occurrence or accident.

(c) A governmental entity shall not be liable for punitive or exemplary damages or for interest prior to judgment. An employee acting within the scope of the employee's employment shall not be liable for punitive or exemplary damages or for interest prior to judgment, except for any act or omission of the employee because of actual fraud or actual malice.

Kan.. Stat. Ann. Section 12-2616 to 29. Enacts the Kansas Municipal Group-Funded Pool Act

Allows five or more municipalities to enter into insurance pooling arrangements subject to approval and regulatory oversight by the insurance commissioner. The annual gross premium of the pools is required to be at least \$250,000 for some categories of insurance, and at least 70 percent of annual premiums must be maintained in claims funds accounts. The commissioner is required to make recommendations to assist in the efficient, effective and fiscally sound operation of the pools.

Kan.. Stat. Ann. Section 12-2905. Same; filing; status; damage or liability actions.

Prior to its entry into force, an agreement made pursuant to this act shall be filed with the register of deeds of the county where such political subdivision or agency of the state government is located and with the secretary of state. In the event that an agreement entered into pursuant to this act is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States, said agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public or private agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

Kan.. Stat. Ann. Section 60-249 (1963). Itemized verdicts for personal injury

Provides for itemized verdicts in all actions for damages for personal injury except medical malpractice. Would require such verdicts to distinguish between non-economic and economic losses as well as between present and future damages. Limits non-economic damages in any wrongful death action to \$100,000 and further provides that the jury may be informed of this limit.

Kan.. Stat. Ann. Section 60-258a (1987). Comparative Negligence.

Abolishes the doctrine of joint and several liability except where the parties acted in concert in the commission of an intentional tort, aggravated misconduct, wanton or reckless misconduct or delegation of

a non-delegable duty.

Kan.. Stat. Ann. Section 60-3701 (1988). Punitive and Exemplary Damages.

Requires a separate hearing by the trier of fact to determine the amount of any punitive damages to be awarded in any civil action except medical malpractice actions. Lists the criteria to be used in determining the punitive damages. Requires an initial determination that the plaintiff has proved by clear and convincing evidence that the defendant acted toward the plaintiff with willful and wanton conduct, fraud or malice. Prohibits the assessment of punitive damages against a principal or employer for acts of the agent or employee absent authorization or ratification; an association, partnership or corporation for the acts of a member, partner or shareholder absent authorization or ratification.

Kan.. Stat. Ann. Section 60-19a.01 (1987). Personal Injury Action Defined – Limitation Established
Establishes a \$250,000 cap on pain and suffering awards in all personal injury actions, except medical malpractice actions. The court may not instruct the jury on this limitation, but the bill does not specifically mandate declaration of mistrial if the jury members learn of the cap.

Kan.. Stat. Ann. Section 75-6106. Same; settlement of claims, procedure; effect of settlement.

(a) Subject to the terms of an insurance contract, if any, a claim against the state or employee thereof acting within the scope of the employee's office or employment may be compromised or settled for and on behalf of the state and any such employee by the attorney general, with the approval of the state finance council. The approval of settlements and compromises by the state finance council is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, except that such approval also may be given when the legislature is in session.
(b) Subject to the terms of the insurance contract, if any, claims against a municipality or employee thereof acting within the scope of the employee's office or employment may be compromised or settled by the governing body of the municipality, or in such manner as such governing body may designate.
(c) The acceptance by a claimant of any such compromise or settlement hereunder shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the governmental entity involved and against the employee whose act or omission gave rise to the claim, by reason of the same subject matter.

Indemnification

Kan.. Stat. Ann. Section 75-6108. Defense of entity or employee

Same; defense of governmental entity or employee, when; provision of legal counsel to employee summoned to appear before grand jury or inquisition, when; refusal by governmental entity to provide defense, when; recovery of defense or legal counsel costs, when; requests to provide defense, procedure; reimbursement of defense costs, when.

(a) Upon request of an employee in accordance with subsection (e), a governmental entity shall: (1) Provide for the defense of any civil action or proceeding against such employee, in such employee's official or individual capacity or both, on account of an act or omission in the scope of such employee's employment as an employee of the governmental entity, except as provided in subsection (c); and (2) provide legal counsel to such employee when such employee is summoned to appear before any grand jury or inquisition on account of an act or omission in the scope of such employee's employment as an employee of the governmental entity, except as provided in subsection (c).

(b) A governmental entity may provide for a defense or representation by its own attorney or by employing other counsel for this purpose or by purchasing insurance which requires that the insurer provide the defense. A governmental entity has no right to recover such expenses from the employee defended or represented, except as provided in K.S.A. 75-6109 and amendments thereto.

(c) Except as provided in K.S.A. 75-4360 and amendments thereto, a governmental entity may refuse to provide for the defense of an action against an employee or representation of the employee if the governmental entity determines that:

- (1) The act or omission was not within the scope of such employee's employment;
- (2) such employee acted or failed to act because of actual fraud or actual malice;

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- (3) the defense of the action or proceeding by the governmental entity would create a conflict of interest between the governmental entity and the employee; or
- (4) the request was not made in accordance with subsection (e).
- (d) If after a timely request in accordance with subsection (e), a governmental entity fails or refuses to provide an employee with a defense and the employee retains the employee's own counsel to defend the action or proceeding, or provide representation, such employee is entitled to recover from the governmental entity such reasonable attorney fees, costs and expenses as are necessarily incurred in defending the action or proceeding or providing representation if the action or proceeding or representation arose out of an act or omission in the scope of employment as an employee of the governmental entity and the trier of fact does not find that such employee acted or failed to act because of actual fraud or actual malice. Nothing in this section shall be construed to deprive an employee of the right to petition a court of competent jurisdiction to compel the governmental entity or the governing body or an employee thereof to perform the duties imposed by this section. Except as provided in subsection (a)(2), nothing in this section shall be construed to require a governmental entity to provide the defense or representation to any employee in a criminal or civil service proceeding.
- (e) An employee's request for a governmental entity to provide for the defense of the employee or representation shall be made in writing within 15 days after service of process or subpoena upon the employee in the action. In actions involving employees of the state, such request shall be filed in the office of the attorney general. In actions involving employees of a municipality, such request shall be filed with the governing body thereof or as otherwise provided by such governing body. A governmental entity, in its discretion, may provide requested defense or representation for any of its employees who failed to make a request within the time prescribed by this subsection.
- (f) Notwithstanding any other provision of law to the contrary, a governmental entity may reimburse an employee such reasonable attorney fees, costs and expenses as are necessarily incurred in defending a claim against the employee for punitive or exemplary damages if the governmental entity finds that:
- (1) The action or proceeding arose out of an act or omission in the scope of the employee's employment; and
- (2) the employee reasonably cooperated in good faith in the defense of the claim.

Kan.. Stat. Ann. Section 75-6109 (1979). Employee indemnification

Same; indemnification of employee acting within scope of employment; no punitive or exemplary damages; recovery or defense costs by governmental entity.

Except as otherwise provided in the Kansas tort claims act, a governmental entity is liable, and shall indemnify its employees against damages, for injury or damage proximately caused by an act or omission of an employee while acting within the scope of his or her employment. A governmental entity shall not be liable under the provisions of this act for any punitive or exemplary damages against an employee, nor for payment of any costs, judgments or settlements which are paid through an applicable contract or policy of insurance. The governmental entity shall have the right to recover any payments made by it for any judgment, or portion thereof, and costs or fees incurred by or on behalf of an employee's defense if the employee fails to cooperate in good faith in the defense of the claim or action or if the trier of fact finds that the act or omission of the employee was because of such employee's actual fraud or actual malice.

Kan.. Stat. Ann. Section 75-6116 (1989). Defense and payment of costs for employees

Defense and payment of liability and defense costs of employee in civil cases; payment of punitive or exemplary damages or reimbursement of related defense costs; compromise or settlement of claim; not a waiver of immunity; certain health care providers considered employees.

(a) If an employee of a governmental entity is or could be subject to personal civil liability on account of a noncriminal act or omission which is within the scope of the employee's employment and which allegedly violates the civil rights laws of the United States or of the state of Kansas, the governmental entity:

- (1) Shall provide for the defense of any civil action or proceeding which arises out of the act or omission and which is brought against the employee in the employee's official or individual capacity, or both, to the extent and under the conditions and limitations provided by K.S.A. 75-6108 and amendments thereto for the defense of actions and proceedings under the Kansas tort claims act; and
- (2) may reimburse the employee attorney fees, costs and expenses incurred in defending a claim for

punitive or exemplary damages in such action or proceeding to the extent and under the conditions and limitations provided by K.S.A. 75-6108 and amendments thereto for reimbursement of such fees, costs and expenses incurred in defending a claim for punitive or exemplary damages under the Kansas tort claims act.

(b) The governmental entity, subject to any procedural requirements imposed by statute, ordinance, resolution or written policy, shall pay or cause to be paid any judgment or settlement of the claim or suit, including any award of attorney fees, and all costs and fees incurred by the employee in defense thereof if:

(1) The governmental entity finds that the employee reasonably cooperated in good faith in the defense of the action or proceeding;

(2) the trier of fact finds that the action or proceeding arose out of an act or omission in the scope of the employee's employment; and

(3) the trier of fact does not find that the employee acted or failed to act because of actual fraud or actual malice.

(c) Notwithstanding any other provision of law to the contrary, a governmental entity may pay any part of a judgment taken against an employee of the governmental entity that is for punitive or exemplary damages for the violation of the civil rights laws of the United States if the governmental entity finds that:

(1) The action or proceeding arose out of an act or omission in the scope of the employee's employment;

(2) the employee reasonably cooperated in good faith in the defense of the claim; and

(3) the employee's act or omission was not the result of actual fraud or actual malice.

(d) The possibility that a governmental entity may pay that part of a judgment that is for punitive or exemplary damages or attorney fees or other costs related thereto shall not be disclosed in any trial in which it is alleged that an employee of that entity is liable for punitive or exemplary damages, and such disclosure shall be grounds for mistrial.

(e) A municipality may pay for the cost of providing defense, judgments and other costs involving actions for alleged civil rights violations in the same manner as that provided in the Kansas tort claims act.

(f) In actions described in subsection (a), a claim against the state or an employee of the state may be compromised or settled for and on behalf of the state or employee under the conditions and procedures provided by K.S.A. 75-6106 and amendments thereto for settlements of actions pursuant to the Kansas tort claims act.

(g) Nothing in this section or in the Kansas tort claims act shall be construed as a waiver by the state of Kansas of immunity from suit under the 11th amendment to the constitution of the United States.

(h) For the purposes of this section only, a health care provider, as defined by K.S.A. 75-6115 and amendments thereto, who provides professional services at a state correctional institution shall be considered an employee for the purposes of this section, even if such services were rendered pursuant to contract as an independent contractor.

Procedures

Kan.. Stat. Ann. Section 60-513 (1987). The statute of limitations is two years.

K.S.A. § 75-6106. Same; settlement of claims, procedure; effect of settlement.

(a) Subject to the terms of an insurance contract, if any, a claim against the state or employee thereof acting within the scope of the employee's office or employment may be compromised or settled for and on behalf of the state and any such employee by the attorney general, with the approval of the state finance council. The approval of settlements and compromises by the state finance council is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, except that such approval also may be given when the legislature is in session.

(b) Subject to the terms of the insurance contract, if any, claims against a municipality or employee thereof acting within the scope of the employee's office or employment may be compromised or settled by the governing body of the municipality, or in such manner as such governing body may designate.

(c) The acceptance by a claimant of any such compromise or settlement hereunder shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the governmental

entity involved and against the employee whose act or omission gave rise to the claim, by reason of the same subject matter.