Senate Substitute for HOUSE BILL No. 2127

AN Act concerning childhood sexual abuse; permitting a prosecution for childhood sexual abuse to be commenced at any time; providing exceptions in the Kansas tort claims act for claims arising from childhood sexual abuse; extending the time to file civil actions for recovery of damages caused by childhood sexual abuse; amending K.S.A. 12-105b, 75-6104 and 75-6105 and K.S.A. 2022 Supp. 21-5107 and 60-523 and repealing the existing sections.

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

- Section 1. K.S.A. 12-105b is hereby amended to read as follows: 12-105b. (a) All claims against a municipality must be presented in writing with a full account of the items, and no claim shall be allowed except in accordance with the provisions of this section. A claim may be the usual statement of account of the vendor or party rendering a service or other written statement showing the required information.
- (b) (1) Claims for salaries or wages of officers or employees need not be signed by the officer or employee if a payroll claim is certified by the administrative head of a department or group of officers or employees or an authorized representative that the salaries or wages stated therein were contracted or incurred for the municipality under authority of law, that the amounts claimed are correct, due and unpaid and that the amounts are due as salaries and wages for services performed by the person named.
- (2) Nothing in this subsection shall be construed as prohibiting the payment of employment incentive or retention bonuses authorized by K.S.A. 72-2244, and amendments thereto.
- (c) No costs shall be recovered against a municipality or against an employee of a municipality in any action brought against the municipality or an employee of a municipality for any claims allowed in part unless the recovery shall be for a greater sum than the amount allowed, with the interest due. Subject to the terms of applicable insurance contracts, judgments and settlements obtained for claims recoverable pursuant to the Kansas tort claims act shall be presented for payment in accordance with this section or in such manner as the governing body may designate.
- (d) (1) Except as provided in paragraph (2), any person having a claim against a municipality or against an employee of a municipality which could give rise to an action brought under the Kansas tort claims act shall file a written notice as provided in this subsection before commencing such action. The notice shall be filed with the clerk or governing body of the municipality and shall contain the following: (1) (A) The name and address of the claimant and the name and address of the claimant's attorney, if any; (2)(B) a concise statement of the factual basis of the claim, including the date, time, place and circumstances of the act, omission or event complained of; (3)(C) the name and address of any public officer or employee involved, if known; (4)(D) a concise statement of the nature and the extent of the injury claimed to have been suffered; and (5)(E) a statement of the amount of monetary damages that is being requested. In the filing of a notice of claim, substantial compliance with the provisions and requirements of this subsection shall constitute valid filing of a claim. The contents of such notice shall not be admissible in any subsequent action arising out of the claim. Once notice of the claim is filed, no action shall be commenced until after the claimant has received notice from the municipality that it has denied the claim or until after 120 days has passed following the filing of the notice of claim, whichever occurs first. A claim is deemed denied if the municipality fails to approve the claim in its entirety within 120 days unless the interested parties have reached a settlement before the expiration of that period. No person may initiate an action against a municipality or against an employee of a municipality unless the claim has been denied in whole or part. Any action brought pursuant to the Kansas tort claims act shall be

commenced within the time period provided for in the code of civil procedure or it shall be forever barred, except that, a claimant shall have no less than 90 days from the date the claim is denied or deemed denied in which to commence an action.

- (2) This subsection shall not apply to any claim for recovery of damages against a governmental entity arising from childhood sexual abuse as defined in K.S.A. 60-523, and amendments thereto.
- (e) Claims against a municipality—which that provide for a discount for early payment or for the assessment of a penalty for late payment may be authorized to be paid in advance of approval thereof by the governing body in accordance with the provisions of this subsection. The governing body may designate and authorize one or more of its officers or employees to pay any such claim made against the municipality in advance of its presentation to and approval by the governing body if payment of the amount of such claim is required before the next scheduled regular meeting of the governing body in order for the municipality to benefit from the discount provided for early payment or to avoid assessment of the penalty for late payment. Any officer or employee authorized to pay claims under this subsection shall keep an accurate record of all moneys paid and the purpose for which expended, and shall submit the record to the governing body at the next meeting thereof. Payments of claims by an officer or employee of the municipality under authority of this subsection are valid to the same extent as if the claims had been approved and ordered to be paid by the governing body.
- (f) When an employee is required to travel on behalf of a municipality, the employee shall be entitled, upon complying with the provisions of the municipality's policies and regulations on employee travel, to timely payment of subsistence allowances and reimbursement for transportation and other related travel expenses incurred by the employee while on an approved travel status. When reimbursement through the regular claims approval process of the municipality will require more than 15 days from the date the reimbursement claim is filed, the claim may be authorized to be paid in advance of approval thereof by the governing body in accordance with the provisions of this subsection. The governing body may designate and authorize one or more of its officers or employees to pay any such claim made against the municipality in advance of its presentation to and approval by the governing body if payment of the amount of such claim is required before the next scheduled regular meeting of the governing body. Any officer or employee authorized to pay claims under this subsection shall keep an accurate record of all moneys paid and the purpose for which expended, and shall submit the record to the governing body at the next meeting thereof. Payments of claims by an officer or employee of the municipality under authority of this subsection are valid to the same extent as if the claims had been approved and ordered to be paid by the governing body.
- (g) Claims submitted by members of a municipality's self-insured health plan may be authorized to be paid in advance of approval thereof by the governing body. Such claims shall be submitted to the administrative officer of such insurance plan.
- (h) Claims against a school district for the purchase of food or gasoline while students are on a co-curricular or extra-curricular activity outside of the school boundaries may be paid in advance of approval thereof by the governing body in accordance with the provisions of this subsection. The governing body may designate and authorize one or more of its officers or employees to pay any such claim made against the school district in advance of its presentation to and approval by the governing body.

- (i) Except as otherwise provided, before any claim is presented to the governing body or before any claim is paid by any officer or employee of the municipality under subsection (e) or (f), it shall be audited by the clerk, secretary, manager, superintendent, finance committee or finance department or other officer or officers charged by law to approve claims affecting the area of government concerned in the claim, and thereby approved in whole or in part as correct, due and unpaid.
- Sec. 2. K.S.A. 2022 Supp. 21-5107 is hereby amended to read as follows: 21-5107. (a) (1) A prosecution for any of the following crimes may be commenced at any time:
- (A) Rape; as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2022 Supp. 21-5503, and amendments thereto;
- (B) aggravated criminal sodomy; as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2022 Supp. 21-5504(b), and amendments thereto:
- (C) murder, as described in K.S.A. 21-3401, 21-3402 or 21-3439, prior to their repeal, or K.S.A. 2022 Supp. 21-5401, 21-5402 or 21-5403, and amendments thereto:
- (D) terrorism as defined in K.S.A. 21-3449, prior to its repeal, or K.S.A. 2022 Supp. 21-5421, and amendments thereto; or
- (E) illegal use of weapons of mass destruction may be commenced at any time as defined in K.S.A. 21-3450, prior to its repeal, or K.S.A. 2022 Supp. 21-5422, and amendments thereto.
- (2) A prosecution for childhood sexual abuse may be commenced at any time. As used in this paragraph, "childhood sexual abuse" means any of the following crimes when the victim is under 18 years of age:
- (A) Indecent liberties with a child as defined in K.S.A. 21-3503, prior to its repeal, or K.S.A. 2022 Supp. 21-5506(a), and amendments thereto:
- (B) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, prior to its repeal, or K.S.A. 2022 Supp. 21-5506(b), and amendments thereto;
- (C) criminal sodomy as defined in K.S.A. 21-3505(a)(2) and (a) (3), prior to its repeal, or K.S.A. 2022 Supp. 21-5504(a)(3) and (a)(4), and amendments thereto;
- (D) enticement of a child as defined in K.S.A. 21-3509, prior to its repeal;
- (E) indecent solicitation of a child as defined in K.S.A. 21-3510, prior to its repeal, or K.S.A. 2022 Supp. 21-5508(a), and amendments thereto;
- (F) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, prior to its repeal, or K.S.A. 2022 Supp. 21-5508(b), and amendments thereto;
- (G) sexual exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2022 Supp. 21-5510, and amendments thereto:
- (H) aggravated sexual battery as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2022 Supp. 21-5505(b), and amendments thereto:
- (I) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2022 Supp. 21-5604(b), and amendments thereto;
- (J) aggravated human trafficking as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2022 Supp. 21-5426(b), and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;
- (K) internet trading in child pornography or aggravated internet trading in child pornography as defined in K.S.A. 2022 Supp. 21-5514,

and amendments thereto; or

- (L) commercial sexual exploitation of a child as defined in K.S.A. 2022 Supp. 21-6422, and amendments thereto.
- (b) Except as provided in subsection (e), a prosecution for any crime shall be commenced within 10 years after its commission if the victim is the Kansas public employees retirement system.
- (c) Except as provided in—subsection subsections (a) and (e), a prosecution for a sexually violent crime as defined in K.S.A. 22-3717, and amendments thereto:
- (1) When the victim is 18 years of age or older shall be commenced within 10 years or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later; or
- (2) when the victim is under 18 years of age shall be commenced within 10 years of the date the victim turns 18 years of age or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later.
- (d) Except as provided by *in* subsection (e), a prosecution for any crime, as defined in K.S.A. 2022 Supp. 21-5102, and amendments thereto, not governed by subsection (a), (b) or (c) shall be commenced within five years after it is committed.
- (e) The period within which a prosecution shall be commenced shall not include any period in which:
 - (1) The accused is absent from the state;
- (2) the accused is concealed within the state so that process cannot be served upon the accused:
 - (3) the fact of the crime is concealed;
- (4) a prosecution is pending against the defendant for the same conduct, even if the indictment or information which commences the prosecution is quashed or the proceedings thereon are set aside, or are reversed on appeal;
- (5) an administrative agency is restrained by court order from investigating or otherwise proceeding on a matter before it as to any criminal conduct defined as a violation of any of the provisions of article 41 of chapter 25 and article 2 of chapter 46 of the Kansas Statutes Annotated, and amendments thereto, which may be discovered as a result thereof regardless of who obtains the order of restraint; or
- (6) whether the fact of the crime is concealed by the active act or conduct of the accused, there is substantially competent evidence to believe two or more of the following factors are present:
- (A) The victim was a child under 15 years of age at the time of the crime:
- (B) the victim was of such age or intelligence that the victim was unable to determine that the acts constituted a crime;
- (C) the victim was prevented by a parent or other legal authority from making known to law enforcement authorities the fact of the crime whether or not the parent or other legal authority is the accused; and
- (D) there is substantially competent expert testimony indicating the victim psychologically repressed such—witness' victim's memory of the fact of the crime, and in the expert's professional opinion the recall of such memory is accurate and free of undue manipulation, and substantial corroborating evidence can be produced in support of the allegations contained in the complaint or information but in no event may a prosecution be commenced as provided in subsection (e)(6) later than the date the victim turns 28 years of age. Corroborating evidence may include, but is not limited to, evidence the defendant committed similar acts against other persons or evidence of contemporaneous physical manifestations of the crime.

- (f) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing offense plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.
- (g) A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution. No such prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.
- (h) As used in this section, "parent or other legal authority" shall include, but not be limited to, natural and stepparents, grandparents, aunts, uncles or siblings.
- Sec. 3. K.S.A. 2022 Supp. 60-523 is hereby amended to read as follows: 60-523. (a) No action for recovery of damages *for an injury or illness* suffered as a result of childhood sexual abuse shall be commenced more than-three 13 years after the date the person victim attains 18 years of age or more than three years-from after the date-the person discovers or reasonably should have discovered that the injury or illness was eaused by of a criminal conviction for a crime described in subsection (b) related to such childhood sexual abuse, whichever occurs later.
 - (b) As used in this section:
- (1) "Injury or illness" includes psychological injury or illness, whether or not accompanied by physical injury or illness.
- (2) "Childhood sexual abuse"—includes means any act committed against the person—which act that occurred when the person was under the age of 18 years and—which act that would have been a violation of any of the following:
- (A) Rape as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2022 Supp. 21-5503, and amendments thereto;
- (B) Indecent liberties with a child as defined in K.S.A. 21-3503, prior to its repeal, or-subsection (a) of K.S.A. 2022 Supp. 21-5506(a), and amendments thereto;
- (B)(C) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, prior to its repeal, or subsection (b) of K.S.A. 2022 Supp. 21-5506(b), and amendments thereto;
- (C)(D) criminal sodomy as defined in K.S.A. 21-3505(a)(2) and (a)(3), prior to its repeal, or K.S.A. 2022 Supp. 21-5504(a)(3) and (a)(4), and amendments thereto;
- (E) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or-subsection (b) of K.S.A. 2022 Supp. 21-5504(b), and amendments thereto;
- (D)(F) enticement of a child as defined in K.S.A. 21-3509, prior to its repeal;
- (E)(G) indecent solicitation of a child as defined in K.S.A. 21-3510, prior to its repeal, or subsection (a) of K.S.A. 2022 Supp. 21-5508(a), and amendments thereto;
- (F)(H) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, prior to its repeal, or-subsection (b) of K.S.A. 2022 Supp. 21-5508(b), and amendments thereto;
- (G)(I) sexual exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2022 Supp. 21-5510, and amendments thereto; or
- (H)(J) aggravated sexual battery as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2022 Supp. 21-5505(b), and amendments thereto;
- (K) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or—subsection (b) of K.S.A. 2022 Supp. 21-5604(b), and

amendments thereto:

- (L) aggravated human trafficking as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2022 Supp. 21-5426(b), and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;
- (M) internet trading in child pornography or aggravated internet trading in child pornography as defined in K.S.A. 2022 Supp. 21-5514, and amendments thereto:
- (N) commercial sexual exploitation of a child as defined in K.S.A. 2022 Supp. 21-6422, and amendments thereto; or
- (O) any prior laws of this state of similar effect at the time the act was committed.
- (c) Discovery that the injury or illness was caused by childhood sexual abuse shall not be deemed to have occurred solely by virtue of the person's awareness, knowledge or memory of the acts of abuse. The person need not establish which act in a series of continuing sexual abuse incidents caused the injury or illness complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is a part of a common scheme or plan of sexual abuse.
 - (d) This section shall be applicable to:
- (1)—any action commenced on or after July 1, 1992, including any action—which that would be barred by application of the period of limitation applicable prior to July 1, 1992;
- (2) any action commenced prior to July 1, 1992, and pending on July 1, 1992.
- Sec. 4. K.S.A. 75-6104 is hereby amended to read as follows: 75-6104. (a) A governmental entity or an employee acting within the scope of the employee's employment shall not be liable for damages resulting from:
- (a)(1) Legislative functions, including, but not limited to, the adoption or failure to adopt any statute, regulation, ordinance or resolution:
 - (b)(2) judicial function;
- (e)(3) 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)(4) 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)(5) 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;
 - (+)(6) the assessment or collection of taxes or special assessments;
- (g)(7) 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:
- $\frac{1}{A}$ Compensable pursuant to the Kansas workers compensation act; or
- (2)(B) 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)(8) 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)(9) 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;
- $\frac{\text{(j)}(10)}{\text{(j)}}$ 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, and amendments thereto:
- (k)(11) 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;
- (1)(12) 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)(13) 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;
- $\frac{\text{(n)}}{(14)}$ failure to provide, or the method of providing, police or fire protection;
- $(\Theta)(15)$ 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:
- (A) The governmental entity or an employee thereof is guilty of gross and wanton negligence proximately causing such injury; or
- (B) an employee of the governmental entity commits childhood sexual abuse as defined in K.S.A. 60-523, and amendments thereto;
- (p)(16) the natural condition of any unimproved public property of the governmental entity;
- (q)(17) 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)(18) 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)(19) 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)(20) 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)(21) 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, or to claims arising from childhood sexual abuse as defined in K.S.A. 60-523, and amendments thereto;

(v)(22) 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)(23) 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, 40 U.S.C. § 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)(24) 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.

- (b) 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.
- (c) The exceptions to liability in subsections (a)(1) through (a)(4) shall not be construed to preclude, prohibit or otherwise limit a claim for damages arising from childhood sexual abuse as defined in K.S.A. 60-523, and amendments thereto. Failure of a governmental entity to adopt or enforce a policy, regulation or law related to childhood sexual abuse and failure to exercise reasonable discretion in the supervision of a governmental employee who commits childhood sexual abuse may be considered by the trier of fact in determining the question of a governmental entity's negligence.
- Sec. 5. K.S.A. 75-6105 is hereby amended to read as follows: 75-6105. (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 by

this section. 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.
- (d) This section shall not apply to any claim for recovery of damages against a governmental entity arising from childhood sexual abuse as defined in K.S.A. 60-523, and amendments thereto.
- Sec. 6. K.S.A. 12-105b, 75-6104 and 75-6105 and K.S.A. 2022 Supp. 21-5107 and 60-523 are hereby repealed.
- Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above Bill originated in the House, and passed that body	
House concurred in	
	Speaker of the House.
	Chief Clerk of the House.
Passed the SENATE as amended	
	President of the Senate.
	Secretary of the Senate.
Approved	

Governor.