

HOUSE BILL No. 2290

By Committee on Judiciary

2-13

1 AN ACT concerning the attorney general; *relating to legal representation*
2 *or indemnification in alleged violations of the open records act or the*
3 *open meetings act; creating a statewide Kansas victim information*
4 *and notification everyday (VINE) coordinator; relating to the crime*
5 *victims compensation board; creating the crime victims-compensating*
6 **compensation** *division within the office of the attorney general;*
7 *amending K.S.A. 74-7304, 74-7305, 74-7308 and 74-7317 and*
8 *repealing the existing sections; also repealing K.S.A. 74-7306.*
9

10 *Be it enacted by the Legislature of the State of Kansas:*

11 *New Section 1. (a) Notwithstanding any provision of the Kansas*
12 *tort claims act, K.S.A. 75-6101 et seq., and amendments thereto, or any*
13 *other provision of law to the contrary, the attorney general may refuse to*
14 *provide legal representation to or indemnification of a public agency or*
15 *employee or agent of a public agency in an action, proceeding or*
16 *investigation involving an alleged violation of the Kansas open records*
17 *act, K.S.A. 45-215 et seq., and amendments thereto. The provisions of*
18 *K.S.A. 75-6108(d), and amendments thereto, shall not apply to a refusal*
19 *under this section.*

20 *(b) This section shall be a part of and supplemental to the open*
21 *records act.*

22 *New Sec. 2. (a) Notwithstanding any provision of the Kansas tort*
23 *claims act, K.S.A. 75-6101 et seq., and amendments thereto, or any other*
24 *provision of law to the contrary, the attorney general may refuse to*
25 *provide legal representation to or indemnification of a public agency or*
26 *employee or agent of a public agency in an action, proceeding or*
27 *investigation involving an alleged violation of the Kansas open meetings*
28 *act, K.S.A. 75-4317 et seq., and amendments thereto. The provisions of*
29 *K.S.A. 75-6108(d), and amendments thereto, shall not apply to a refusal*
30 *under this section.*

31 *(b) This section shall be a part of and supplemental to the open*
32 *meetings act.*

33 *New Sec. 3. (a) The attorney general shall appoint a Kansas victim*
34 *information and notification everyday (VINE) coordinator, and within*

1 *the limits of appropriations available therefor, such additional staff as*
2 *necessary to support the coordinator.*

3 *(b) The Kansas VINE coordinator shall work with interested*
4 *parties, including, but not limited to, the sheriffs throughout the state, to*
5 *oversee the implementation and operation of the VINE system*
6 *throughout the state.*

7 *(c) The attorney general may appoint an advisory board to make*
8 *recommendations for the implementation and operation of the VINE*
9 *program. Such advisory committee, if appointed, may consist of up to*
10 *five members appointed by the attorney general. One member shall be a*
11 *victim advocate and one shall be a representative of the Kansas sheriffs'*
12 *association. Except as provided in K.S.A. 75-3212, and amendments*
13 *thereto, no member of any such advisory committee shall receive any*
14 *compensation, subsistence, mileage or other allowance for serving on an*
15 *advisory board appointed pursuant to this section.*

16 *(d) The attorney general shall promulgate rules and regulations*
17 *necessary to carry out the provisions of this section.*

18 New ~~Section 4~~, *Sec. 4.* (a) There is hereby established within the
19 office of the attorney general a crime victims compensation division to
20 administer and support the operations of the crime victims compensation
21 board established pursuant to K.S.A. 74-7301 et seq., and amendments
22 thereto. The division shall receive applications for compensation and all
23 supporting papers and shall, if requested by the board, investigate the
24 claim, appear in proceedings related to the claim and present evidence in
25 opposition to or support of an award.

26 (b) The attorney general shall establish and maintain a principal
27 office for the division and other necessary offices within the state, appoint
28 employees and agents, as necessary, and prescribe the duties and
29 compensation for each employee and agent subject to appropriations. The
30 crime victims compensation division shall be headed by a director
31 appointed by the attorney general in consultation with the crime victims
32 compensation board.

33 (c) The crime victims compensation division shall:

34 (1) Prescribe forms on which applications for compensation shall be
35 made;

36 (2) request investigations and data from county and district attorneys,
37 law enforcement officers and other sources to enable the crime victims
38 compensation board to determine whether, and to what extent a claimant
39 qualifies for compensation;

40 (3) make available for public inspection, as provided by the Kansas
41 open records act, K.S.A. 45-215 et seq., and amendments thereto, all rules
42 and regulations, written statements of policy, interpretations formulated,
43 adopted or used by the crime victims compensation board and decisions

1 and opinions of the crime victims compensation board;

2 (4) publicize the availability of compensation and information
3 regarding the filing of claims; and

4 (5) perform any other duty assigned by the attorney general to carry
5 out the provisions of this section.

6 (d) Confidentiality provided by law covering a claimant's or victim's
7 juvenile court records shall not be applicable in proceedings pursuant to
8 K.S.A. 74-7301 et seq., and amendments thereto.

9 Sec. ~~2~~ 5. K.S.A. 74-7304 is hereby amended to read as follows: 74-
10 7304. In addition to the powers and duties specified elsewhere in this act,
11 the board shall have the following powers and duties:

12 ~~(a) The duty to establish and maintain a principal office and other~~
13 ~~necessary offices within this state, to appoint employees and agents as~~
14 ~~necessary and to prescribe their duties and compensation, all within the~~
15 ~~limitations and conditions of appropriations made therefor;~~

16 ~~(b) The duty power to adopt by rule and regulation a description of~~
17 ~~the organization of the board, stating the general method and course of~~
18 ~~operation of the board;~~

19 ~~(e)(b) the duty power to adopt rules and regulations to carry out the~~
20 ~~provisions of this act, and the property crime restitution and compensation~~
21 ~~act, including rules for the allowance of attorney fees for representation of~~
22 ~~claimants; and to adopt rules and regulations providing for discovery~~
23 ~~proceedings, including medical examination, consistent with the~~
24 ~~provisions of this act relating thereto. Rules and regulations adopted by the~~
25 ~~board shall be statements of general applicability which implement,~~
26 ~~interpret or prescribe policy, or describe the procedure or practice~~
27 ~~requirements of the board;~~

28 ~~(d) the duty to prescribe forms on which applications for~~
29 ~~compensation shall be made;~~

30 ~~(e)(c) the duty to hear and determine all matters relating to claims for~~
31 ~~compensation, and the power to reinvestigate or reopen claims without~~
32 ~~regard to statutes of limitation or periods of prescription;~~

33 ~~(f) the power to request investigations and data from county and~~
34 ~~district attorneys and law enforcement officers to enable the board to~~
35 ~~determine whether and the extent to which a claimant qualifies for~~
36 ~~compensation. Confidentiality provided by law covering claimant's or~~
37 ~~victim's juvenile court records shall not be applicable in proceedings under~~
38 ~~this act;~~

39 ~~(g)(d) the duty, if it would contribute to the function of the board, to~~
40 ~~subpoena witnesses and other prospective evidence, administer oaths or~~
41 ~~affirmations, conduct hearings and receive relevant, nonprivileged~~
42 ~~evidence; and~~

43 ~~(h)(e) the power to take notice of judicially recognizable facts and~~

1 general, technical and scientific facts within their specialized knowledge;

2 ~~(i) the duty to make available for public inspection all rules and~~
3 ~~regulations, written statements of policy, interpretations formulated,~~
4 ~~adopted or used by the board in discharging its functions, and decisions~~
5 ~~and opinions of the board;~~

6 ~~(j) the duty to publicize the availability of compensation and~~
7 ~~information regarding the filing of claims therefor.~~

8 Sec. ~~3~~ 6. K.S.A. 74-7305 is hereby amended to read as follows: 74-
9 7305. (a) An application for compensation shall be made in the manner
10 and form prescribed by the ~~board~~ *crime victims compensation division*
11 *created by section ~~4~~ 4, and amendments thereto.*

12 (b) Compensation may not be awarded unless an application has been
13 filed with the ~~board~~ *division* within two years of the reporting of the
14 incident to law enforcement officials if the victim was less than 16 years of
15 age and the injury or death is the result of any of the following crimes: (1)
16 Indecent liberties with a child as defined in K.S.A. 21-3503, prior to its
17 repeal, or K.S.A. 2018 Supp. 21-5506(a), and amendments thereto; (2)
18 aggravated indecent liberties with a child as defined in K.S.A. 21-3504,
19 prior to its repeal, or K.S.A. 2018 Supp. 21-5506(b), and amendments
20 thereto; (3) aggravated criminal sodomy as defined in K.S.A. 21-3506,
21 prior to its repeal, or K.S.A. 2018 Supp. 21-5504(b), and amendments
22 thereto; (4) enticement of a child as defined in K.S.A. 21-3509, prior to its
23 repeal; (5) indecent solicitation of a child as defined in K.S.A. 21-3510,
24 prior to its repeal, or K.S.A. 2018 Supp. 21-5508(a), and amendments
25 thereto; (6) aggravated indecent solicitation of a child as defined in K.S.A.
26 21-3511, prior to its repeal, or K.S.A. 2018 Supp. 21-5508(b), and
27 amendments thereto; (7) sexual exploitation of a child as defined in K.S.A.
28 21-3516, prior to its repeal, or K.S.A. 2018 Supp. 21-5510, and
29 amendments thereto; (8) aggravated incest as defined in K.S.A. 21-3603,
30 prior to its repeal, or K.S.A. 2018 Supp. 21-5604(b), and amendments
31 thereto; (9) human trafficking as defined in K.S.A. 21-3446, prior to its
32 repeal, or K.S.A. 2018 Supp. 21-5426(a), and amendments thereto; (10)
33 aggravated human trafficking as defined in K.S.A. 21-3447, prior to its
34 repeal, or K.S.A. 2018 Supp. 21-5426(b), and amendments thereto; or (11)
35 commercial sexual exploitation of a child as defined in K.S.A. 2018 Supp.
36 21-6422, and amendments thereto. Compensation for mental health
37 counseling may be awarded if a claim is filed within two years of: (1)
38 Testimony, to a claimant who is, or will be, required to testify in a sexually
39 violent predator commitment, pursuant to article 29a of chapter 59 of the
40 Kansas Statutes Annotated, and amendments thereto, of an offender who
41 victimized the claimant or the victim on whose behalf the claim is made;
42 or (2) notification, to a claimant who is notified that DNA testing of a
43 sexual assault kit or other evidence has revealed a DNA profile of a

1 suspected offender who victimized the claimant or the victim on whose
2 behalf the claim is made, or is notified of the identification of a suspected
3 offender who victimized the claimant or the victim on whose behalf the
4 claim is made, whichever occurs later. For all other incidents of criminally
5 injurious conduct, compensation may not be awarded unless the claim has
6 been filed with the ~~board~~ *division* within two years after the injury or death
7 upon which the claim is based. Compensation may not be awarded to a
8 claimant who was the offender or an accomplice of the offender and may
9 not be awarded to another person if the award would unjustly benefit the
10 offender or accomplice.

11 (c) Compensation otherwise payable to a claimant shall be reduced or
12 denied, to the extent, if any that the:

13 (1) Economic loss upon which the claimant's claim is based is
14 recouped from other persons, including collateral sources;

15 (2) board deems reasonable because of the contributory misconduct
16 of the claimant or of a victim through whom the claimant claims; or

17 (3) board deems reasonable, because the victim was likely engaging
18 in, or attempting to engage in, unlawful activity at the time of the crime
19 upon which the claim for compensation is based. This subsection shall not
20 be construed to reduce or deny compensation to a victim of domestic
21 abuse or sexual assault.

22 (d) Compensation may be awarded only if the board finds that unless
23 the claimant is awarded compensation the claimant will suffer financial
24 stress as the result of economic loss otherwise reparable. A claimant
25 suffers financial stress only if the claimant cannot maintain the claimant's
26 customary level of health, safety and education for self and dependents
27 without undue financial hardship. In making its determination of financial
28 stress, the board shall consider all relevant factors, including:

29 (1) The number of *the* claimant's dependents;

30 (2) the usual living expenses of the claimant and the claimant's
31 family;

32 (3) the special needs of the claimant and the claimant's dependents;

33 (4) the claimant's income and potential earning capacity; and

34 (5) the claimant's resources.

35 (e) Compensation may not be awarded unless the criminally injurious
36 conduct resulting in injury or death was reported to a law enforcement
37 officer within 72 hours after its occurrence or the board finds there was
38 good cause for the failure to report within that time.

39 (f) The board, upon finding that the claimant or victim has not fully
40 cooperated with appropriate law enforcement agencies, may deny,
41 withdraw or reduce an award of compensation.

42 (g) Except in K.S.A. 21-3602 or 21-3603, prior to their repeal, or
43 K.S.A. 2018 Supp. 21-5604, and amendments thereto, or cases of sex

1 offenses established in article 35 of chapter 21, of the Kansas Statutes
2 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas
3 Statutes Annotated, and amendments thereto, K.S.A. 2018 Supp. 21-6419
4 through 21-6422, and amendments thereto, or human trafficking or
5 aggravated human trafficking, as defined in K.S.A. 21-3446 or 21-3447,
6 prior to their repeal, or K.S.A. 2018 Supp. 21-5426, and amendments
7 thereto, compensation may not be awarded if the economic loss is less than
8 \$100.

9 (h) Compensation for work loss, replacement services loss,
10 dependent's economic loss and dependent's replacement service loss may
11 not exceed \$400 per week or actual loss, whichever is less.

12 (i) Compensation payable to a victim and to all other claimants
13 sustaining economic loss because of injury to or death of that victim may
14 not exceed \$25,000 in the aggregate.

15 (j) Nothing in subsections (c)(2), (c)(3), (e) and (f) shall be construed
16 to reduce or deny compensation to a victim of human trafficking or
17 aggravated human trafficking, as defined in K.S.A. 2018 Supp. 21-5426,
18 and amendments thereto, or commercial sexual exploitation of a child, as
19 defined in K.S.A. 2018 Supp. 21-6422, and amendments thereto, who was
20 18 years of age or younger at the time the crime was committed and is
21 otherwise qualified for compensation.

22 ~~Sec. 4~~ 7. K.S.A. 74-7308 is hereby amended to read as follows: 74-
23 7308. (a) There shall be no privilege, except privileges arising from the
24 attorney-client relationship, as to communications or records relevant to an
25 issue of the physical, mental or emotional conditions of the claimant or
26 victim in a proceeding under this act in which such condition is an
27 element.

28 (b) If the mental, physical or emotional condition of a victim or
29 claimant is material to a claim, the board may order the victim or claimant
30 to submit to a mental or physical examination by a physician or
31 psychologist, and may order an autopsy of a deceased victim. The order
32 may be made for good cause shown upon notice to the person to be
33 examined and to all persons who have appeared. The order shall specify
34 the time, place, manner, conditions and scope of the examination or
35 autopsy and the person by whom it is to be made; and the order shall
36 require the person to file with the board a detailed written report of the
37 examination or autopsy. The report shall set out the findings of the person
38 making the report, including results of all tests made, diagnoses, prognosis
39 and other conclusions and reports of earlier examinations of the same
40 conditions.

41 (c) On request of the person examined, the board shall furnish a copy
42 of the report to such person. If the victim is deceased, the board, on
43 request, shall furnish to the claimant a copy of the report.

1 (d) The board may require the claimant to supplement the application
2 with any reasonably available medical or psychological reports relating to
3 the injury for which compensation is claimed.

4 (e) All records and information given to the board *and the crime*
5 *victims compensation division created by section ~~4~~ 4, and amendments*
6 *thereto*, to process a claim on behalf of a crime victim shall be
7 confidential. Such exhibits, medical records, psychological records,
8 counseling records, work records, criminal investigation records, criminal
9 court case records, witness statements, telephone records, and other
10 records of any type or nature whatsoever gathered for the purpose of
11 evaluating whether to compensate a victim shall not be obtainable by any
12 party to any action, civil or criminal, through any discovery process
13 except:

14 (1) In the event of an appeal under the Kansas administrative
15 procedure act from a decision of the board and then only to the extent
16 narrowly and necessarily to obtain court review;

17 (2) upon a strict showing to the court in a separate civil or criminal
18 action that particular information or documents are not obtainable after
19 diligent effort from any independent source, and are known to exist
20 otherwise only in board records, the court may inspect in camera such
21 records to determine whether the specific requested information exists. If
22 the court determines the specific information sought exists in the board
23 records, the documents may then be released only by court order if the
24 court finds as part of its order that the documents will not pose any threat
25 to the safety of the victim or any other person whose identity may appear
26 in board records; or

27 (3) by any board order granting or denying compensation to a crime
28 victim.

29 Sec. ~~5~~ 8. K.S.A. 74-7317 is hereby amended to read as follows: 74-
30 7317. (a) There is hereby established in the state treasury the crime victims
31 compensation fund.

32 (b) Moneys in the crime victims compensation fund shall be used
33 only for the payment of compensation pursuant to K.S.A. 74-7301 et seq.,
34 and amendments thereto, and for state operations of the board *and the*
35 *crime victims compensation division of the office of the attorney general*
36 *created pursuant to section ~~4~~ 4, and amendments thereto*. Payments from
37 the fund shall be made upon warrants of the director of accounts and
38 reports issued pursuant to vouchers approved by the chairperson of the
39 board and the attorney general or by a person or persons designated by the
40 chairperson and the attorney general.

41 (c) The crime victims compensation board may apply for, receive and
42 accept money from any source, including financial contributions from
43 inmates as provided by subsection (b) of K.S.A. 75-5211, and amendments

1 thereto, for the purposes for which money in the crime victims
2 compensation fund may be expended. Upon receipt of any such money, the
3 chairperson of the board shall remit the entire amount to the state treasurer
4 in accordance with the provisions of K.S.A. 75-4215, and amendments
5 thereto. Upon receipt of each such remittance, the state treasurer shall
6 deposit the entire amount in the state treasury to the credit of the crime
7 victims compensation fund.

8 ~~Sec. 6.~~ **9.** K.S.A. 74-7304, 74-7305, 74-7306, 74-7308 and 74-7317
9 are hereby repealed.

10 ~~Sec. 7.~~ **10.** This act shall take effect and be in force from and after its
11 publication in the Kansas register.