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

AN ACT concerning the attorney general; relating to legal representation or indemnification in alleged violations of the open records act or the open meetings act; creating a statewide Kansas victim information and notification everyday (VINE) coordinator; appointment of a Kansas youth suicide prevention coordinator; relating to the crime victims compensation board; creating the crime victims compensating compensation division within the office of the attorney general; relating to the tort claims fund; claims involving alleged violations of the open records act or the open meetings act; amending K.S.A. 74-7304, 74-7305, 74-7308 and 74-7317 and K.S.A. 2018 Supp. 75-6117 and repealing the existing sections; also repealing K.S.A. 74-7306.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) organize events that bring together youth, educators and community members from across the state to share information and receive training to prevent and address youth suicide in their communities;
(4) gather, disseminate and promote information focused on suicide reduction; and
(5) perform any other duty assigned by the attorney general to carry out the provisions of this section.

New Section 1. Sec. 4. (a) There is hereby established within the office of the attorney general a crime victims compensation division to administer and support the operations of the crime victims compensation board established pursuant to K.S.A. 74-7301 et seq., and amendments thereto. The division shall receive applications for compensation and all supporting papers and shall, if requested by the board, investigate the claim, appear in proceedings related to the claim and present evidence in opposition to or support of an award.
(b) The attorney general shall establish and maintain a principal office for the division and other necessary offices within the state, appoint employees and agents, as necessary, and prescribe the duties and compensation for each employee and agent subject to appropriations. The crime victims compensation division shall be headed by a director appointed by the attorney general in consultation with the crime victims compensation board.
(c) The crime victims compensation division shall:
(1) Prescribe forms on which applications for compensation shall be made;
(2) request investigations and data from county and district attorneys, law enforcement officers and other sources to enable the crime victims compensation board to determine whether, and to what extent a claimant qualifies for compensation;
(3) make available for public inspection, as provided by the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto, all rules and regulations, written statements of policy, interpretations formulated, adopted or used by the crime victims compensation board and decisions and opinions of the crime victims compensation board;
(4) publicize the availability of compensation and information regarding the filing of claims; and
(5) perform any other duty assigned by the attorney general to carry out the provisions of this section.
(d) Confidentiality provided by law covering a claimant's or victim's juvenile court records shall not be applicable in proceedings pursuant to K.S.A. 74-7301 et seq., and amendments thereto.

Sec. 2. K.S.A. 74-7304 is hereby amended to read as follows:
74-7304. In addition to the powers and duties specified elsewhere in this act, the board shall have the following powers and duties:
(a) The duty to establish and maintain a principal office and other necessary offices within this state, to appoint employees and agents as-
necessary and to prescribe their duties and compensation, all within the
limitations and conditions of appropriations made therefor;
(b) The duty power to adopt by rule and regulation a description of
the organization of the board, stating the general method and course of
operation of the board;
(e)(b) the duty power to adopt rules and regulations to carry out the
provisions of this act, and the property crime restitution and compensation
act, including rules for the allowance of attorney fees for representation of
claimants; and to adopt rules and regulations providing for discovery
proceedings, including medical examination, consistent with the
provisions of this act relating thereto. Rules and regulations adopted by the
board shall be statements of general applicability which implement,
interpret or prescribe policy, or describe the procedure or practice
requirements of the board;
(d) the duty to prescribe forms on which applications for
compensation shall be made;
(e)(c) the duty to hear and determine all matters relating to claims for
compensation, and the power to reinvestigate or reopen claims without
regard to statutes of limitation or periods of prescription;
(f) the power to request investigations and data from county and
district attorneys and law enforcement officers to enable the board to
determine whether and the extent to which a claimant qualifies for
compensation. Confidentiality provided by law covering claimant’s or
victim’s juvenile court records shall not be applicable in proceedings under
this act;
(g) the duty, if it would contribute to the function of the board, to
subpoena witnesses and other prospective evidence, administer oaths or
affirmations, conduct hearings and receive relevant, nonprivileged
evidence; and
(h)(e) the power to take notice of judicially recognizable facts and
general, technical and scientific facts within their specialized knowledge;
(i) the duty to make available for public inspection all rules and
regulations, written statements of policy, interpretations formulated,
adopted or used by the board in discharging its functions, and decisions
and opinions of the board;
(j) the duty to publicize the availability of compensation and
information regarding the filing of claims therefor.
Sec. 3. K.S.A. 74-7305 is hereby amended to read as follows:
74-7305. (a) An application for compensation shall be made in the manner
and form prescribed by the board crime victims compensation division
created by section 1-4 [3], and amendments thereto.
(b) Compensation may not be awarded unless an application has been
filed with the board division within two years of the reporting of the
incident to law enforcement officials if the victim was less than 16 years of age and the injury or death is the result of any of the following crimes: (1) Indecent liberties with a child as defined in K.S.A. 21-3503, prior to its repeal, or K.S.A. 2018 Supp. 21-5506(a), and amendments thereto; (2) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, prior to its repeal, or K.S.A. 2018 Supp. 21-5506(b), and amendments thereto; (3) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2018 Supp. 21-5504(b), and amendments thereto; (4) enticement of a child as defined in K.S.A. 21-3509, prior to its repeal; (5) indecent solicitation of a child as defined in K.S.A. 21-3510, prior to its repeal, or K.S.A. 2018 Supp. 21-5508(a), and amendments thereto; (6) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, prior to its repeal, or K.S.A. 2018 Supp. 21-5508(b), and amendments thereto; (7) sexual exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2018 Supp. 21-5510, and amendments thereto; (8) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2018 Supp. 21-5604(b), and amendments thereto; (9) human trafficking as defined in K.S.A. 21-3446, prior to its repeal, or K.S.A. 2018 Supp. 21-5426(a), and amendments thereto; (10) aggravated human trafficking as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2018 Supp. 21-5426(b), and amendments thereto; or (11) commercial sexual exploitation of a child as defined in K.S.A. 2018 Supp. 21-6422, and amendments thereto. Compensation for mental health counseling may be awarded if a claim is filed within two years of: (1) Testimony, to a claimant who is, or will be, required to testify in a sexually violent predator commitment, pursuant to article 29a of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, of an offender who victimized the claimant or the victim on whose behalf the claim is made; or (2) notification, to a claimant who is notified that DNA testing of a sexual assault kit or other evidence has revealed a DNA profile of a suspected offender who victimized the claimant or the victim on whose behalf the claim is made, or is notified of the identification of a suspected offender who victimized the claimant or the victim on whose behalf the claim is made, whichever occurs later. For all other incidents of criminally injurious conduct, compensation may not be awarded unless the claim has been filed with the board division within two years after the injury or death upon which the claim is based. Compensation may not be awarded to a claimant who was the offender or an accomplice of the offender and may not be awarded to another person if the award would unjustly benefit the offender or accomplice.

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

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

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

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

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

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

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

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

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

(5) the claimant's resources.

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

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

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

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

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

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

Sec. 4. K.S.A. 74-7308 is hereby amended to read as follows:

74-7308. (a) There shall be no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical, mental or emotional conditions of the claimant or victim in a proceeding under this act in which such condition is an element.

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

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

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

(e) All records and information given to the board and the crime victims compensation division created by section 144, and amendments thereto, to process a claim on behalf of a crime victim shall be confidential. Such exhibits, medical records, psychological records, counseling records, work records, criminal investigation records, criminal court case records, witness statements, telephone records; and other records of any type or nature whatsoever gathered for the purpose of evaluating whether to compensate a victim shall not be obtainable by any party to any action, civil or criminal, through any discovery process except:
(1) In the event of an appeal under the Kansas administrative procedure act from a decision of the board and then only to the extent narrowly and necessarily to obtain court review;

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

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

Sec. 5. K.S.A. 74-7317 is hereby amended to read as follows:

74-7317. (a) There is hereby established in the state treasury the crime victims compensation fund.

(b) Moneys in the crime victims compensation fund shall be used only for the payment of compensation pursuant to K.S.A. 74-7301 et seq., and amendments thereto, and for state operations of the board and the crime victims compensation division of the office of the attorney general created pursuant to section 14, and amendments thereto. Payments from the fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the board and the attorney general or by a person or persons designated by the chairperson and the attorney general.

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

Sec. 8. K.S.A. 2018 Supp. 75-6117 is hereby amended to read as follows: 75-6117. (a) There is hereby established in the state treasury the tort claims fund which shall be administered by the attorney general. All expenditures from such fund shall be made upon warrants of the director of accounts and reports pursuant to vouchers approved by the attorney general or by a designee of the attorney general.
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(b) (1) Moneys in the tort claims fund shall be used only for the purpose of paying: (A) Compromises, settlements and final judgments arising from claims against the state or an employee of the state under the Kansas tort claims act or under the civil rights laws of the United States or of the state of Kansas; (B) costs of defending the state or an employee of the state in any actions or proceedings on those claims; and (C) judgments arising from claims pursuant to K.S.A. 2018 Supp. 60-5004, and amendments thereto, including, but not limited to, premiums under the state health care benefits program.

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

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

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

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

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

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

(e) This section shall be part of and supplemental to the Kansas tort claims act.
(f) When payment is made from the tort claims fund on behalf of a state agency or employee for defense or indemnification of a claim involving an alleged violation of the Kansas open records act or the Kansas open meetings act, the agency requesting the defense or indemnification or employing the employee who requests the defense or indemnification shall transfer to the tort claims fund an amount equal to the payment made by the tort claims fund on behalf of the agency.

Sec. 6. K.S.A. 74-7304, 74-7305, 74-7306, 74-7308 and 74-7317 {and K.S.A. 2018 Supp. 75-6117} are hereby repealed.

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