

To: Senator Tim Owens, Chairman  
Members of the Senate Judiciary Committee

From: Callie Jill Denton  
Director of Public Policy

Date: March 7, 2011

Re: HB 2029 Concerning the Tort Claims Act (Written Only)

The Kansas Association for Justice (KsAJ) is a statewide, nonprofit organization of trial lawyers. KsAJ members support protection of the right to trial by jury and fair laws that protect all parties in a dispute.

HB 2029 amends the Kansas Tort Claims Act by expanding the definition of "charitable health care provider" to include ultrasound technologists working under the supervision of a person licensed to practice medicine and surgery. The House Judiciary Committee amended HB 2029 to require that ultrasound technologists covered by the Act be 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.

The Tort Claims Act is a law requiring the State to be accountable for negligent or harmful conduct of state employees, which includes "charitable health care providers". Under the act, the maximum liability of the State relating to any single occurrence or accident, for both economic and non-economic damages, is \$500,000. In addition, the State is not liable for punitive damages or prejudgment interest. The Act also contains a number of exceptions, which are specific circumstances when the State bears no liability at all.

**The Kansas Association for Justice opposes proposals to amend the Kansas Tort Claims Act by adding exceptions or expanding remedies**

**to include private citizens. Such proposals increase the State's legal and financial liability and reduce protections for Kansans.**

**Financial liability of the State for private acts of negligence.** When an employee of the State is alleged to have been negligent and caused injury, the job of defending the employee falls to the Attorney General. The State's litigation and defense costs increase as more private citizens and entities are defined as state "employees." If the employee is negligent, the State pays damages to the injured party. All costs are passed on to taxpayers.

The State assumes increased risk management costs, litigation defense costs, and potentially the costs of settlements and damages for all new private citizens it defines as "employees" under the Tort Claims Act. However, it is speculation that these costs will be outweighed by a reduction in costs elsewhere in the state budget.

In addition, the Tort Claims Act already applies to indigent health care clinics and health departments and their employees. So the State has already "bargained for" the costs of liability insurance in a contract with charitable health care providers, or perhaps paid for insurance premiums to cover liability. It is unreasonable for the State to pay twice.

**Growth in government.** Adding private citizens and entities to the Tort Claims Act forces the State to underwrite the costs of litigation and any damages awarded injured persons. Right now, these costs are appropriately paid for by private liability insurance coverage. In addition, increasing the State's liability and risk management accountabilities is a slippery slope. It is difficult to know where to draw the line once more and more private citizens are defined as state "employees."

**Less protection for Kansas citizens.** The purpose of the Act is to provide relief to citizens that are injured by a negligent act of the State. But it is a disservice to taxpayers for the State to expand its liabilities by assuming the responsibilities of private citizens. At the same time, injured Kansans should not be deprived from seeking justice because private citizens have been granted the protection of the limited remedies of the Act.

**Lawsuit protection for charitable medical professionals is already the law.** Medical professionals providing free or reduced cost care may *already* have limited immunity for medical errors or negligence. The current protections are found in the Tort Claims Act and also at KSA 60-3601, which provides for limited immunity for volunteers for certain non-profit organizations.

**Claims brought directly to the Legislature instead of a jury.** The State is free to waive its immunity and subject itself to greater liability than provided in the Tort Claims Act. If a citizen feels that Tort Claims Act immunity barred or limited their claim unjustly, he or she may seek introduction of legislation to address their specific case. KsAJ believes the civil justice system and citizen juries are the most appropriate venue for resolving such disputes. The purpose of the Tort Claims Act is to provide an effective, responsive remedy for citizens; the Legislature is not meant to serve as a jury.

**The Kansas Association for Justice opposes proposals to amend the Kansas Tort Claims Act by expanding its remedies to private citizens. We respectfully request the Committee's opposition to HB 2029.**

