



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

**DEREK SCHMIDT**  
ATTORNEY GENERAL

MEMORIAL HALL  
120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
[WWW.AG.KS.GOV](http://WWW.AG.KS.GOV)

**Testimony in Support of Senate Bill 264  
The Kansas Fights Addiction Act**

**Presented to the Senate Committee on Ways & Means  
By Kansas Attorney General Derek Schmidt**

**March 23, 2021**

Chairman Billinger and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill 264. This bill would enact the “Kansas Fights Addiction Act,” providing a mechanism for distributing funds received as a result of litigation against opioid manufacturers, distributors, and others who contributed to the opioid addiction crisis.

Since 2017, Kansas has been a part of a multistate investigation into conduct that contributed to the opioid addiction crisis. Earlier this year, we announced that we have reached the first legal settlement related to that investigation. In that case, McKinsey & Company, one of the world’s largest consulting firms, will be paying the State of Kansas \$4.8 million for its conduct in providing consulting services to opioid manufacturer Purdue Pharma, which manufactured OxyContin, in selling its product in Kansas from 2004 through 2019. Under the terms of the settlement, the \$4.8 million the state will receive must be used for drug treatment and addiction abatement.

We have also reached separate agreements in principle to resolve the state’s claims against Purdue Pharma and Mallinckrodt Pharmaceuticals plc, but each of those companies then filed for bankruptcy and negotiations through bankruptcy court continue.

As additional cases reach settlement, we expect similar provisions in the settlement agreements to require funds be used for drug treatment and addiction abatement. The legislation before the committee today would establish a framework for the state to be able to receive that money, keep it segregated from other state funds, and establish a committee representing a broad spectrum of interests to grant the funds to eligible organizations.

The funds would be administered by the Sunflower Foundation, which has agreed to provide the grant administration services, alleviating the need for the State to establish a separate administrative and oversight entity, maximizing the amount of funds that can be granted and go directly to treatment providers and abatement programs.

The bill also contains a provision restricting the ability of any governmental entity in Kansas to bring future opioid litigation against settling defendants based on their involvement in the opioid crisis. We have included this provision in the bill for the purpose of maximizing the amount of money Kansas can recover in some future settlements. In general, some of the defendants are willing to pay a premium for finality – or “global peace,” as the term has come to be known. The effect of including this provision will be to maximize funds received by Kansas in at least some future settlements; the effect of excluding it may be to reduce the amount of future recoveries. This is a separate policy decision for the legislature than the other provisions in the bill relating to handling of state settlement funds.

I would note that this bill’s companion, HB2412, was heard Monday in the House Judiciary Committee. Following that hearing, we collaborated with some of the other proponents and neutral conferees to craft a balloon amendment that includes several of the suggestions raised in the House hearing. I have attached that balloon amendment to this testimony, and would urge that if this committee works SB264 that these amendments also be adopted by the Senate.

We believe this is a good proposal that will allow us to help bring some of this years-long litigation to a close, and begin getting assistance to people and communities that have suffered from this crisis.

Thank you for your consideration.

###

**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.

and municipalities fight  
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.

. The state treasurer shall credit 75% of each such deposit to

and 25% of each such deposit to the municipalities fight  
addiction fund

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.~~

(c) (1) There is hereby established in the state treasury the municipalities fight addiction  
fund, and such fund shall be administered by the attorney general to disperse funds to  
municipalities. Moneys in the municipalities fight addiction fund shall be expended  
subject to an agreement between the attorney general, the Kansas association of  
counties and the league of Kansas municipalities for projects and activities that prevent,  
reduce, treat or mitigate the effects of substance abuse and addiction or to reimburse the  
municipality for previous expenses related to substance abuse mitigation or arising from  
covered conduct. Moneys may also be used to reimburse municipalities for the payment  
of litigation costs, expenses or attorney fees related to opioid litigation, but a municipality  
shall first seek payment from applicable outside settlement sources or settlement fee  
funds prior to seeking payment from the municipalities fight addiction fund.  
(2) An agreement between the attorney general, the Kansas association of counties and  
the league of Kansas municipalities shall determine the method for disbursing money  
from the fund, and moneys shall 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, that releases the  
municipality's legal claims arising from covered conduct to the attorney general and  
assigns any future legal claims arising from covered conduct to the attorney general.  
(d) All expenditures from the Kansas fights addiction fund and the municipalities fight  
addiction fund shall be made in accordance with appropriation acts upon warrants of the  
director of accounts and reports pursuant to vouchers approved by the attorney general  
or the attorney general's designee.

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:

the Kansas association of

- 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

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.~~

strike

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  $\frac{1}{8}$  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

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.~~

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.~~

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;

(3) The attorney general may take any action necessary to ensure the greatest possible recovery from opioid litigation and to seek funds for the Kansas fights addiction fund and the municipalities fight addiction fund.

deposited in the Kansas fights addiction fund

become a party to

or became a party to

March 15

municipality that filed or became a party to opioid

1 (b) a summary of each approved grant, including the name and a  
2 detailed description of the qualified applicant, the amount granted, the  
3 justification for the grant with a detailed description of the grant's intended  
4 use and any other relevant information the board deems appropriate;

5 (c) an explanation of how the board's actions during the year have  
6 complied with the requirements of this act; and

7 (d) any other relevant information the board deems appropriate.

8 Sec. 8. This act shall take effect and be in force from and after its  
9 publication in the Kansas register.