



Department of Health
and Environment

Community Health Systems

CHARITABLE HEALTH CARE PROVIDER PROGRAM

Information on the Charitable Health Care Provider Program may be found at <http://www.kdheks.gov/olrh/CHP.htm>.
Questions regarding the Program should be directed to primarycare@kdheks.gov.

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GENERAL PURPOSE

In 1991, Kansas enacted legislation allowing indigent health care clinics and charitable health care providers to receive coverage under the [Kansas Tort Claims Act](#) for liability purposes, with the intent to increase the provision of health care to the medically indigent. The Kansas Department of Health and Environment (KDHE) is responsible for the data collection and tracking of these Charitable Health Care Providers and Indigent Health Care Clinics.

Clinics or health care professionals providing care to the medically indigent may enter into an agreement with KDHE in order to be deemed a Point of Entry or Charitable Health Care Provider and be indemnified for liability purposes under the Kansas Tort Claims Act.

Medically Indigent

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 Kansas Department of Health and Environment (KDHE). An individual is medically indigent if they are either:

- a member of a family unit at or below 200 percent of the current federal poverty level and not indemnified against medical or dental costs by accident and sickness insurance, an employee health benefits plan, or similar coverage; or
- eligible for publicly funded health care programs administered by KDHE or Indian Health Services.

[Reference Source: [KAR 28-53-3](#)]

HEALTH CARE PROVIDERS

Kansas Statutes permits a health care professional deemed as a charitable health care provider to be included under the coverage of Kansas Tort Claims Act for liability purposes. [Reference Source: [KSA75-6120](#)].

There are three ways that an individual may serve as a charitable health care provider to medically indigent individuals.

1. Charitable health care providers, on their own, may gratuitously provide 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. [Reference Source: [KSA75-6102\(e\)\(1\)](#)]
2. Charitable health care providers may gratuitously provide professional services coordinated through an entity serving as designated “point of entry”. [Reference Source: [KSA75-6102\(e\)\(3\)](#)]; or
3. Dental professionals may provide gratuitous dentistry and dental hygienist services at an event targeted but not limited to medically indigent individuals sponsored by a not-for-profit organization, such as the annual Kansas Mission of Mercy event sponsored by the Kansas Dental Foundation. These dental services may not include oral and maxillofacial surgery or use deep sedation or general anesthesia. [Reference Source: [KSA75-6102\(e\)\(4\)](#)].

ELIGIBILITY

Kansas Statutes defines “charitable health care provide” as a person or organization meeting the following specifications.

To be a charitable health care provider, a person must meet at least one of the below categories:

1. licensed/certified by the [Kansas Board of Healing Arts](#) with an active, federal active, limited, or exempt license [[www.ksbha.org](#)],
2. engaged in a postgraduate training program approved by the [Kansas Board of Healing Arts](#) [[www.ksbha.org](#)],
3. licensed by the [Kansas Dental Board](#) [[www.dental.ks.gov](#)] as a dentist or dental hygienist,
4. licensed by the [Kansas Board of Pharmacy](#) [[www.pharmacy.ks.gov](#)] as a pharmacist,
5. licensed by the [Kansas Board of Nursing](#) as a professional nurse, practical nurse, or mental health technician [[www.ksbn.org](#)],
6. licensed by the [Behavioral Sciences Regulatory Board](#) [[www.ksbsrb.org/](#)] as a mental health practitioner,
7. licensed by the [Kansas Board of Examiners in Optometry](#) [[www.kssbeo.ks.gov](#)] as an optometrist, or
8. be an ultrasound technologist currently registered in any area of sonography credentialed through the [American Registry of Radiology Technologists](#) [<https://www.arrt.org>], the [American Registry for Diagnostic Medical Sonography](#)

[<http://www.ardms.org>], or [Cardiovascular Credentialing International](#) [<http://www.cci-online.org>] and working under the supervision of a person licensed to practice medicine and surgery.

[Reference Sources: [KSA 75-6102](#), [KSA 65-4921](#), and [KSA 40-3401](#)]

To be a charitable health care provider, an organization must meet at least one of the below categories:

1. a medical care facility licensed by the Kansas Department of Health and Environment,
2. a health maintenance organization issued a certificate of authority by the Kansas Commissioner of Insurance;
3. a professional corporation organized by health care providers pursuant to the professional corporation law of Kansas;
4. a Kansas limited liability company organized for the purpose of rendering professional services by its member providers, who are legally authorized to render the professional services for which the limited liability company is organized;
5. a partnership of persons who are health care providers;
6. a Kansas not-for-profit corporation organized to render professional services by health care providers;
7. a nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the University of Kansas School of Medicine; or
8. a psychiatric hospital licensed or a mental health center/clinic licensed by the Kansas Department of Aging and Disability Services.

[Reference Sources: [KSA 40-3401](#)]

APPLICATION PROCESS - ORGANIZATIONS

Entities meeting the eligibility requirements (listed above) should refer to the subsequent sections titled "Guidelines for Indigent Health Care Clinics and "Guidelines for Other Organizations". *Entities are also encourage to contact the Office of Primary Care and Rural Health at primarycare@kdheks.gov.*

APPLICATION PROCESS – INDIVIDUAL PROVIDERS

Individual providers meeting the eligibility requirements (listed above), must complete one of the following:

1. Providers intending to provide professional services gratuitously as a Charitable Health Care Provider with their own medical, dental, or medical practice must fully complete and submit the [Agreement Form for Independent Charitable Health Care Providers](#) to KDHE Office of Primary Care and Rural Health.

The Office will review and validate the information provided. Once the review is complete, the agreement will be signed by the Secretary of KDHE. A copy of the signed agreement will be returned to the entity for record keeping purposes.

2. Providers intending to provide professional services through a designated "point of entry"
 - a. Must have a formal agreement with the indigent health care clinic (e.g.

- employment contract, volunteer agreement); or
- b. Must complete and submit the [Agreement Form for Providing Care through Indigent Health Care Clinic or Other Designated Point of Entry](#).

The Office will review and validate the information provided. Once the review is complete, the agreement will be signed by the Secretary of KDHE. A copy of the signed agreement will be returned to the entity for record keeping purposes.

3. Dental professionals providing services gratuitously at an event sponsored by a not-for-profit organization must complete and submit the [Agreement Form for Providing Care through Indigent Health Care Clinic or Other Designated Point of Entry](#). The not-for-profit organization responsible for the dental event must submit the [Point of Entry Agreement Form for Other Organizations](#) to the KDHE Office of Primary Care and Rural Health.

The Office will review and validate the information provided. Once the review is complete, the agreement will be signed by the Secretary of KDHE. A copy of the signed agreement will be returned to the entity for record keeping purposes.

REPORTING REQUIREMENTS

1. Providers intending to provide professional services gratuitously as a Charitable Health Care Provider with their own medical, dental, or medical practice annually submit the following information:
 - Updated Point of Contact Information; and
 - Aggregated Patient Data by Income Level and by Payor Type.

Providers will begin receiving notifications from the Office in January or February of each calendar year regarding this reporting requirement. The annual [Charitable Health Care Independent Provider Annual Reporting Form](#) is available on the Charitable Health Care Provider Program website at <http://www.kdheks.gov/olrh/CHP.htm>. Failure to submit this annual report will result in cancellation of the agreement with the Secretary of KDHE to serve as a charitable health care provider.

2. Providers that provide professional services through a designated “point of entry” should provide information as needed to the respective clinic or organization, in order to annually submit data to the KDHE Office of Primary Care and Rural Health. The designated point of entry is responsible for submitting data to KDHE Office of Primary Care and Rural Health, on behalf of the provider.
3. Dental professionals providing services gratuitously at an event sponsored by a not-for-profit organization should provide information as needed to the organization, in order to annually submit data to the KDHE Office of Primary Care and Rural Health. The not-for-profit organization responsible for the dental event is responsible for submitting data to KDHE Office of Primary Care and Rural Health on behalf of the provider.

POINT OF ENTRY - INDIGENT HEALTH CARE CLINICS

Kansas Statutes permits any employee of an indigent health care clinic to be included under the coverage of Kansas Tort Claims Act for liability purposes when acting within the scope of the employee's employment. [Reference Source: [KSA75-6102\(d\)\(1G\)](#)].

Kansas Statutes also permits a person licensed by the appropriate state health professional board and who has a formal agreement with an indigent health care clinic to provide professional services to be included under the coverage of Kansas Tort Claims Act for liability purposes. [Reference Sources: [KSA75-6120](#) and [KSA75-6102\(e\)\(3\)](#)].

An indigent health care clinic is defined as an outpatient medical care clinic operated on a not-for-profit basis that has an agreement in place with the Secretary of KDHE [Reference Source: [KSA75-6102\(g\)](#)].

ELIGIBILITY

To be an Indigent Health Care Clinic Point of Entry, the facility must:

1. Operate on a not-for-profit basis.
2. Provide outpatient medical care.
3. Provide services to individuals regardless of their insurance type, ability to pay, or the individual's race, color, sex, national origin, disability, religion, age, or sexual orientation.
4. Charge for services at the usual and customary rates prevailing in the areas in which such services are provided, except that if a person is unable to pay such charge, such person shall be charged at a reduced rate (discounted/sliding fee schedule) or not charged any fee.
5. Use a discounted/sliding fee schedule to ensure that no one who is unable to pay will be denied access to services. Information must be publicly posted to ensure that patients are aware of its availability.
6. Charge uninsured patients a reasonable fee based on the patient's ability to pay (discounted/sliding fee schedule) and must provide a full discount to individuals and families with annual incomes at or below 100% of the federal poverty level (only nominal fees may be charged). Patients with incomes between 100% and 200% of the federal poverty level must be charged in accordance with a sliding discount policy based on family size and income.
7. Have a written nondiscrimination policy and provide services in a culturally and linguistically appropriate fashion responsive to the needs of the area's general population.

Additionally, Kansas statute (65-1648) requires that the distribution and control of prescription medications at indigent health care clinics occur under the supervision of a pharmacist in charge. Information about these requirements and the necessary forms and materials can be obtained from the Kansas State Board of Pharmacy.

APPLICATION PROCESS

Facilities meeting the eligibility requirements (listed above), must submit the [Agreement Form for Indigent Health Care Clinics](#) to the KDHE Office of Primary Care and Rural Health. *The Office will review and validate the information provided. Once the review is complete, the agreement will be signed by the Secretary of KDHE. A copy of the signed agreement will be returned to the entity for record keeping purposes.*

REPORTING REQUIREMENTS

Indigent health care clinics must annually submit data to the KDHE Office of Primary Care and Rural Health. Clinics are expected to provide:

1. Updated Point of Contact Information;
2. Aggregated Patient Data by Income Level and by Payor Type;
3. Updated List of Health Providers Working or Volunteering with the Clinic;
4. Information about the services provided by clinic.

Clinics will begin receiving notifications from the Office in January or February of each calendar year regarding this reporting requirement. The [Point of Entry Annual Reporting Form](#) is available at the KDHE website at <http://www.kdheks.gov/olrh/CHP.htm>.

Failure to submit this annual report will result in cancellation of the agreement with the Secretary of KDHE to serve as an indigent health care clinic – point of entry.

POINT OF ENTRY – OTHER ORGANIZATIONS

ELIGIBILITY

To be a Point of Entry, the entity must:

1. Operate on a not-for-profit basis.
2. Determine whether an individual meets the criteria for a medically indigent person
3. Refers any medically indigent person to a charitable health care provider
4. Maintain records and submit an annual activity report as outline by KDHE.
5. Have a written nondiscrimination policy and provide services in a culturally and linguistically appropriate fashion responsive to the needs of the area's general population.

APPLICATION PROCESS

Entities meeting the eligibility requirements (listed above), must submit the [Point of Entry Agreement Form for Other Organizations](#) to KDHE Office of Primary Care and Rural Health. The Office will review and validate the information provided. Once the review is complete, the agreement will be signed by the Secretary of KDHE. A copy of the signed agreement will be returned to the entity for record keeping purposes.

REPORTING REQUIREMENTS

Points of Entry must annually submit data to KDHE Office of Primary Care and Rural Health. Clinics are expected to provide:

1. Updated Point of Contact Information;
2. Aggregated Patient Data by Income Level and by Payor Type; and
3. Updated List of Health Providers Volunteering Services;

Clinics will begin receiving notifications from the Office in January or February of each calendar year regarding this reporting requirement. The [Point of Entry Annual Reporting Form](#) is available at the KDHE website at <http://www.kdheks.gov/olrh/CHP.htm>.

Failure to submit this annual report will result in cancellation of the agreement with the Secretary of KDHE to serve as a point entry clinic.

**APPENDIX A: KANSAS CHARITABLE HEALTH CARE PROVIDER
REGULATIONS**

**Department of Health and Environment
Permanent Administrative Regulations**

Article 53.—CHARITABLE HEALTH CARE PROVIDERS

28-53-1. Definitions. (a) “Agreement” means a written understanding between the secretary and a “charitable health care provider,” as defined in K.S.A. 75-6102 and amendments thereto, regarding the rendering of professional services to a medically indigent person.

(b) “Department” means the Kansas department of health and environment.

(c) “Federally qualified health center” means one of the following:

(1) An entity that meets the requirements for federal funding in 42 USC 1396d(1)(2)(B) and has been designated as a “federally qualified health center” by the federal government; or

(2) an entity that, based on the recommendation of the federal health resources and services administration, is deemed to meet the requirements of the federal grant program and has been designated a “federally qualified health center look-alike” by the federal government but does not receive the federal grant funding specified in 42 USC 1396d(1)(2)(B).

(d) “Indigent health care clinic” has the meaning specified in K.S.A. 75-6102, and amendments thereto.

(e) “Local health department” has the meaning specified in K.S.A. 65-241, and amendments thereto.

(f) (1) “Point of entry” means an entity that performs the following:

(A) Determines whether an individual meets the criteria for a medically indigent person;

(B) refers any medically indigent person to a charitable health care provider;

(C) has submitted a completed application to the department on forms prescribed by the department; and

(D) agrees to maintain records and submit an annual activity report as prescribed by the secretary.

(f) (2) This term may include either of the following:

(A) An entity meeting the definition of “federally qualified health center” or “federally qualified health center look-alike”; or

(B) an entity meeting the definition of “charitable health care provider” in K.S.A. 75-6102, and amendments thereto.

(g) “Secretary” means the secretary of the Kansas department of health and environment. (Authorized by and implementing K.S.A. 75-6120; effective April 1, 1991; amended July 13, 1992; amended March 20, 2009.)

28-53-2. Agreement. (a) Each person or entity applying for an agreement shall submit a completed application to the department on forms prescribed by the department.

(b) An agreement may be terminated by the secretary or the charitable health care provider with 30 days of prior written notice to the department.

Failure of the charitable health care provider to maintain the required licensure shall constitute concurrent cancellation of the agreement. (Authorized by and implementing K.S.A. 75-6120; effective April 1, 1991; amended July 13, 1992; amended March 20, 2009.)

28-53-3. Eligibility criteria for a medically indigent person. An individual shall qualify as a medically indigent person if a point of entry determines that the individual meets either of the following requirements:

(a) Is determined to be a member of a family unit earning at or below 200% of the current federal poverty level and is not indemnified against costs arising from medical and dental care by a policy of accident and sickness insurance, an employee health benefits plan, or any similar coverage; or

(b) is eligible for publicly funded health care programs administered by the Kansas health policy authority or the department or is qualified for Indian health services. (Authorized by and implementing K.S.A. 75-6120; effective April 1, 1991; amended March 20, 2009.)

28-53-4. Records and reports. (a) Each charitable health care provider shall ensure that each point of entry through which the charitable health care provider delivers care meets the following requirements:

- (1) Maintains the completed forms prescribed by the department; and
- (2) submits a completed annual activity report to the department on a form prescribed by the department.

(b) Failure of the charitable health care provider or the point of entry to comply with this regulation shall be grounds for termination of the agreement with the charitable health care provider. (Authorized by and implementing K.S.A. 75-6120; effective April 1, 1991; amended March 20, 2009.)

28-53-5. Referrals. Each referral of professional services shall be documented in the records of the point of entry. (Authorized by and implementing K.S.A. 75-6120; effective April 1, 1991; amended March 20, 2009.)

APPENDIX B: CHAPTER 75, ARTICLE 61 - KANSAS TORT CLAIMS ACT STATUTES

75-6101

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6101. 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.

History: L. 1979, ch. 186, § 1; July 1.

75-6102

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6102. 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) (1) "Employee" means: (A) 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;

(B) 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;

(C) employees of the United States marshal's service engaged in the transportation of inmates on behalf of the secretary of corrections;

(D) 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;

(E) a person who is an employee or volunteer 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 or volunteer does not otherwise have coverage for such acts and omissions within the scope of their employment or volunteer activities through a liability insurance contract of such nonprofit program;

(F) a person who contracts with the Kansas guardianship program to provide services as a court-appointed guardian or conservator;

(G) an employee of an indigent health care clinic;

(H) former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity;

(I) any member of a regional medical emergency response team, created under the provisions of K.S.A. 48-928, and amendments thereto, in connection with authorized training or upon activation for an emergency response; and

(J) medical students enrolled at the university of Kansas medical center who are in clinical training, on or after July 1, 2008, at the university of Kansas medical center or at another health care institution.

(2) "Employee" does not include: (A) An individual or entity for actions within the scope of K.S.A. 60-3614, and amendments thereto; or

(B) any independent contractor under contract with a governmental entity except those contractors specifically listed in paragraph (1) of this subsection.

(e) "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, a mental health practitioner licensed by the behavioral sciences regulatory board, an ultrasound technologist currently registered in any area of sonography credentialed through the American registry of radiology technologists, the American registry for diagnostic medical sonography or cardiovascular credentialing international and working under the supervision of a person licensed to practice medicine and surgery, 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, 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;

(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); or

(4) the secretary of health and environment to provide dentistry services defined by K.S.A. 65-1422 et seq., and amendments thereto, or dental hygienist services defined by K.S.A. 65-1456, and amendments thereto, that are targeted, but are not limited to medically indigent persons, and are provided on a gratuitous basis at a location sponsored by a not-for-profit organization that is not the dentist or dental hygienist office location. Except that such dentistry services and dental hygienist services shall not include "oral and maxillofacial surgery" as defined by Kansas administrative regulation 71-2-2, or use sedation or general anesthesia that result in "deep sedation" or "general anesthesia" as defined by Kansas administrative regulation 71-5-1.

(f) "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.

(g) "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.

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

(i) "Fire control, fire rescue or emergency medical services equipment" means any vehicle, firefighting tool, protective clothing, breathing apparatus and any other supplies, tools or equipment used in firefighting or fire rescue or in the provision of emergency medical services.

History: L. 1979, ch. 186, § 2; L. 1982, ch. 374, § 1; L. 1983, ch. 299, § 1; L. 1987, ch. 353, § 1; L. 1990, ch. 146, § 4; L. 1990, ch. 329, § 2; L. 1990, ch. 149, § 9; L. 1991, ch. 268, § 1; L. 1991, ch. 182, § 5; L. 1993, ch. 29, § 2; L. 1994, ch. 343, § 1; L. 1995, ch. 82, § 7; L. 1996, ch. 91, § 4; L. 1997, ch. 156, § 91; L. 2000, ch. 164, § 1; L. 2002, ch. 46, § 1; L. 2003, ch. 2, § 1; L. 2003, ch. 158, § 9; L. 2004, ch. 122, § 1; L. 2005, ch. 139, § 2; L. 2009, ch. 44, § 1; Apr. 16.

75-6102a

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6102a.

History: L. 1979, ch. 186, § 2; L. 1982, ch. 374, § 1; L. 1983, ch. 299, § 1; L. 1987, ch. 353, § 1; L. 1990, ch. 146, § 4; L. 1990, ch. 329, § 2; L. 1990, ch. 149, § 9; L. 1991, ch. 268, § 1; L. 1991, ch. 182, § 5; L. 1993, ch. 29, § 2; L. 1994, ch. 343, § 1; L. 1995, ch. 82, § 7; L. 1996, ch. 91, § 4; L. 1997, ch. 156, § 91; L. 2000, ch. 162, § 26; Repealed, L. 2002, ch. 46, § 2; Repealed, L. 2002, ch. 149, § 8; July 1.

75-6102b

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6102b.

History: L. 1979, ch. 186, § 2; L. 1982, ch. 374, § 1; L. 1983, ch. 299, § 1; L. 1987, ch. 353, § 1; L. 1990, ch. 146, § 4; L. 1990, ch. 329, § 2; L. 1990, ch. 149, § 9; L. 1991, ch. 268, § 1; L. 1991, ch. 182, § 5; L. 1993, ch. 29, § 2; L. 1994, ch. 343, § 1; L. 1995, ch. 82, § 7; L. 1996, ch. 91, § 4; L. 1997, ch. 156, § 91; L. 2000, ch. 164, § 1; L. 2002, ch. 149, § 7; Repealed, L. 2003, ch. 158, § 11; July 1.

75-6103

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES
Article 61.--KANSAS TORT CLAIMS ACT

75-6103. 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. 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.

History: L. 1979, ch. 186, § 3; L. 1980, ch. 294, § 1; L. 2000, ch. 161, § 116; Jan. 1, 2001.

75-6104

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES
Article 61.--KANSAS TORT CLAIMS ACT

75-6104. Same; 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 operation of vending machines authorized pursuant to K.S.A. 68-432 or K.S.A. 75-3343a, and amendments thereto;

(t) 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;

(u) 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. The provisions of this section do not apply to community service work within the scope of K.S.A. 60-3614, and amendments thereto;

(v) performance of, or failure to perform, any activity pursuant to K.S.A. 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;

(w) any claim arising from the making of a donation of used or excess fire control, fire rescue, or emergency medical services equipment to a fire department, fire district, volunteer fire department, medical emergency response team or the Kansas forest service if at the time of making the donation the donor believes that the equipment is serviceable or may be made serviceable. This subsection also applies to equipment that is acquired through the Federal Excess Personal Property Program established by the Federal Property and Administrative Services Act of 1949 (P.L. 81-152; 63 stat. 377; 40 United States Code Section 483). This subsection shall apply to any breathing apparatus or any mechanical or electrical device which functions to monitor, evaluate, or restore basic life functions, only if it is recertified to the manufacturer's specifications by a technician certified by the manufacturer; or

(x) any claim arising from the acceptance of a donation of fire control, fire rescue or emergency medical services equipment, if at the time of the donation the donee reasonably believes that the equipment is serviceable or may be made serviceable and if after placing the donated equipment into service, the donee maintains the donated equipment in a safe and serviceable manner.

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.

History: L. 1979, ch. 186, § 4; L. 1981, ch. 358, § 2; L. 1981, ch. 357, § 1; L. 1981, ch. 359, § 1; L. 1987, ch. 353, § 3; L. 1991, ch. 209, § 3; L. 1994, ch. 248, § 30; L. 1995, ch. 56, § 1; L. 1995, ch. 260, § 10; L. 1996, ch. 131, § 1; L. 1997, ch. 156, § 92; L. 1998, ch. 142, § 20; L. 2000, ch. 99, § 1; L. 2003, ch. 107, § 2; L. 2005, ch. 139, § 3; July 1.

75-6105

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6105. 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.

History: L. 1979, ch. 186, § 5; L. 1980, ch. 294, § 2; L. 1987, ch. 353, § 4; July 1.

75-6106

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

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.

History: L. 1979, ch. 186, § 6; L. 1981, ch. 360, § 1; July 1.

75-6107

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6107. Same; judgment against governmental entity, effect; judgment against employee, effect. (a) The judgment in an action subject to the provisions of this act against a governmental entity shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee whose act or omission gave rise to the claim.

(b) Any judgment against an employee whose act or omission gave rise to the claim shall constitute a complete bar to any action for injury by the claimant, by reason of the same subject matter, against a governmental entity.

History: L. 1979, ch. 186, § 7; July 1.

75-6108

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6108. 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;
- (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.

History: L. 1979, ch. 186, § 8; L. 1987, ch. 353, § 5; L. 1999, ch. 72, § 1; July 1.

75-6109

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6109. 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.

History: L. 1979, ch. 186, § 9; July 1.

75-6110

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6110. Same; costs for defense of municipalities or its employees; special liability expense fund, establishment and maintenance; tax levy. (a) Except as provided for school districts, 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). School districts shall make such payments from the special liability expense fund of the school district.

(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 through 79-2937, and amendments thereto. 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 determines that moneys from other sources will be insufficient to pay such costs, the governing body may 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 and counties, 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 city or county.

History: L. 1979, ch. 186, § 10; L. 1990, ch. 66, § 52; L. 2003, ch. 116, § 17; July 1.

75-6111

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6111. 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 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.

History: L. 1979, ch. 186, § 11; L. 1986, ch. 330, § 4; L. 1987, ch. 74, § 16; L. 1987, ch. 353, § 6; July 1.

75-6112

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6112. 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.

History: L. 1979, ch. 186, § 12; L. 1987, ch. 353, § 7; July 1.

75-6113

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6113. 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.

History: L. 1979, ch. 186, § 13; L. 1987, ch. 354, § 1; L. 1990, ch. 66, § 53; May 31.

75-6114

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 61.--KANSAS TORT CLAIMS ACT

75-6114.

History: L. 1979, ch. 186, § 14; Repealed, L. 1981, ch. 360, § 5; July 1.

75-6115

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 61.--KANSAS TORT CLAIMS ACT

75-6115. 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.

History: L. 1979, ch. 186, § 15; L. 1982, ch. 375, § 1; L. 1989, ch. 143, § 7; L. 1990, ch. 329, § 3; L. 1993, ch. 29, § 3; L. 1993, ch. 276, § 1; July 1.

75-6116

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 61.--KANSAS TORT CLAIMS ACT

75-6116. 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.

History: L. 1979, ch. 186, § 16; L. 1983, ch. 299, § 2; L. 1985, ch. 293, § 1; L. 1987, ch. 353, § 8; L. 1989, ch. 279, § 1; July 1.

75-6117

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6117. Tort claims fund for payment of claims and defense expenses. (a) 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) Moneys in the tort claims fund shall be used only for the purpose of paying (1) compromises, settlements and final judgments arising from claims against the state or an employee of the state under the Kansas tort claims act or under the civil rights laws of the United States or of the state of Kansas and (2) costs of defending the state or an employee of the state in any actions or proceedings on those claims. Payment of a compromise or settlement shall be subject to approval by the state finance council as provided in K.S.A. 75-6106 and amendments thereto. Payment of a final judgment shall be made from the fund if there has been a determination of any appeal taken from the judgment or, if no appeal is taken, if the time for appeal has expired. No payment shall be made from the fund to satisfy a compromise, settlement or final judgment when there exists insurance coverage obtained therefor, except that payment shall be made from the fund to satisfy a compromise settlement or final judgment for claims against the state or an employee of the state in any actions or proceedings arising from rendering or failure to render professional services by (A) a charitable health care provider as defined by K.S.A. 75-6102 and amendments thereto, (B) a local health department as defined by K.S.A. 65-241 and amendments thereto or an employee thereof, or (C) an indigent health care clinic as defined by K.S.A. 75-6115 and amendments thereto, or an employee thereof, even if there exists insurance coverage obtained therefor.

(c) Upon certification by the attorney general to the director of accounts and reports that the unencumbered balance in the tort claims fund is insufficient to pay an amount for which the fund is liable, the director of accounts and reports shall transfer an amount equal to the insufficiency from the state general fund to the tort claims fund.

(d) When payment is made from the Kansas tort claims fund on behalf of the university of Kansas hospital authority, the authority shall transfer to the tort claims fund an amount equal to the payment made by the tort claims fund on behalf of the authority.

(e) This section shall be part of and supplemental to the Kansas tort claims act.

History: L. 1981, ch. 360, § 2; L. 1983, ch. 299, § 3; L. 1990, ch. 329, § 4; L. 1991, ch. 268, § 2; L. 1991, ch. 182, § 6; L. 1993, ch. 29, § 4; L. 1995, ch. 83, § 1; L. 1998, ch. 12, § 16; Feb. 26.

75-6118

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6118. Settlement of claims under other statutes. Nothing in the Kansas tort claims act shall be construed to preclude settlement and payment of a claim pursuant to K.S.A. 46-920 or 46-922, and amendments thereto.

History: L. 1981, ch. 360, § 4; July 1.

75-6119

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

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.

History: L. 1987, ch. 353, § 2; July 1.

75-6120

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6120. Agreements for provision of gratuitous services by charitable health care providers; providers considered employees under act; rules and regulations; effect of claim on rate or cancellation of policy. (a) The secretary of health and environment may enter into agreements with charitable health care providers in which such charitable health care provider stipulates to the secretary of health and environment that when such charitable health care provider renders professional services to a medically indigent person such services will be provided gratuitously. The secretary of health and environment shall adopt rules and regulations which specify the conditions for termination of any such agreement, and such rules and regulations are hereby made a part of any such agreement. 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 Kansas tort claims act.

(b) The secretary of health and environment shall establish by rules and regulations eligibility criteria for determining whether a person qualifies as a medically indigent person.

(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.

(d) This section shall be part of and supplemental to the Kansas tort claims act.

History: L. 1990, ch. 329, § 1; L. 1991, ch. 268, § 3; April 25.

