

{As Amended by Senate Committee of the Whole}

As Amended by Senate Committee

As Amended by House Committee

Session of 2019

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; {appointment of a
5 Kansas youth suicide prevention coordinator;} relating to the crime
6 victims compensation board; creating the crime victims-compensating
7 compensation division within the office of the attorney general;
8 {relating to the tort claims fund; claims involving alleged violations
9 of the open records act or the open meetings act;} amending K.S.A.
10 74-7304, 74-7305, 74-7308 and 74-7317 and {K.S.A. 2018 Supp. 75-
11 6117 and} repealing the existing sections; also repealing K.S.A. 74-
12 7306.

13

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

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

24 ~~*(b) This section shall be a part of and supplemental to the open*~~
25 ~~*records act.*~~

26 ~~*New Sec. 2. (a) Notwithstanding any provision of the Kansas tort*~~
27 ~~*claims act, K.S.A. 75-6101 et seq., and amendments thereto, or any other*~~
28 ~~*provision of law to the contrary, the attorney general may refuse to*~~
29 ~~*provide legal representation to or indemnification of a public agency or*~~
30 ~~*employee or agent of a public agency in an action, proceeding or*~~
31 ~~*investigation involving an alleged violation of the Kansas open meetings*~~
32 ~~*act, K.S.A. 75-4317 et seq., and amendments thereto. The provisions of*~~

1 ~~*K.S.A. 75-6108(d), and amendments thereto, shall not apply to a refusal*~~
2 ~~*under this section.*~~

3 ~~*(b) This section shall be a part of and supplemental to the open*~~
4 ~~*meetings act.*~~

5 *New Sec. 3. {Section 1.} (a) The attorney general shall appoint a*
6 *Kansas victim information and notification everyday (VINE)*
7 *coordinator, and within the limits of appropriations available therefor,*
8 *such additional staff as necessary to support the coordinator.*

9 *(b) The Kansas VINE coordinator shall work with interested*
10 *parties, including, but not limited to, the sheriffs throughout the state, to*
11 *oversee the implementation and operation of the VINE system*
12 *throughout the state.*

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

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

24 *{New Sec. 2. (a) The attorney general shall appoint a Kansas youth*
25 *suicide prevention coordinator and, within the limits of appropriations*
26 *available therefor, such additional staff as necessary to support the*
27 *coordinator. The Kansas youth suicide prevention coordinator shall*
28 *identify, create, coordinate and support youth suicide awareness and*
29 *prevention efforts throughout the state.*

30 *(b) Within the limits of appropriations therefor, the Kansas youth*
31 *suicide prevention coordinator may:*

32 *(1) Lead the development, implementation and marketing of a*
33 *website, online application and mobile phone application to facilitate*
34 *communication with youth for the purpose of preventing youth suicide*
35 *and promoting youth safety and well-being;*

36 *(2) develop and promote multidisciplinary and interagency*
37 *strategies to help communities, schools, mental health professionals,*
38 *medical professionals, law enforcement and others work together and*
39 *coordinate efforts to prevent and address youth suicide;*

40 *(3) organize events that bring together youth, educators and*
41 *community members from across the state to share information and*
42 *receive training to prevent and address youth suicide in their*
43 *communities;*

1 ***(4) gather, disseminate and promote information focused on suicide***
 2 ***reduction; and***

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

5 New ~~Section 1, Sec. 4~~ {3.} (a) There is hereby established within the
 6 office of the attorney general a crime victims compensation division to
 7 administer and support the operations of the crime victims compensation
 8 board established pursuant to K.S.A. 74-7301 et seq., and amendments
 9 thereto. The division shall receive applications for compensation and all
 10 supporting papers and shall, if requested by the board, investigate the
 11 claim, appear in proceedings related to the claim and present evidence in
 12 opposition to or support of an award.

13 (b) The attorney general shall establish and maintain a principal
 14 office for the division and other necessary offices within the state, appoint
 15 employees and agents, as necessary, and prescribe the duties and
 16 compensation for each employee and agent subject to appropriations. The
 17 crime victims compensation division shall be headed by a director
 18 appointed by the attorney general in consultation with the crime victims
 19 compensation board.

20 (c) The crime victims compensation division shall:

21 (1) Prescribe forms on which applications for compensation shall be
 22 made;

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

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

32 (4) publicize the availability of compensation and information
 33 regarding the filing of claims; and

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

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

39 ~~Sec. 2-5, {4.}~~ K.S.A. 74-7304 is hereby amended to read as follows:
 40 74-7304. In addition to the powers and duties specified elsewhere in this
 41 act, the board shall have the following powers and duties:

42 ~~(a) The duty to establish and maintain a principal office and other~~
 43 ~~necessary offices within this state, to appoint employees and agents as~~

1 necessary and to prescribe their duties and compensation, all within the
2 limitations and conditions of appropriations made therefor;

3 ~~(b)~~—The ~~duty~~ *power* to adopt by rule and regulation a description of
4 the organization of the board, stating the general method and course of
5 operation of the board;

6 ~~(e)(b)~~ the ~~duty~~ *power* to adopt rules and regulations to carry out the
7 provisions of this act, and the property crime restitution and compensation
8 act, including rules for the allowance of attorney fees for representation of
9 claimants; and to adopt rules and regulations providing for discovery
10 proceedings, including medical examination, consistent with the
11 provisions of this act relating thereto. Rules and regulations adopted by the
12 board shall be statements of general applicability which implement,
13 interpret or prescribe policy, or describe the procedure or practice
14 requirements of the board;

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

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

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

26 ~~(g)(d)~~ the duty, if it would contribute to the function of the board, to
27 subpoena witnesses and other prospective evidence, administer oaths or
28 affirmations, conduct hearings and receive relevant, nonprivileged
29 evidence; *and*

30 ~~(h)(e)~~ the power to take notice of judicially recognizable facts and
31 general, technical and scientific facts within their specialized knowledge;

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

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

38 Sec. ~~3-6~~ {5.} K.S.A. 74-7305 is hereby amended to read as follows:
39 74-7305. (a) An application for compensation shall be made in the manner
40 and form prescribed by the ~~board~~ *crime victims compensation division*
41 *created by section ~~1-4~~ {3}, and amendments thereto.*

42 (b) Compensation may not be awarded unless an application has been
43 filed with the ~~board~~ *division* within two years of the reporting of the

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

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

43 (1) Economic loss upon which the claimant's claim is based is

1 recouped from other persons, including collateral sources;

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

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

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

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

17 (2) the usual living expenses of the claimant and the claimant's
18 family;

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

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

21 (5) the claimant's resources.

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

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

29 (g) Except in K.S.A. 21-3602 or 21-3603, prior to their repeal, or
30 K.S.A. 2018 Supp. 21-5604, and amendments thereto, or cases of sex
31 offenses established in article 35 of chapter 21, of the Kansas Statutes
32 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas
33 Statutes Annotated, and amendments thereto, K.S.A. 2018 Supp. 21-6419
34 through 21-6422, and amendments thereto, or human trafficking or
35 aggravated human trafficking, as defined in K.S.A. 21-3446 or 21-3447,
36 prior to their repeal, or K.S.A. 2018 Supp. 21-5426, and amendments
37 thereto, compensation may not be awarded if the economic loss is less than
38 \$100.

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

42 (i) Compensation payable to a victim and to all other claimants
43 sustaining economic loss because of injury to or death of that victim may

1 not exceed \$25,000 in the aggregate.

2 (j) Nothing in subsections (c)(2), (c)(3), (e) and (f) shall be construed
3 to reduce or deny compensation to a victim of human trafficking or
4 aggravated human trafficking, as defined in K.S.A. 2018 Supp. 21-5426,
5 and amendments thereto, or commercial sexual exploitation of a child, as
6 defined in K.S.A. 2018 Supp. 21-6422, and amendments thereto, who was
7 18 years of age or younger at the time the crime was committed and is
8 otherwise qualified for compensation.

9 Sec. ~~4-7~~ {6.} K.S.A. 74-7308 is hereby amended to read as follows:
10 74-7308. (a) There shall be no privilege, except privileges arising from the
11 attorney-client relationship, as to communications or records relevant to an
12 issue of the physical, mental or emotional conditions of the claimant or
13 victim in a proceeding under this act in which such condition is an
14 element.

15 (b) If the mental, physical or emotional condition of a victim or
16 claimant is material to a claim, the board may order the victim or claimant
17 to submit to a mental or physical examination by a physician or
18 psychologist, and may order an autopsy of a deceased victim. The order
19 may be made for good cause shown upon notice to the person to be
20 examined and to all persons who have appeared. The order shall specify
21 the time, place, manner, conditions and scope of the examination or
22 autopsy and the person by whom it is to be made; and the order shall
23 require the person to file with the board a detailed written report of the
24 examination or autopsy. The report shall set out the findings of the person
25 making the report, including results of all tests made, diagnoses, prognosis
26 and other conclusions and reports of earlier examinations of the same
27 conditions.

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

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

34 (e) All records and information given to the board *and the crime*
35 *victims compensation division created by section ~~14~~ {3}, and amendments*
36 *thereto*, to process a claim on behalf of a crime victim shall be
37 confidential. Such exhibits, medical records, psychological records,
38 counseling records, work records, criminal investigation records, criminal
39 court case records, witness statements, telephone records; and other
40 records of any type or nature whatsoever gathered for the purpose of
41 evaluating whether to compensate a victim shall not be obtainable by any
42 party to any action, civil or criminal, through any discovery process
43 except:

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

4 (2) upon a strict showing to the court in a separate civil or criminal
5 action that particular information or documents are not obtainable after
6 diligent effort from any independent source, and are known to exist
7 otherwise only in board records, the court may inspect in camera such
8 records to determine whether the specific requested information exists. If
9 the court determines the specific information sought exists in the board
10 records, the documents may then be released only by court order if the
11 court finds as part of its order that the documents will not pose any threat
12 to the safety of the victim or any other person whose identity may appear
13 in board records; or

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

16 ~~Sec. 5-8 {7.}~~ K.S.A. 74-7317 is hereby amended to read as follows:
17 74-7317. (a) There is hereby established in the state treasury the crime
18 victims compensation fund.

19 (b) Moneys in the crime victims compensation fund shall be used
20 only for the payment of compensation pursuant to K.S.A. 74-7301 et seq.,
21 and amendments thereto, and for state operations of the board *and the*
22 *crime victims compensation division of the office of the attorney general*
23 *created pursuant to section ~~1-4~~ {3}, and amendments thereto.* Payments
24 from the fund shall be made upon warrants of the director of accounts and
25 reports issued pursuant to vouchers approved by the chairperson of the
26 board and the attorney general or by a person or persons designated by the
27 chairperson and the attorney general.

28 (c) The crime victims compensation board may apply for, receive and
29 accept money from any source, including financial contributions from
30 inmates as provided by ~~subsection (b) of~~ K.S.A. 75-5211**{(b)}**, and
31 amendments thereto, for the purposes for which money in the crime
32 victims compensation fund may be expended. Upon receipt of any such
33 money, the chairperson of the board shall remit the entire amount to the
34 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
35 amendments thereto. Upon receipt of each such remittance, the state
36 treasurer shall deposit the entire amount in the state treasury to the credit
37 of the crime victims compensation fund.

38 ***Sec. 8. K.S.A. 2018 Supp. 75-6117 is hereby amended to read as***
39 ***follows: 75-6117. (a) There is hereby established in the state treasury the***
40 ***tort claims fund which shall be administered by the attorney general. All***
41 ***expenditures from such fund shall be made upon warrants of the***
42 ***director of accounts and reports pursuant to vouchers approved by the***
43 ***attorney general or by a designee of the attorney general.***

1 ***(b) (1) Moneys in the tort claims fund shall be used only for the***
2 ***purpose of paying: (A) Compromises, settlements and final judgments***
3 ***arising from claims against the state or an employee of the state under***
4 ***the Kansas tort claims act or under the civil rights laws of the United***
5 ***States or of the state of Kansas; (B) costs of defending the state or an***
6 ***employee of the state in any actions or proceedings on those claims; and***
7 ***(C) judgments arising from claims pursuant to K.S.A. 2018 Supp. 60-***
8 ***5004, and amendments thereto, including, but not limited to, premiums***
9 ***under the state health care benefits program.***

10 ***(2) Payment of a judgment arising from a claim pursuant to K.S.A.***
11 ***2018 Supp. 60-5004, and amendments thereto, shall be subject to review***
12 ***by the state finance council. The attorney general shall notify the state***
13 ***finance council of the need for such review and ensure that payment of***
14 ***the judgment occurs without unnecessary delay.***

15 ***(3) Payment of a compromise or settlement shall be subject to***
16 ***approval by the state finance council as provided in K.S.A. 75-6106, and***
17 ***amendments thereto.***

18 ***(4) Payment of a final judgment shall be made from the fund if***
19 ***there has been a determination of any appeal taken from the judgment***
20 ***or, if no appeal is taken, if the time for appeal has expired.***

21 ***(5) No payment shall be made from the fund to satisfy a***
22 ***compromise, settlement or final judgment when there exists insurance***
23 ***coverage obtained therefor, except that payment shall be made from the***
24 ***fund to satisfy a compromise settlement or final judgment for claims***
25 ***against the state or an employee of the state in any actions or***
26 ***proceedings arising from rendering or failure to render professional***
27 ***services by: (A) A charitable health care provider as defined by K.S.A.***
28 ***75-6102, and amendments thereto; (B) a local health department as***
29 ***defined by K.S.A. 65-241, and amendments thereto, or an employee***
30 ***thereof; or (C) an indigent health care clinic as defined by K.S.A. 75-***
31 ***6115, and amendments thereto, or an employee thereof, even if there***
32 ***exists insurance coverage obtained therefor.***

33 ***(c) Upon certification by the attorney general to the director of***
34 ***accounts and reports that the unencumbered balance in the tort claims***
35 ***fund is insufficient to pay an amount for which the fund is liable, the***
36 ***director of accounts and reports shall transfer an amount equal to the***
37 ***insufficiency from the state general fund to the tort claims fund.***

38 ***(d) When payment is made from the ~~Kansas~~ tort claims fund on***
39 ***behalf of the university of Kansas hospital authority, the authority shall***
40 ***transfer to the tort claims fund an amount equal to the payment made by***
41 ***the tort claims fund on behalf of the authority.***

42 ***(e) This section shall be part of and supplemental to the Kansas tort***
43 ***claims act.***

1 (f) *When payment is made from the tort claims fund on behalf of a*
2 *state agency or employee for defense or indemnification of a claim*
3 *involving an alleged violation of the Kansas open records act or the*
4 *Kansas open meetings act, the agency requesting the defense or*
5 *indemnification or employing the employee who requests the defense or*
6 *indemnification shall transfer to the tort claims fund an amount equal to*
7 *the payment made by the tort claims fund on behalf of the agency.*

8 Sec. ~~6~~ **9**. K.S.A. 74-7304, 74-7305, 74-7306, 74-7308 and 74-7317
9 **{and K.S.A. 2018 Supp. 75-6117}** 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.