

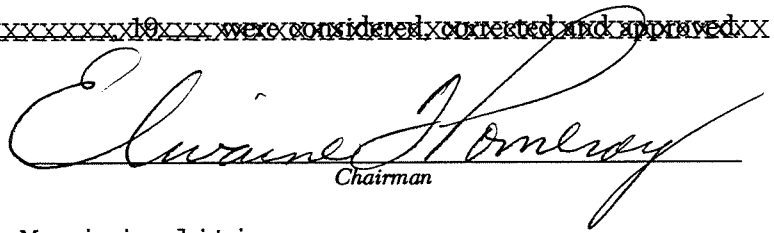
MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 10:00 a. m. ~~April~~, on March 1, 19 79.

All members were present except: Senators Steineger and Hess

The next meeting of the Committee will be held at 10:00 a. m. ~~April~~, on March 2, 19 79.

~~These minutes of the meeting held on xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx 19xx were considered corrected and approved xx~~



Chairman

The conferees appearing before the Committee were:

- E. A. Mosher - League of Kansas Municipalities
- Kathleen Sebelius - Kansas Trial Lawyers Association

Staff present:

- Art Griggs - Revisor of Statutes
- Jerry Stephens - Legislative Research Department
- Wayne Morris - Legislative Research Department

Proposed Substitute for Senate Bill No. 76 - Enacting a tort claims act applicable to the state and local units of government.

Ernie Mosher passed out copies of proposed amendments to the bill. He again strongly urged the committee to pass some kind of a bill. He proposed the bill be amended to eliminate the mob liability portion; to provide that the employer would be required to furnish legal defense to the employees; to require that insurance be purchased from a company authorized to do business in Kansas, and if not, from any insurance company; and to include section 16 of the original bill relating to civil rights actions. Committee discussion with him followed.

Kathleen Sebelius testified that the proposal the committee was now considering is not a tort claims act. She stated she would prefer the original bill or the printed proposed substitute for SB 76.

The chairman reminded the committee that the committee had previously adopted the subcommittee's report as a working document. Senator Simpson moved to amend the subcommittee report along the lines of the recommendations of the League of Municipalities regarding availability of insurance; Senator Burke seconded the motion, and the motion carried. Senator Gaar moved to amend by including the League's proposal regarding federal civil rights actions; Senator Hein seconded the motion, and following committee discussion, the motion carried. Senator Simpson moved to adopt the recommendation

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Prop. Sub. for SB 76 continued -

of the League of Municipalities regarding the employer providing legal defense for employees; Senator Burke seconded the motion. Following committee discussion, Senator Hein made a substitute motion to provide immunity for employees in the same instances where governmental entities are immune; Senator Gaar seconded the motion. Following committee discussion, the substitute motion carried. Senator Gaar moved to amend by adding a prohibition against local governments chartering out from the provisions of the bill; Senator Hein seconded the motion, and the motion carried. Senator Gaar moved to adopt the proposal of the League clarifying who would have responsibility for the mob liability section; Senator Berman seconded the motion, and following committee discussion, the motion carried on a vote of four to two.

The staff was directed to bring back ballooned copies of the draft.

The meeting adjourned.

These minutes were read and approved  
by the committee on 4-25-79.

3-1-79

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Bill Gough	Topeka	KACT
<del>Frank Berger</del>		League of Municipalities
George Welch	Topeka	DofA
Steve Henry	Topeka	Ks Assoc. of Sch Psychologists
Frank Bean	Topeka	League of Kan Women
John Summers	Stat City	Citizen Savings + Loan
Pat Patterson	O.P. Ks -	Anchor Savings Assoc
Tom Hamby	O.P. Ks	Anchor Savings Assoc
Patsy Cassidy	Lawrence	Aide/Sen. Hess
Ellen Richardson	Box 5314 Topeka	Ks. Children's Service League
John Roddy	Lawrence	Univ. Comm. Service
Kathleen Sedwick	Topeka	KTUA
Martha Shuman	Emporia	Way College of Emporia
Jessie Buass	Emporia	Way College of Emporia
DVD GRANT	TOPEKA	KACI
Judy Tuszink	Topeka	KWPC
Mack Heaver	"	Deals Co. Co.
Mary Ellen Cmlce	Wichita	City of Wichita

League #1

the scope of their employment in the operation of any motor vehicle, aircraft, watercraft, snowmobiles or other mobile vehicles.

New Sec. 9. Governmental entities having a police force or law enforcement powers are liable for damages caused by the action of a mob within the jurisdiction of such body if such police force or other law enforcement officers of the public body have not exercised reasonable care or diligence in the prevention or suppression of a mob.

Governmental entities shall have all of the defenses in such action that are available to parties in tort actions.

As used in this section, the word "mob" shall mean an assembly of ten (10) or more persons intent on unlawful violence either to persons or property.

New	0352	New Sec. 15. (a) Except as provided in subsection (c), a city	ges
for crea	0353	<del>shall be liable</del> <sup>having a police force</sup> in damages for injuries to persons or property	
control.	0354	caused by the action of a mob within the corporate limits of the	nejr
	0355	city if the city police or other proper authorities of the city have	
	0356	not exercised reasonable care or diligence in the prevention or	
	0357	suppression of such a mob. The city shall have all of the defenses	
New	0358	in such action that are available to parties in tort actions.	for
claims wi	0359	(b) Except as provided in subsection (c), a county shall be	three
hundred	0360	liable in damages for injuries to persons or property caused by the	
arising o	0361	action of a mob within the county and outside the corporate limits	aims
	0362	of any city if the sheriff or other proper authorities of the county	
	0363	have not exercised reasonable care or diligence in the prevention	
	0364	or suppression of such a mob. The county shall have all of the	
(b)	0365	defenses in such action that are available to parties in tort actions.	ple
claimants	0366	(c) In counties having a consolidated law enforcement agency	may
apply to	0367	as authorized by article 44 of chapter 19 of the Kansas Statutes	
to appor	0368	Annotated or as hereafter authorized by law, such agency shall be	ause
total amo	0369	liable in damages for injuries to persons or property caused by the	the
claimant	0370	action of a mob within the limits of such county if the law	each
	0371	enforcement authorities of such agency have not exercised rea-	ward
	0372	sonable care or diligence in the prevention or suppression of such	
or settle	0373	a mob. The agency shall have all of the defenses in such action	ards
and settl	0374	that are available to parties in tort actions.	
	0375	(d) As used in this section, the word "mob" shall mean an	
	0376	assemblage of ten (10) or more persons intent on unlawful vio-	
	0377	lence either to persons or property.	
(c)	0378	(e) Sheriffs and their deputies shall not be liable upon their	ive
damages o	0379	official bonds for damages recoverable pursuant to this section.	
within the sec	0380	(f) Claims for damages recoverable pursuant to this section	ing
	0381	shall be made in accordance with, and subject to, the Kansas tort	
	0382	claims act.	for

punitive damages or interest prior to judgment, except for any act or omission of an employee because of actual fraud or actual malice.

(e) An employee's request for a governmental entity to provide for the defense of the employee shall be made in writing within fifteen (15) days after service of process 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 for any of its employees who failed to make a request within the time prescribed by this subsection.

New Sec. 15. With regard to damages for which a governmental entity is liable pursuant to this act, a governmental entity shall indemnify its employees against damages, for injury or damage proximately caused by an act or omission of an employee while acting within the scope of his or her employment.

With regard to damages for which a governmental entity is immune from liability pursuant to this act, a governmental entity may indemnify its employees against damages, for injury or damage proximately caused by an act or omission of an employee while acting within the scope of his or her employment.

A governmental entity shall not be liable under the provisions of this act for any punitive or exemplary damages against an employee, nor for payment of any costs, judgments or settlements which are paid through an applicable contract or policy of insurance. The governmental entity shall have the right to recover any payments made by it for any judgment, or portion thereof, and costs or fees incurred by or on behalf of an employee's defense if the employee fails to cooperate in good faith in the defense of the claim or action or if the trier of fact finds that the act or omission of the employee was because of such employee's actual fraud or actual malice.

New Sec. 16. (a) Payments by municipalities for the cost of providing for its defense and the defense of employees pursuant to this act and for the payment of claims and other direct and

acting within the scope of their employment and to the extent of the insurance so obtained the governmental entity and the insurer thereby waive any defense based on the provisions of subsection (a) of section 3.

(c) Any insurance <sup>purchased under the provisions of</sup> ~~authorized by~~ this section must be purchased from an insurance company or association authorized to transact insurance business in this state. <sup>if such insurance is available from such a company or association.</sup> In the case of municipalities any such insurance may be obtained by competitive bids or by negotiation. In the case of the state, any such insurance shall be purchased in the manner and subject to the limitations prescribed by K.S.A. 75-4114, and amendments thereto. Except as provided in subsection (b), insurers of governmental entities may avail themselves of any defense that would be available to a governmental entity defending itself in an action within the scope of this act, except that the limitation on liability provided by subsection (a) of section 11 shall not be applicable where the contract of insurance provides for coverage in excess of such limitation in which case the limitation on liability shall be fixed at the amount for which insurance coverage has been purchased.

(d) Pursuant to the interlocal cooperation act, municipalities may enter into interlocal agreements providing for:

(1) The purchase of insurance to provide for the defense of employees and for liability for claims pursuant to this act; or

(2) pooling arrangements or other agreements to share and pay expenditures for judgments, settlements, defense costs and other direct or indirect expenses incurred as a result of implementation of this act including, but not limited to, the establishment of special funds to pay such expenses. With regard to establishing and maintaining such pooling arrangements or other agreements to share in expenditures incurred pursuant to this act, governmental entities and employees or agents thereof shall not be required to be licensed pursuant to the insurance laws of this state.

insert after Sec. 20

SB 76

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0379 official bonds for damages recoverable pursuant to this section.  
0380 (f) Claims for damages recoverable pursuant to this section  
0381 shall be made in accordance with, and subject to, the Kansas tort  
0382 claims act.

0383 New Sec. 16. If an employee of a governmental entity is or  
0384 could be subject to personal civil liability for a loss occurring  
0385 because of a noncriminal act or omission within the scope of his  
0386 or her employment which violates the civil rights laws of the  
0387 United States, and the act or omission was in good faith, and the  
0388 employee reasonably cooperates in good faith in defense of the  
0389 action, the governmental entity shall, subject to procedure re-  
0390 quirements imposed by statute, ordinance, resolution or written  
0391 policy, pay or cause to be paid any judgment or settlement of the  
0392 claim or suit and all costs and fees incurred by the employee in  
0393 defense thereof. A municipality may pay for the cost of providing  
0394 defense, judgments and other costs involving actions for civil  
0395 rights violations in the same manner as that provided in the  
0396 Kansas tort claims act.

0397 Sec. 17. K.S.A. 12-105a is hereby amended to read as follows:  
0398 12-105a. As used in this act and the act of which this section is  
0399 amendatory, the following words and phrases shall have the  
0400 meanings respectively ascribed to them herein, unless the context  
0401 shall otherwise require:

0402 (a) "Municipality" means and includes county, township,  
0403 city, school district of whatever name or nature, community  
0404 junior college, municipal university, drainage district, cemetery  
0405 district, fire district, and other political subdivision or taxing  
0406 unit, and including their boards, bureaus, commissions, commit-  
0407 tees and other agencies, such as, but not limited to, library board,  
0408 park board, recreation commission, hospital board of trustees  
0409 having power to create indebtedness and make payment of the  
0410 same independently of the parent unit.

0411 (b) "Governing body" means and includes the board of  
0412 county commissioners, the governing body of a city, the township  
0413 board (trustee, clerk and treasurer), board of education or other  
0414 governing body of a school district, board of trustees of a com-  
0415 munity junior college, board of regents of a municipal university,