

HOUSE BILL No. 2574

By Committee on Judiciary

1-31

1 AN ACT concerning the attorney general; relating to the crime victims
2 compensation board; awarding of compensation for mental health
3 counseling; increasing the amount of certain awards; changing the
4 definition of "crime scene cleanup"; amending K.S.A. 2021 Supp. 74-
5 7301 and 74-7305 and repealing the existing sections.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2021 Supp. 74-7301 is hereby amended to read as
9 follows: 74-7301. As used in this act:

10 (a) "Allowance expense" means reasonable charges incurred for
11 reasonably needed products, services and accommodations, including
12 those for medical care, rehabilitation, rehabilitative occupational training
13 and other remedial treatment and care and for the replacement of items of
14 clothing or bedding which were seized for evidence. "Allowance expense"
15 includes a total charge not in excess of ~~\$5,000~~ \$7,500 for expenses in any
16 way related to funeral, cremation or burial; but "allowance expense" shall
17 not include that portion of a charge for a room in a hospital, clinic,
18 convalescent or nursing home or any other institution engaged in
19 providing nursing care and related services, in excess of a reasonable and
20 customary charge for semi-private accommodations, unless other
21 accommodations are medically required. "Allowance expense" includes a
22 total charge not in excess of ~~\$1,000~~ \$2,500 for expenses in any way related
23 to crime scene cleanup.

24 (b) "Board" means the crime victims compensation board established
25 under K.S.A. 74-7303, and amendments thereto.

26 (c) "Claimant" means any of the following persons claiming
27 compensation under this act:

- 28 (1) A victim;
29 (2) a dependent of a deceased victim;
30 (3) a third person other than a collateral source; or
31 (4) an authorized person acting on behalf of any of them.

32 (d) "Collateral source" means the net financial benefit, after
33 deduction of taxes, legal fees, costs, expenses of litigation, liens, offsets,
34 credits or other deductions, from a source of benefits or advantages for
35 economic loss otherwise reparable under this act which the victim or
36 claimant has received, or which is readily available to the victim or

1 claimant, from:

2 (1) The offender;

3 (2) the government of the United States or any agency thereof, a state
4 or any of its political subdivisions or an instrumentality or two or more
5 states, unless the law providing for the benefits or advantages makes them
6 excess or secondary to benefits under this act;

7 (3) social security, medicare and medicaid;

8 (4) state-required temporary nonoccupational disability insurance;

9 (5) workers' compensation;

10 (6) wage continuation programs of any employer;

11 (7) proceeds of a contract of insurance payable to the victim for loss
12 which the victim sustained because of the criminally injurious conduct;

13 (8) a contract providing prepaid hospital and other health care
14 services or benefits for disability; or

15 (9) damages awarded in a tort action.

16 (e) "Criminally injurious conduct" means conduct that: (1) (A)
17 Occurs or is attempted in this state or occurs to a person whose domicile is
18 in Kansas who is the victim of a violent crime which occurs in another
19 state, possession, or territory of the United States of America may make an
20 application for compensation if:

21 (i) The crimes would be compensable had it occurred in the state of
22 Kansas; and

23 (ii) the places the crimes occurred are states, possessions or territories
24 of the United States of America not having eligible crime victim
25 compensation programs;

26 (B) poses a substantial threat or personal injury or death; and

27 (C) either is punishable by fine, imprisonment or death or would be
28 so punishable but for the fact that the person engaging in the conduct
29 lacked capacity to commit the crime under the laws of this state; or

30 (2) is an act of terrorism, as defined in 18 U.S.C. § 2331, or a violent
31 crime that posed a substantial threat or caused personal injury or death,
32 committed outside of the United States against a person whose domicile is
33 in Kansas, except that criminally injurious conduct does not include any
34 conduct resulting in injury or death sustained as a member of the United
35 States armed forces while serving on active duty.

36 "Criminally injurious conduct" does not include conduct arising out of
37 the ownership, maintenance or use of a motor vehicle, except for
38 violations of K.S.A. 8-2,144 or 8-1567, and amendments thereto, or
39 violations of municipal ordinances or county resolutions prohibiting the
40 acts prohibited by those statutes, or violations of K.S.A. 8-1602, and
41 amendments thereto, K.S.A. 21-3404, 21-3405 or 21-3414, prior to their
42 repeal, or K.S.A. 2021 Supp. 21-5405, 21-5406 or 21-5413(b), and
43 amendments thereto, or when such conduct was intended to cause personal

1 injury or death.

2 (f) "Dependent" means a natural person wholly or partially dependent
3 upon the victim for care or support, and includes a child of the victim born
4 after the victim's death.

5 (g) "Dependent's economic loss" means loss after decedent's death of
6 contributions of things of economic value to the decedent's dependents, not
7 including services they would have received from the decedent if the
8 decedent had not suffered the fatal injury, less expenses of the dependents
9 avoided by reason of decedent's death.

10 (h) "Dependent's replacement services loss" means loss reasonably
11 incurred by dependents after decedent's death in obtaining ordinary and
12 necessary services in lieu of those the decedent would have performed for
13 their benefit if the decedent had not suffered the fatal injury, less expenses
14 of the dependents avoided by reason of decedent's death and not subtracted
15 in calculating dependent's economic loss.

16 (i) "Economic loss" means economic detriment consisting only of
17 allowable expense, work loss, replacement services loss and, if injury
18 causes death, dependent's economic loss and dependent's replacement
19 service loss. Noneconomic detriment is not loss, but economic detriment is
20 loss although caused by pain and suffering or physical impairment.

21 (j) "Noneconomic detriment" means pain, suffering, inconvenience,
22 physical impairment and nonpecuniary damage.

23 (k) "Replacement services loss" means expenses reasonably incurred
24 in obtaining ordinary and necessary services in lieu of those the injured
25 person would have performed, not for income, but for the benefit of self or
26 family, if such person had not been injured.

27 (l) "Work loss" means loss of income from work the injured person
28 would have performed if such person had not been injured, and expenses
29 reasonably incurred by such person in obtaining services in lieu of those
30 the person would have performed for income, reduced by any income from
31 substitute work actually performed by such person or by income such
32 person would have earned in available appropriate substitute work that the
33 person was capable of performing but unreasonably failed to undertake.

34 (m) "Victim" means a person who suffers personal injury or death as
35 a result of:

36 (1) Criminally injurious conduct;

37 (2) the good faith effort of any person to prevent criminally injurious
38 conduct;

39 (3) the good faith effort of any person to apprehend a person
40 suspected of engaging in criminally injurious conduct; or

41 (4) witnessing a violent crime when the person was 16 years of age or
42 younger at the time the crime was committed.

43 (n) "Crime scene cleanup" means removal of blood, stains, odors or

1 other debris caused by the crime or the processing of the crime scene *and*
2 *may include replacement of materials that were removed because such*
3 *materials were biohazardous or were damaged as part of evidence*
4 *collection.*

5 Sec. 2. K.S.A. 2021 Supp. 74-7305 is hereby amended to read as
6 follows: 74-7305. (a) An application for compensation shall be made in the
7 manner and form prescribed by the crime victims compensation division
8 created by K.S.A. 75-773, and amendments thereto.

9 (b) (1) Except as otherwise provided in this subsection, compensation
10 may not be awarded unless an application has been filed with the division
11 within two years of the reporting of the incident to law enforcement
12 officials if the victim was less than 16 years of age and the injury or death
13 is the result of any of the following crimes:

14 (A) Enticement of a child as defined in K.S.A. 21-3509, prior to its
15 repeal;

16 (B) human trafficking as defined in K.S.A. 21-3446, prior to its
17 repeal, or K.S.A. 2021 Supp. 21-5426(a), and amendments thereto;

18 (C) aggravated human trafficking as defined in K.S.A. 21-3447, prior
19 to its repeal, or K.S.A. 2021 Supp. 21-5426(b), and amendments thereto;
20 or

21 (D) a sexually violent crime, as defined in K.S.A. 22-3717, and
22 amendments thereto.

23 (2) Compensation for mental health counseling may be awarded to a:

24 (A) Victim, as defined in K.S.A. 74-7301(m)(4), and amendments
25 thereto, if the board finds there was good cause for the failure to file within
26 the time specified in this subsection and the claim is filed before the victim
27 turns 19 years of age; ~~or~~

28 (B) victim of a sexually violent crime, as defined in K.S.A. 22-3717,
29 and amendments thereto, if the board finds there was good cause for the
30 failure to file within the time specified in this subsection and:

31 (i) The claim is filed with the division within 10 years of the date
32 such crime was committed; or

33 (ii) if the victim was less than 18 years of age at the time such crime
34 was committed, the claim is filed within 10 years of the date the victim
35 turns 18 years of age;

36 (C) *victim who is or will be required to testify in a sexually violent*
37 *predator commitment, pursuant to article 29a of chapter 59 of the Kansas*
38 *Statutes Annotated, and amendments thereto, of an offender who*
39 *victimimized the victim or the victim on whose behalf the claim is made, if*
40 *the claim is made within two years of such testimony; or*

41 (D) *victim who is notified that DNA testing of a sexual assault kit or*
42 *other evidence has revealed a DNA profile of a suspected offender who*
43 *victimimized the victim or the victim on whose behalf the claim is made, or is*

1 *notified of the identification of a suspected offender who victimized the*
2 *victim or the victim on whose behalf the claim is made, if the claim is*
3 *made within two years of such notification.*

4 (3) For all other incidents of criminally injurious conduct,
5 compensation may not be awarded unless the claim has been filed with the
6 division within two years after the injury or death upon which the claim is
7 based.

8 (c) Compensation may not be awarded to a claimant who was the
9 offender or an accomplice of the offender and may not be awarded to
10 another person if the award would unjustly benefit the offender or
11 accomplice.

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

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

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

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

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

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

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

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

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

35 (5) the claimant's resources.

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

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

43 ~~(h) Except in K.S.A. 21-3602 or 21-3603, prior to their repeal, or~~

1 ~~K.S.A. 2021 Supp. 21-5604, and amendments thereto, or cases of sex~~
2 ~~offenses established in article 35 of chapter 21, of the Kansas Statutes~~
3 ~~Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas~~
4 ~~Statutes Annotated, and amendments thereto, K.S.A. 2021 Supp. 21-6419~~
5 ~~through 21-6422, and amendments thereto, or human trafficking or~~
6 ~~aggravated human trafficking, as defined in K.S.A. 21-3446 or 21-3447,~~
7 ~~prior to their repeal, or K.S.A. 2021 Supp. 21-5426, and amendments~~
8 ~~thereto, compensation may not be awarded if the economic loss is less than~~
9 ~~\$100.~~

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

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

16 (†)(j) Nothing in subsections (d)(2), (d)(3), (f) and (g) shall be
17 construed to reduce or deny compensation to a victim of human trafficking
18 or aggravated human trafficking, as defined in K.S.A. 2021 Supp. 21-
19 5426, and amendments thereto, or commercial sexual exploitation of a
20 child, as defined in K.S.A. 2021 Supp. 21-6422, and amendments thereto,
21 who was 18 years of age or younger at the time the crime was committed
22 and is otherwise qualified for compensation.

23 Sec. 3. K.S.A. 2021 Supp. 74-7301 and 74-7305 are hereby repealed.

24 Sec. 4. This act shall take effect and be in force from and after its
25 publication in the statute book.