

SENATE BILL No. 104

By Committee on Judiciary

2-7

1 AN ACT concerning the Kansas tort claims act; pertaining to charitable
2 health care providers; amending K.S.A. 2010 Supp. 75-6102 and
3 repealing the existing section.
4

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

6 Section 1. K.S.A. 2010 Supp. 75-6102 is hereby amended to read as
7 follows: 75-6102. As used in K.S.A. 75-6101 through 75-6118, and
8 amendments thereto, unless the context clearly requires otherwise:

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

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

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

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

22 (B) any steward or racing judge appointed pursuant to K.S.A. 74-
23 8818, and amendments thereto, regardless of whether the services of such
24 steward or racing judge are rendered pursuant to contract as an
25 independent contractor;

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

28 (D) a person who is an employee of a nonprofit independent
29 contractor, other than a municipality, under contract to provide
30 educational or vocational training to inmates in the custody of the
31 secretary of corrections and who is engaged in providing such service in
32 an institution under the control of the secretary of corrections provided
33 that such employee does not otherwise have coverage for such acts and
34 omissions within the scope of their employment through a liability
35 insurance contract of such independent contractor;

36 (E) a person who is an employee or volunteer of a nonprofit

1 program, other than a municipality, who has contracted with the
2 commissioner of juvenile justice or with another nonprofit program that
3 has contracted with the commissioner of juvenile justice to provide a
4 juvenile justice program for juvenile offenders in a judicial district
5 provided that such employee or volunteer does not otherwise have
6 coverage for such acts and omissions within the scope of their
7 employment or volunteer activities through a liability insurance contract
8 of such nonprofit program;

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

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

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

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

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

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

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

27 (e) "Charitable health care provider" means a person licensed by the
28 state board of healing arts as an exempt licensee or a federally active
29 licensee, a person issued a limited permit by the state board of healing
30 arts, a physician assistant licensed by the state board of healing arts, a
31 mental health practitioner licensed by the behavioral sciences regulatory
32 board or a health care provider as the term "health care provider" is
33 defined under K.S.A. 65-4921, and amendments thereto, who has entered
34 into an agreement with:

35 (1) The secretary of health and environment under K.S.A. 75-6120,
36 and amendments thereto, who, pursuant to such agreement, gratuitously
37 renders professional services to a person who has provided information
38 which would reasonably lead the health care provider to make the good
39 faith assumption that such person meets the definition of medically
40 indigent person as defined by this section or to a person receiving
41 medical assistance from the programs operated by the Kansas health
42 policy authority, and who is considered an employee of the state of
43 Kansas under K.S.A. 75-6120, and amendments thereto;

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

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

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

29 (f) "Medically indigent person" means a person who lacks resources
30 to pay for medically necessary health care services and who meets the
31 eligibility criteria for qualification as a medically indigent person
32 established by the secretary of health and environment under K.S.A. 75-
33 6120, and amendments thereto.

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

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

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

1 services.

2 Sec. 2. K.S.A. 2010 Supp. 75-6102 is hereby repealed.

3 Sec. 3. This act shall take effect and be in force from and after its
4 publication in the Kansas register.