

49.070 State institutions of higher education declared agencies of state government for purposes of KRS 49.060 -- Jurisdiction of Board of Claims -- Sovereign immunity -- Exposure to asbestos claims.

- (1) For purposes of KRS 49.060, state institutions of higher education under KRS Chapter 164 are agencies of the state.
- (2) The Board of Claims shall have primary and exclusive jurisdiction over all negligence claims for the negligent performance of ministerial acts against the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any officers, agents, or employees thereof while acting within the scope of their employment.
- (3) The board shall have primary and exclusive jurisdiction to make findings of fact, conclusions of law, and legal determinations with regard to whether the alleged negligent act was on the part of the Commonwealth or any of its cabinets, departments, bureaus, or agencies or any officers, agents, or employees thereof.
- (4) The board shall have primary and exclusive jurisdiction to make findings of fact, conclusions of law, and legal determinations with regard to whether the alleged negligent act was on the part of the Commonwealth or any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies.
- (5) No action for negligence against the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any officers, agents, or employees thereof may be brought in any other court or forum in the Commonwealth except the board unless the board makes a final determination that it does not have primary and exclusive jurisdiction over the claim.
- (6) The determination by the board becomes final only after all appellate rights have been finalized or waived.
- (7) Any applicable statute of limitations for bringing negligence actions in any court or forum other than the board shall be tolled pending the final determination that the board does not have primary and exclusive jurisdiction of the negligence claim.
- (8) No action for negligence may be brought in any court or forum other than the board against the Commonwealth, any of its cabinets, departments, bureaus, or agencies or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies.
- (9) Negligence as used herein includes negligence, gross negligence, or wanton negligence.
- (10) The defense of contributory negligence is not a complete bar to recovery of a plaintiff's claim in the board, and the doctrine of comparative negligence shall be utilized by the board.
- (11) Except as otherwise provided by KRS 49.040 to 49.180, nothing contained herein shall be construed to be a waiver of sovereign immunity or any other immunity or privilege maintained by the Commonwealth, its cabinets, departments, bureaus, and

agencies and its officers, agents, and employees.

- (12) Except as otherwise specifically set forth by statute and in reference to subsection (11) of this section, no action for damages may be maintained in any court or forum against the Commonwealth, any of its cabinets, departments, bureaus, or agencies or any of its officers, agents, or employees while acting within their official capacity and scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies.
- (13) The preservation of sovereign immunity referred to in subsections (11) and (12) of this section includes but is not limited to the following:
 - (a) Discretionary acts or decisions;
 - (b) Executive decisions;
 - (c) Ministerial acts;
 - (d) Actions in the performance of obligations running to the public as a whole;
 - (e) Governmental performance of a self-imposed protective function to the public or citizens; and
 - (f) Administrative acts.
- (14) The filing of an action in court or any other forum or the purchase of liability insurance or the establishment of a fund for self-insurance by the Commonwealth, its cabinets, departments, bureaus, or agencies or its agents, officers, or employees thereof for a government-related purpose or duty shall not be construed as a waiver of sovereign immunity or any other immunity or privilege thereby held. Except as specifically set forth by statute, no counterclaim, set-off, recoupment, cross-claim, or other form of avoidance of the claim for damages may be asserted by any person when suit is brought against said person by the Commonwealth or any of its cabinets, departments, bureaus, or agencies thereof.
- (15) Neither the Commonwealth nor any of its cabinets, departments, bureaus, or agencies or any officers, agents, or employees thereof shall be liable under a respondeat superior theory or any other similar theory for the acts of independent contractors, contractors, or subcontractors thereof or anyone else doing work or providing services for the state on a volunteer basis or pursuant to a contract therewith.
- (16) Any claim against the Commonwealth or its departments, agencies, officers, agents, or employees, or a school district board of education or its members, officers, agents, or employees, for damages sustained as a result of exposure to asbestos before, during, or after its removal from a facility owned, leased, occupied, or operated by the Commonwealth or a school district board of education shall be brought before the Board of Claims.

Effective: June 29, 2021

History: Amended 2021 Ky. Acts ch. 185, sec. 18, effective June 29, 2021. -- Repealed, reenacted, renumbered, and amended 2017 Ky. Acts ch. 74, sec. 7, effective June 29, 2017. -- Created 1986 Acts ch. 499, sec. 2, effective July 15, 1986.

Formerly codified as KRS 44.073.