

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2412

As Amended by House Committee on Judiciary

Brief*

HB 2412, as amended, would create the Kansas Fights Addiction Act (Act), which would address use of funds received from opioid litigation and establish limits on future opioid litigation by municipalities.

New Funds

The bill would establish in the State Treasury two new funds administered by the Attorney General: the Kansas Fights Addiction Fund (KFA Fund) and the Municipalities Fight Addiction Fund (MFA Fund). The bill would require the Attorney General to remit to the State Treasurer all moneys received by Kansas pursuant to opioid litigation in which the Attorney General is involved that is dedicated by the terms of such litigation for the abatement or remediation of substance abuse or addiction. The bill would require 75 percent of these moneys be credited to the KFA Fund and 25 percent be credited to the MFA Fund, and would specify how expenditures are to be made from the funds.

KFA Fund

The bill would require moneys in the KFA Fund be expended for grants approved by the Kansas Fights Addiction Grant Review Board (Board), which also would be created by the bill, to qualified applicants for projects and activities that prevent, reduce, treat, or mitigate the effects of substance

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

abuse and addiction. Such grants could not supplant any other source of funding, and no moneys from the KFA Fund could be used for litigation costs, expenses, or attorney fees related to opioid litigation.

MFA Fund

Moneys in the MFA Fund would be expended subject to an agreement among the Attorney General, the Kansas Association of Counties (KAC), and the League of Kansas Municipalities (LKM) for projects and activities that prevent, reduce, treat, or mitigate the effects of substance abuse and addiction, or to reimburse a municipality for previous expenses related to substance abuse mitigation or arising from covered conduct, defined by the bill to include any conduct covered by opioid litigation that resulted in payment of moneys into the KFA Fund. Moneys in the MFA Fund could also be used to reimburse municipalities for payment of litigation costs, expenses, or attorney fees related to opioid litigation, after the municipality has first sought payment from applicable outside settlement sources or settlement fee funds.

An agreement among the Attorney General, KAC, and LKM would determine the method for disbursing money from the MFA Fund, and the bill would require that moneys be disbursed to municipalities that have not filed opioid litigation and municipalities that have filed opioid litigation, but have entered into an agreement with the Attorney General prior to January 1, 2022, to release the municipality's legal claims arising from covered conduct to the Attorney General and assign any future legal claims arising from covered conduct to the Attorney General.

Kansas Fights Addiction Grant Review Board

The bill would establish the Board under the jurisdiction of the Attorney General.

Membership

The bill would require at least one member of the Board reside in each of Kansas' congressional districts. The Board would consist of 11 members with expertise in the prevention, reduction, treatment, or mitigation of the effects of substance abuse and addiction, as follows:

- Two members appointed by the Attorney General, one of whom would be designated as chairperson and at least one of whom would be appointed after consultation with the Kansas Association of Addiction Professionals;
- One member appointed by the Governor;
- One member appointed by the President of the Senate;
- One member appointed by the Speaker of the House of Representatives;
- One member appointed by the Minority Leader of the Senate;
- One member appointed by the Minority Leader of the House of Representatives;
- One member appointed by LKM;
- One member appointed by KAC;
- One member appointed by the Kansas County and District Attorneys Association; and
- One member appointed by the Association of Community Mental Health Centers of Kansas.

Each member would serve at the pleasure of the appointing authority.

Duties and Operation

The bill would require the Board to receive and consider applications for grants of money from the KFA Fund and would provide a list of five mandatory and three permissive factors to be considered or applied in awarding grants.

The affirmative vote of six members would be required to approve a grant. The Board could adopt rules and procedures for its operation, conduct hearings, receive testimony, and gather information to assist in its powers, duties, and functions. Members would not receive compensation or expenses for serving on the Board, would be required to file a statement of substantial interest, and would be prohibited from participating in the consideration of any grant application for which such member has a conflict of interest.

The bill would require the Attorney General to provide administrative support for the Board and to administer, monitor, and assure compliance with grant conditions, and would allow the Attorney General to enter into an agreement with the Sunflower Foundation to provide such support and administration. The bill would establish provisions regarding transfer of moneys, fees, and earnings on moneys that could be included in such agreement. The bill would state the Attorney General could take any action necessary to ensure the greatest possible recovery from opioid litigation and to seek funds for the KFA Fund and the MFA Fund.

The bill would require, not later than March 1 of each year, the Board to submit to the Speaker of the House of Representatives, the President of the Senate, the Governor, and the Attorney General a report of the Board's activities during the prior calendar year, including:

- An accounting of moneys deposited into and expended from the KFA Fund;

- A summary of each approved grant, including certain specified details;
- An explanation of how the Board's actions during the year have complied with the bill's requirements; and
- Any other relevant information the Board deems appropriate.

Responsibility for Costs

The bill would provide that the Attorney General and each municipality shall be solely responsible for paying all costs, expenses, and attorney fees arising from opioid litigation brought under their respective authorities, including any attorney fees owed to private legal counsel, and may seek payment or reimbursement of such costs, expenses, and attorney fees from moneys not deposited in the KFA Fund.

Limitation on Municipal Litigation

The bill would prohibit municipalities, on and after January 1, 2021, from filing or becoming a party to opioid litigation in any court without the prior approval of the Attorney General. The bill would require any municipality that filed opioid litigation on or after January 1, 2021, through the effective date of the Act, to withdraw from such litigation, unless the municipality receives approval from the Attorney General to maintain such litigation. The bill would specify these provisions would not apply to or affect any municipality that filed or became a party to opioid litigation in court prior to January 1, 2021.

Definitions

In addition to “covered conduct,” the bill would define other relevant terms, including: “moneys that are received,” “opioid litigation,” and “qualified applicant.”

Effective Date

The bill would be in effect upon publication in the *Kansas Register*.

Background

The bill was introduced by the House Committee on Appropriations at the request of Representative Finch on behalf of the Attorney General.

House Committee on Judiciary

In the House Committee hearing on March 22, 2021, the Attorney General and representatives of the Association of Community Mental Health Centers of Kansas, Behavioral Health Association of Kansas (requesting for-profit treatment providers be added to the list of qualified applicants), and the Kansas Association of Addiction Professionals (requesting an adjustment to the appointments to the Board) testified as **proponents**, stating the bill would establish a mechanism for distributing funds received from litigation against opioid manufacturers and others who contributed to the opioid addiction crisis. Under settlement terms, such funds must be used for drug treatment and addiction abatement. The Attorney General stated the provisions restricting the ability of governmental entities to bring future opioid litigation against settling defendants would maximize the amount of money Kansas could receive in some future settlements. Representatives of the KAC and the Kansas County and District Attorneys Association provided written-only proponent testimony.

Representatives of the following entities provided neutral testimony:

- City of Overland Park and LKM, with a proposed amendment regarding municipalities with separate opioid litigation;
- Kansas Association of Criminal Defense Lawyers, with proposed amendments to match best practices recommended by health experts; and
- Kansas Board of Pharmacy and Kansas State Board of Healing Arts (providing written-only testimony submitted after the hearing), requesting funding for the Kansas Prescription Drug Monitoring Program (K-TRACS).

A representative of the Kansas Trial Lawyers Association testified as an **opponent**, stating concerns with the prohibitions on opioid litigation by municipalities.

On March 25, 2021, the House Committee amended the bill to:

- Establish the MFA Fund and add related provisions, based on the suggestions of the municipality representatives;
- Adjust the appointment authority regarding members of the Board, based on the suggestion of the Kansas Association of Addiction Professionals; and
- Add a provision allowing the Attorney General to take any action necessary to ensure the greatest possible recovery from opioid litigation.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of the Attorney General (OAG) indicates it is likely the funds recovered by Kansas through opioid litigation could be in the millions of dollars. Because the bill allows the OAG to contract with the Sunflower Foundation for administration of grant funds, the administrative costs to the OAG would be negligible and could be absorbed within existing resources.

The Office of Judicial Administration indicates enactment of the bill could impact expenditures because it could force the end of some opioid litigation or prohibit more such litigation, resulting in fewer court cases. The bill could also reduce docket fee revenues, but a fiscal effect cannot be estimated.

The Kansas Department of Health and Environment (KDHE) indicates enactment of the bill would result in KDHE requiring \$67,009 in FY 2021 and \$69,114 for FY 2022 from the KFA Fund to support 1.0 FTE position to help coordinate the program.

The KAC indicates it would receive funds from grants to address opioid addiction and associated costs, but it cannot estimate a fiscal effect. The LKM states enactment of the bill could have both positive and negative effects on cities, depending on litigation status and whether a city is awarded a grant, but it is unable to estimate a fiscal effect.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Kansas Fights Addiction Act; opioid litigation; Attorney General; Kansas Fights Addiction Fund; Municipalities Fight Addiction Fund; Kansas Fights Addiction Grant Review Board; substance abuse or addiction; grants; Sunflower Foundation