

75-6108. Same; defense of governmental entity or employee, when; provision of legal counsel to employee summoned to appear before grand jury or inquisition, when; refusal by governmental entity to provide defense, when; recovery of defense or legal counsel costs, when; requests to provide defense, procedure; reimbursement of defense costs, when. (a) Upon request of an employee in accordance with subsection (c), a governmental entity shall:

(1) Provide for the defense of any civil action or proceeding against such employee, in such employee's official or individual capacity or both, on account of an act or omission in the scope of such employee's employment as an employee of the governmental entity, except as provided in subsection (c); and

(2) provide legal counsel to such employee when such employee is summoned to appear before any grand jury or inquisition on account of an act or omission in the scope of such employee's employment as an employee of the governmental entity, except as provided in subsection (c).

(b) A governmental entity may provide for a defense or representation by its own attorney or by employing other counsel for this purpose or by purchasing insurance which requires that the insurer provide the defense. A governmental entity has no right to recover such expenses from the employee defended or represented, except as provided in K.S.A. 75-6109, and amendments thereto.

(c) Except as provided in K.S.A. 75-4360, and amendments thereto, a governmental entity may refuse to provide for the defense of an action against an employee or representation of the employee if the governmental entity determines that:

(1) The act or omission was not within the scope of such employee's employment;

(2) such employee acted or failed to act because of actual fraud or actual malice;

(3) the defense of the action or proceeding by the governmental entity would create a conflict of interest between the governmental entity and the employee; or

(4) the request was not made in accordance with subsection (c).

(d) If after a timely request in accordance with subsection (c), a governmental entity fails or refuses to provide an employee with a defense and the employee retains the employee's own counsel to defend the action or proceeding, or provide representation, such employee is entitled to recover from the governmental entity such reasonable attorney fees, costs and expenses as are necessarily incurred in defending the action or proceeding or providing representation if the action or proceeding or representation arose out of an act or omission in the scope of employment as an employee of the governmental entity and the trier of fact does not find that such employee acted or failed to act because of actual fraud or actual malice.

Nothing in this section shall be construed to deprive an employee of the right to petition a court of competent jurisdiction to compel the governmental entity or the governing body or an employee thereof to perform the duties imposed by this section.

Except as provided in subsection (a)(2), nothing in this section shall be construed to require a governmental entity to provide the defense or representation to any employee in a criminal or civil service proceeding.

(e) An employee's request for a governmental entity to provide for the defense of the employee or representation shall be made in writing within 15 days after service of process or subpoena upon the employee in the action. In actions involving employees of the state, such request shall be filed in the office of the attorney general. In actions involving employees of a municipality, such request shall be filed with the governing body thereof or as otherwise provided by such governing body. A governmental entity, in its discretion, may provide requested defense or representation for any of its employees who failed to make a request within the time prescribed by this subsection.

(f) Notwithstanding any other provision of law to the contrary, a governmental entity may reimburse an employee such reasonable attorney fees, costs and expenses as are necessarily incurred in defending a claim against the employee for punitive or exemplary damages 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; and

(2) the employee reasonably cooperated in good faith in the defense of the claim.

History: L. 1979, ch. 186, § 8; L. 1987, ch. 353, § 5; L. 1999, ch. 72, § 1; July 1.