

2012 Kansas Statutes

75-6104. Same; when; exceptions from liability. A governmental entity or an employee acting within the scope of the employee's employment shall not be liable for damages resulting from:

(a) Legislative functions, including, but not limited to, the adoption or failure to adopt any statute, regulation, ordinance or resolution;

(b) judicial function;

(c) 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) 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) 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;

(f) the assessment or collection of taxes or special assessments;

(g) 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 (1) compensable pursuant to the Kansas workers compensation act or (2) 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) 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) 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;

(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;

(k) 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;

(l) 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) 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;

(n) failure to provide, or the method of providing, police or fire protection;

(o) 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 the governmental entity or an employee thereof is guilty of gross and wanton negligence proximately causing such injury;

(p) the natural condition of any unimproved public property of the governmental entity;

(q) 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) 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) 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) 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) 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;

(v) 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) 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 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) 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.

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.

History: L. 1979, ch. 186, § 4; L. 1981, ch. 358, § 2; L. 1981, ch. 357, § 1; L. 1981, ch. 359, § 1; L. 1987, ch. 353, § 3; L. 1991, ch. 209, § 3; L. 1994, ch. 248, § 30; L. 1995, ch. 56, § 1; L. 1995, ch. 260, § 10; L. 1996, ch. 131, § 1; L. 1997, ch. 156, § 92; L. 1998, ch. 142, § 20; L. 2000, ch. 99, § 1; L. 2003, ch. 107, § 2; L. 2005, ch. 139, § 3; July 1.