

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.