

HOUSE BILL No. 2521

By Committee on Health and Human Services

Requested by Representative W. Carpenter on behalf of Children's Alliance of Kansas

1-22

1 AN ACT concerning the Kansas tort claims act; expanding the act to
2 include child placement agencies that contract with the secretary for
3 children and families; amending K.S.A. 75-6102 and repealing the
4 existing section.

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6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 75-6102 is hereby amended to read as follows: 75-
8 6102. As used in K.S.A. 75-6101 through 75-6118, and amendments
9 thereto, unless the context clearly requires otherwise:

10 (a) "State" means the state of Kansas and any department or branch of
11 state government, or any agency, authority, institution or other
12 instrumentality thereof. *"State" also means a child placement agency as
13 defined in K.S.A. 65-503, and amendments thereto, if such child placement
14 agency has a current contract with the secretary for children and families.*

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

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

19 (d) (1) "Employee" means: (A) Any officer, employee, servant or
20 member of a board, commission, committee, division, department, branch
21 or council of a governmental entity, including elected or appointed
22 officials and persons acting on behalf or in service of a governmental
23 entity in any official capacity, whether with or without compensation and a
24 charitable healthcare provider;

25 (B) any steward or racing judge appointed pursuant to K.S.A. 74-
26 8818, and amendments thereto, regardless of whether the services of such
27 steward or racing judge are rendered pursuant to contract as an
28 independent contractor;

29 (C) ~~employees~~ an employee of the United States marshals service
30 engaged in the transportation of inmates on behalf of the secretary of
31 corrections;

32 (D) a person who is an employee of a nonprofit independent
33 contractor, other than a municipality, under contract to provide educational
34 or vocational training to inmates in the custody of the secretary of

1 corrections and who is engaged in providing such service in an institution
2 under the control of the secretary of corrections provided that such
3 employee does not otherwise have coverage for such acts and omissions
4 within the scope of their employment through a liability insurance contract
5 of such independent contractor;

6 (E) a person who is an employee or volunteer of a nonprofit program,
7 other than a municipality, who has contracted with the ~~commissioner of~~
8 ~~juvenile justice~~ *secretary of corrections* or with another nonprofit program
9 that has contracted with the secretary of corrections to provide a juvenile
10 justice program for juvenile offenders in a judicial district provided that
11 such employee or volunteer does not otherwise have coverage for such
12 acts and omissions within the scope of their employment or volunteer
13 activities through a liability insurance contract of such nonprofit program;

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

16 (G) an employee of an indigent healthcare clinic;

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

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

24 (J) any member of a regional search and rescue team or regional
25 hazardous materials response team contracting with the state fire marshal
26 pursuant to K.S.A. 31-133, ~~and amendments thereto~~, or K.S.A. 75-1518,
27 and amendments thereto, in connection with authorized training or upon
28 activation for an emergency response; and

29 (K) medical students enrolled at the university of Kansas medical
30 center who are in clinical training, on or after July 1, 2008, at the
31 university of Kansas medical center or at another healthcare institution.

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

34 (B) any independent contractor under contract with a governmental
35 entity except those contractors specifically listed in subsection (d)(1).

36 (e) "Charitable healthcare provider" means a person licensed by the
37 state board of healing arts as an exempt licensee or a federally active
38 licensee, a person issued a limited permit by the state board of healing arts,
39 a physician assistant licensed by the state board of healing arts, a mental
40 health practitioner licensed by the behavioral sciences regulatory board, an
41 ultrasound technologist currently registered in any area of sonography
42 credentialed through the American registry of radiology technologists, the
43 American registry for diagnostic medical sonography or cardiovascular

1 credentialing international and working under the supervision of a person
2 licensed to practice medicine and surgery, or a healthcare provider as ~~the~~
3 ~~term "healthcare provider" is defined under~~ in K.S.A. 65-4921, and
4 amendments thereto, who has entered into an agreement with:

5 (1) The secretary of health and environment under K.S.A. 75-6120,
6 and amendments thereto, who, pursuant to such agreement, gratuitously
7 renders professional services to a person who has provided information
8 that would reasonably lead the healthcare provider to make the good faith
9 assumption that such person meets the definition of medically indigent
10 person as defined by this section or to a person receiving medical
11 assistance from the programs operated by the department of health and
12 environment, and who is considered an employee of the state of Kansas
13 under K.S.A. 75-6120, and amendments thereto;

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

17 (3) a local health department or indigent healthcare clinic that renders
18 professional services to medically indigent persons or persons receiving
19 medical assistance from the programs operated by the department of health
20 and environment gratuitously or for a fee paid by the local health
21 department or indigent healthcare clinic to such provider and who is
22 considered an employee of the state of Kansas under K.S.A. 75-6120, and
23 amendments thereto. Professional services rendered by a provider under
24 this paragraph shall be considered gratuitous notwithstanding fees based
25 on income eligibility guidelines charged by a local health department or
26 indigent healthcare clinic and notwithstanding any fee paid by the local
27 health department or indigent healthcare clinic to a provider in accordance
28 with this paragraph; or

29 (4) the secretary of health and environment to provide dentistry
30 services defined by K.S.A. 65-1422 et seq., and amendments thereto, or
31 dental hygienist services defined by K.S.A. 65-1456, and amendments
32 thereto, that are targeted, but are not limited to, medically indigent
33 persons, and are provided on a gratuitous basis:

34 (A) At a location sponsored by a not-for-profit organization that is not
35 the dentist or dental hygienist office location;

36 (B) at the office location of a dentist or dental hygienist provided the
37 care be delivered as part of a program organized by a not-for-profit
38 organization and approved by the secretary of health and environment; or

39 (C) as part of a charitable program organized by the dentist that has
40 been approved by the secretary of health and environment upon a showing
41 that the dentist seeks to treat medically indigent patients on a gratuitous
42 basis, except that such dentistry services and dental hygienist services shall
43 not include "oral and maxillofacial surgery" as defined by K.A.R. 71-2-2,

1 or use sedation or general anesthesia that result in "deep sedation" or
2 "general anesthesia" as defined by K.A.R. 71-5-7.

3 (f) "Medically indigent person" means a person who lacks resources
4 to pay for medically necessary healthcare services and who meets the
5 eligibility criteria for qualification as a medically indigent person
6 established by the secretary of health and environment under K.S.A. 75-
7 6120, and amendments thereto.

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

12 (h) "Local health department" means the same as defined in K.S.A.
13 65-241, and amendments thereto.

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

19 (j) "Community mental health center" means the same as defined in
20 K.S.A. 39-2002, and amendments thereto.

21 Sec. 2. K.S.A. 75-6102 is hereby repealed.

22 Sec. 3. This act shall take effect and be in force from and after its
23 publication in the statute book.