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**Date: March 22, 2021
To: House Committee on Judiciary
From: City of Overland Park, Michael Koss, Attorney
Re: HB 2412 – Neutral (Proposed Amendment)**

Thank you for allowing the City of Overland Park (the “City”) to submit testimony on HB 2412. The City is neutral on HB 2412 but proposes an amendment to designate a portion of settlement funds to municipalities to combat substance abuse, allow non-litigating municipalities to access those funds, and allow litigating municipalities to access those funds by agreeing with the Attorney General to release their opioid litigation claims.

The City has entered into litigation against opioid manufacturers and distributors who have contributed to the opioid epidemic (the City is one of over 2,000 local governments that are plaintiffs in this litigation). The City’s main purpose in participating in the opioid litigation was not pursuit of damages (which will likely be minimal), but to allow the City to be a party to a resolution that will hopefully help curtail the opioid addiction epidemic. Settlement discussions in the opioid litigation have included potential injunctive relief like requiring companies to change opioid marketing practices and fund programs that may include education, drug treatment, job programs, homelessness solutions, and counseling. These are exactly the types of solutions the City was hoping would result from its participation in the opioid litigation. By entering a contingency fee arrangement, the City hoped to support these important achievements without spending any taxpayer money.

The City respects HB 2412’s approach of allowing litigating municipalities to continue their litigation against opioid defendants. However, we and other cities think the legislation could be improved by creating an option and incentives for litigating municipalities to enter an agreement with the Attorney General to release their claims and become eligible for state settlement funds. This collaborative approach would potentially increase the amount of state settlement funds and allow municipalities to work with the Attorney General on the conditions of distributing settlement funds to municipalities. The Attorney General would control the distribution of funds to municipalities, only non-litigating municipalities and litigating municipalities that have released their claims would be eligible for the designated funds, and litigating municipalities that release their claims would have to first seek reimbursement for legal fees from settlement sources other than state settlement funds.

Thank you for allowing the City to submit testimony on HB 2412. The City appreciates the Committee’s consideration of our proposed amendment.

PROPOSED AMENDMENT TO HB 2412 – CITY OF OVERLAND PARK

Session of 2021

HOUSE BILL No. 2412

By Committee on Appropriations

2-22

1 AN ACT concerning the attorney general; enacting the Kansas fights
2 addiction act; providing for the expenditure of moneys recovered in
3 opioid litigation; establishing a grant program to address the effects of
4 substance abuse and addiction; Kansas fights addiction grant review
5 board; Kansas fights addiction fund.
6

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

8 Section 1. Sections 1 through 7, and amendments thereto, shall be
9 known and may be cited as the Kansas fights addiction act.

10 Sec. 2. As used in sections 1 through 7, and amendments thereto:

11 (a) "Act" means the Kansas fights addiction act.

12 (b) "Covered conduct" means any conduct covered by opioid
13 litigation that resulted in payment of moneys into the Kansas fights
14 addiction fund.

15 (c) "Defendant" means a defendant or putative defendant in any
16 opioid litigation.

17 (d) "Moneys that are received" includes damages, penalties, attorney
18 fees, costs, disbursements, refunds, rebates or any other monetary payment
19 made or paid by any defendant by reason of any judgment, consent decree
20 or settlement, after payment of any costs or fees allocated by court order.

21 (e) "Municipality" means the same as defined in K.S.A. 75-6102, and
22 amendments thereto.

23 (f) "Opioid litigation" means any civil lawsuit, demand or settlement,
24 including any settlement in lieu of litigation, alleging unlawful conduct in
25 the manufacturing, marketing, distribution, prescribing or other use of
26 opioid medications and asserting or resolving claims of the state or any
27 municipality.

28 (g) "Qualified applicant" means any state entity, municipality or not-
29 for-profit private entity that provides services for the purpose of
30 preventing, reducing, treating or otherwise abating or remediating
31 substance abuse or addiction ~~and that has released its legal claims arising~~
32 ~~from covered conduct against each defendant that is required by opioid~~
33 ~~litigation to pay into the fund.~~

34 (h) "State" means the state of Kansas, including any agency or
35 official thereof.

36 (i) "Sunflower foundation" means the sunflower foundation: health

1 care for Kansas, established pursuant to the settlement agreement entered
2 into by the attorney general in the action filed by blue cross and blue
3 shield of Kansas, inc., in the district court of Shawnee county, Kansas,
4 case No. 97CV608.

5 Sec. 3. (a) Notwithstanding any other provision of law to the contrary,
6 the attorney general shall remit to the state treasurer in accordance with
7 K.S.A. 75-4215, and amendments thereto, all moneys that are received by
8 the state pursuant to opioid litigation in which the attorney general is
9 involved that is dedicated by the terms of such litigation for the abatement
10 or remediation of substance abuse or addiction. Upon receipt of each such
11 remittance, the state treasurer shall deposit the entire amount into the state
12 treasury to the credit of the Kansas fights addiction fund.

seventy-five percent of

13 (b) There is hereby established in the state treasury the Kansas fights
14 addiction fund, and such fund shall be administered by the attorney
15 general. Moneys in the Kansas fights addiction fund shall be expended
16 subject to any agreement authorized under section 4(d), and amendments
17 thereto, for grants approved by the Kansas fights addiction grant review
18 board created by section 4, and amendments thereto, to qualified
19 applicants for projects and activities that prevent, reduce, treat or mitigate
20 the effects of substance abuse and addiction. Any such expenditure for a
21 grant shall not be used to supplant any other source of funding. No moneys
22 shall be expended from the Kansas fights addiction fund for the payment
23 of litigation costs, expenses or attorney fees related to opioid litigation. All
24 expenditures from the Kansas fights addiction fund shall be made in
25 accordance with appropriation acts upon warrants of the director of
26 accounts and reports pursuant to vouchers approved by the attorney
27 general or the attorney general's designee.

and twenty-five percent of the entire amount into the state treasury to the credit of the municipalities fight addiction fund.

New subsection 3(c) on the following page

28 Sec. 4. (a) There is hereby created under the jurisdiction of the
29 attorney general the Kansas fights addiction grant review board. At least
30 one member of such board shall reside in each of the state's congressional
31 districts. Each member shall serve at the pleasure of the appointing
32 authority. Such board shall be composed of 11 members who have
33 expertise in the prevention, reduction, treatment or mitigation of the effects
34 of substance abuse and addiction, as follows:

- 35 (1) Two members appointed by the attorney general, one of whom
36 shall be designated as chairperson of the board and at least one of whom
37 shall be appointed after consultation with addiction professionals;
- 38 (2) one member appointed by the governor;
- 39 (3) one member appointed by the president of the senate;
- 40 (4) one member appointed by the speaker of the house of
41 representatives;
- 42 (5) one member appointed by the minority leader of the senate;
- 43 (6) one member appointed by the minority leader of the house of

New subsection 3(c)

(c) There is hereby established in the state treasury the municipalities fight addiction fund, and such fund shall be distributed to municipalities and administered by the attorney general. Moneys in the municipalities fight addiction fund shall be expended subject to any agreement between the Attorney General and municipalities, for projects and activities that prevent, reduce, treat or mitigate the effects of substance abuse and addiction. Any such expenditure shall not be used to supplant any other source of funding. Municipalities may also seek reimbursement for the payment of litigation costs, expenses or attorney fees related to opioid litigation, but shall first seek payment from applicable outside settlement sources or settlement fee funds prior to seeking payment from the municipalities fight addiction fund. The following municipalities shall be eligible to receive funds from the municipalities fight addiction fund:

(i) Municipalities that have not filed opioid litigation. The Attorney General shall consider the population of each municipality, and the impact of substance abuse and addiction on the municipality and its residents, when determining the proportionate distribution each such municipality may receive from the municipalities fight addiction fund. If a municipality's proportionate share would be less than \$500, that share shall go to county in which the largest portion of the municipality's residents reside.

(ii) Municipalities that have filed opioid litigation prior to January 1, 2021, and have entered into an agreement with the Attorney General by [DATE] that releases the municipality's legal claims arising from covered conduct. The agreement shall address the distribution of funds from the municipalities fight addiction fund to the municipality. The Attorney General shall consider the population of each municipality, and the impact of substance abuse and addiction on the municipality and its residents, when determining the proportionate distribution each such municipality may receive from the municipalities fight addiction fund.

- 1 representatives;
- 2 (7) one member appointed by the league of Kansas municipalities;
- 3 (8) one member appointed by the Kansas association of counties;
- 4 (9) one member appointed by the Kansas county and district
- 5 attorneys association; and
- 6 (10) one member appointed by the association of community mental
- 7 health centers of Kansas after consultation with the Kansas association of
- 8 addiction professionals.

9 (b) The board shall receive and consider applications for grants of
 10 money from the Kansas fights addiction fund. Not fewer than six members
 11 of the board voting in the affirmative shall be necessary to approve each
 12 grant, and each member shall have one vote. The board may adopt rules
 13 and procedures for its operation, conduct hearings, receive testimony and
 14 gather information to assist in its powers, duties and functions under this
 15 act.

16 (c) In awarding grants, the board:

17 (1) Shall take care to support services throughout the state and shall
 18 ensure not less than 1/8 of the total amount of moneys granted each
 19 calendar year shall be for services in each of the state's congressional
 20 districts;

21 (2) shall take into account science and data-driven substance abuse
 22 prevention reduction, treatment or mitigation strategies;

23 (3) shall consult with the Kansas prescription drug and opioid
 24 advisory committee, the department of health and environment, the
 25 insurance department and other appropriate public and private entities to
 26 ensure coordination of drug abuse and addiction prevention and mitigation
 27 efforts throughout the state;

28 (4) shall approve grants only in compliance with the requirements of
 29 section 3, and amendments thereto;

30 (5) shall consider the sustainability of programming after grant funds
 31 are exhausted;

32 (6) may establish conditions for the award of grants and require
 33 assurance and subsequent review to ensure such conditions are satisfied;

34 (7) may give preference to qualified applicants that are not otherwise
 35 seeking or receiving funds from opioid litigation; and

36 (8) may give preference to grants that expand availability of certified
 37 drug abuse treatment programs authorized by K.S.A. 2020 Supp. 21-6824,
 38 and amendments thereto.

39 (d) (1) The attorney general shall provide administrative support for
 40 the board and shall administer, monitor and assure compliance with
 41 conditions on grants awarded.

42 (2) To carry out the duties and responsibilities under paragraph (1),
 43 the attorney general may enter into an agreement with the sunflower

; and
 (9) shall give preference to qualified applicants that have released their claims arising from covered conduct against each defendant that is required by opioid litigation to pay into the Kansas fights addiction fund.

1 foundation to provide such administration, monitoring and assurance of
 2 compliance. Such agreement may:

3 (A) Provide for the attorney general to periodically transfer moneys
 4 from the Kansas fights addiction fund to the sunflower foundation. The
 5 sunflower administration shall administer any such moneys in a manner
 6 consistent with this act and with grants approved by the board. If an
 7 agreement authorized by this subsection is in effect, the attorney general
 8 may transfer moneys from the Kansas fights addiction fund to the
 9 sunflower foundation pursuant to such agreement;

10 (B) provide for a reasonable fee or other compensation for the
 11 sunflower foundation for services related to this act;

12 (C) make provision for the use of any earnings on moneys transferred
 13 to the sunflower foundation pursuant to this act and invested by the
 14 sunflower foundation; and

15 (D) contain other provisions as may be reasonably necessary and
 16 appropriate to carry out the provisions of this act.

17 (e) Members of the board shall not receive compensation or expenses
 18 for serving on the board. Each member shall file a statement of substantial
 19 interest as provided in K.S.A. 46-248 through 46-252, and amendments
 20 thereto. No member shall participate in the consideration of any grant
 21 application for which such member has a conflict of interest.

22 Sec. 5. The attorney general and each municipality shall be solely
 23 responsible for paying all costs, expenses and attorney fees arising from
 24 opioid litigation brought under their respective authorities, including any
 25 attorney fees owed to private legal counsel, and may seek payment or
 26 reimbursement of such costs, expenses and attorney fees from moneys not
 27 ~~subject to the requirements of section 2, and amendments thereto.~~

deposited in the Kansas
 fights addiction fund

28 Sec. 6. (a) Except as provided by subsection (b), on and after January
 29 1, 2021, no municipality shall file or maintain opioid litigation in any court
 30 without the prior approval of the attorney general. Any municipality that
 31 filed opioid litigation on or after January 1, 2021, through the effective
 32 date of the Kansas fights addiction act shall withdraw from such opioid
 33 litigation, unless such municipality receives approval from the attorney
 34 general to maintain such opioid litigation.

municipality that filed
 opioid

35 (b) This section shall not apply to or affect any litigation ~~filed~~ in court
 36 prior to January 1, 2021.

37 Sec. 7. Not later than March 1 of each year, the Kansas fights
 38 addiction grant review board shall submit to the speaker of the house of
 39 representatives, the president of the senate, the governor and the attorney
 40 general a report of the board's activities during the prior calendar year,
 41 including:

42 (a) An accounting of moneys deposited into and expended from the
 43 Kansas fights addiction fund;