

SESSION OF 2021

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2079**

As Agreed to April 8, 2021

**Brief\***

HB 2079 would create the Kansas Fights Addiction Act, which would address use of funds received from opioid litigation and establish limits on future opioid litigation by municipalities; amend law to transfer certain duties from the Secretary of State to the Attorney General; and amend law related to notices offering help to victims of human trafficking.

***Kansas Fights Addiction Act***

*New Funds for Abatement of Substance Abuse or Addiction*

The bill would establish in the State Treasury the Kansas Fights Addiction Fund (KFA Fund) and the Municipalities Fight Addiction Fund (MFA Fund), which would be administered by the Attorney General. The bill would require the Attorney General to remit to the State Treasurer all moneys received by the State, 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 to be credited to the KFA Fund and 25 percent be credited to the

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MFA Fund and would specify how expenditures are to be made from each fund.

The bill would also establish in the State Treasury the Prescription Monitoring Program Fund (PMP Fund), which would be administered by the President of the State Board of Pharmacy (President) or the President's designee.

**Kansas Fights Addiction Fund.** The bill would require moneys in the KFA Fund to be expended for grants approved by the Kansas Fights Addiction Grant Review Board (Board), as created by the bill, to qualified applicants for projects and activities that prevent, reduce, treat, or mitigate the effects of substance 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. [*Note:* See section titled "Prescription Monitoring Program Fund" for provisions related to the transfer of moneys from the KFA Fund to the PMP Fund.]

**Municipalities Fight Addiction Fund.** The bill would require moneys in the MFA Fund to 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 expenses related to previous substance abuse mitigation or arising from covered conduct, which would be defined 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.

The bill would require an agreement among the Attorney General, KAC, and LKM to determine the method for

disbursing moneys from the MFA Fund. 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.

**Prescription Monitoring Program Fund.** The bill would create law in the Prescription Monitoring Program Act to establish the PMP Fund and would require all expenditures made from the PMP Fund to be approved by the President or the President's designee and for the purpose of operating the Prescription Monitoring Program (K-TRACS). Expenditures from the PMP Fund would be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the President or the President's designee.

The bill would require, on July 1 of each year or as soon as moneys are available, the Director of Accounts and Reports to transfer \$200,000 from the KFA Fund to the PMP Fund, except no transfer would be made for any fiscal year if there are insufficient unencumbered moneys in the KFA Fund.

*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 to 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 by the Behavioral Sciences Regulatory Board;
- 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 depositing 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 the Attorney General and each municipality would 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.”

***Transfer of Duties from Secretary of State to the Attorney General***

*Charitable Organizations and Solicitations Act*

The bill would amend the Charitable Organizations and Solicitations Act (Act) to transfer responsibilities related to registration under the Act from the Secretary of State to the Attorney General. The Attorney General would have authority to adopt rules and regulations necessary for administration of the Act, and all rules and regulations, orders, directives, and standards of the Secretary of State relating to the Act in effect on June 30, 2021, would be deemed to be those of the Attorney General and would continue to be effective until amended, revoked, or nullified pursuant to law. Similarly, all reciprocal agreements entered into by the Secretary of State relating to the Act in effect on June 30, 2021, would be deemed to be entered into by the Attorney General and would continue to be effective until amended, revoked, or nullified pursuant to law. The bill would create a new section in the Act transferring legal custody of all records, memoranda, writings, entries, prints, representations, or combinations thereof, of any act, transaction, occurrence, or event relating to the Act from the Secretary of State to the Attorney General.

The bill would prohibit a state agency or state official from imposing annual filing or reporting requirements on a private foundation or charitable trust that are more stringent, restrictive, or expansive than the requirements outlined in state and federal law.

The bill would increase the charitable organization registration fee from \$20 to \$25 and would add a registration or renewal fee of \$25 for every professional fundraiser and professional solicitor required to register with the Attorney General under the Act. The bill would create in the State Treasury the Charitable Organizations Fee Fund (Fund), to which the Attorney General would remit all moneys received pursuant to the Act. The bill would state moneys in the Fund

are to be used by the Attorney General to carry out the provisions and purposes of the Act, and the bill would specify how moneys are to be credited to the Fund and how expenditures are to be made from the Fund.

The bill would amend the State Governmental Ethics Law, in a provision regarding solicitation, to reflect the transfer of duties under the Act.

#### *Safe at Home Program*

The bill also would amend statutes regarding a substitute mailing address program (“Safe at Home” program) for certain victims of domestic violence, sexual assault, human trafficking, or stalking, to transfer responsibility for administering the Safe at Home program from the Secretary of State to the Attorney General. Related rules and regulations authority (except for that relating to voting procedures) would be transferred, and the bill would deem all rules and regulations, orders, directives, and standards of the Secretary of State relating to the Safe at Home program (except for those prescribing voting procedures) in effect on June 30, 2021, to be those of the Attorney General, and they would continue to be effective until amended, revoked, or nullified pursuant to law. Similarly, the bill would transfer legal custody of all records, memoranda, writings, entries, prints, representations, or combinations thereof of any act, transaction, occurrence, or event relating to the Safe at Home program (except for those relating to voting procedures) to the Attorney General. The bill would add an exception to the provision prohibiting the making of any records in a Safe at Home program participant’s file available for inspection or copying; this exception would allow disclosure to the Secretary of State if requested by the Secretary of State for election purposes, in accordance with procedures prescribed by rules and regulations.



### ***Human Trafficking Notices***

The bill also would amend law related to notices offering help to victims of human trafficking to require a prominent notice of such help be posted in any place required to post notices pursuant to:

- The Kansas Act Against Discrimination;
- The Kansas Age Discrimination in Employment Act;
- Kansas child labor law;
- Employment security law, rules, and regulations; or
- The Workers Compensation Act and adopted rules and regulations related to that Act.

Additionally, the bill would require the notice be posted in a location visible to members of the public in the following public places:

- Sexually oriented businesses, as defined in continuing law as an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center;
- Massage parlors;
- Health care facilities;
- Convenience stores and truck stops; and
- Rest areas and visitors centers under State supervision or control.

The bill would require the Attorney General to adopt rules and regulations prescribing the content, size, and other characteristics of such notice.

The bill also would remove from the notice requirement specific content regarding the National Human Trafficking Hotline that must be included and outdated language regarding the Secretary of Labor's duty to implement a human trafficking awareness education plan.

### ***Technical Amendments***

The bill would also make technical amendments throughout to ensure consistency in statutory phrasing and references.

### ***Effective Date***

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

### **Conference Committee Action**

The Conference Committee agreed to adopt the provisions of HB 2079 as passed by the Senate, which would transfer certain duties from the Secretary of State to the Attorney General. The Conference Committee also agreed to add the contents of:

- SB 56 as amended by the House Committee on Judiciary, regarding the posting of a human trafficking awareness notices, and
- SB 264, as amended by the Senate Committee on Ways and Means, which would create the Kansas Fights Addiction Act.

## **Background**

As it entered conference, HB 2079 contained provisions related to the transfer of duties of the Secretary of State to the Attorney General.

HB 2079 was introduced by the House Committee on Judiciary at the request of the Office of the Attorney General. As introduced, HB 2079 contained the provisions transferring the Safe at Home program.

### ***House Committee on Judiciary***

In the House Committee hearing, representatives of the Office of the Attorney General and the Office of Secretary of State testified as **proponents**, stating the bill was a joint effort between the two offices, and the Safe at Home program would be a better fit in the Office of the Attorney General.

No other testimony was provided.

The House Committee amended the bill to add the language of HB 2080, to transfer duties from the Secretary of State to the Attorney General that are related to the Act. [Note: The Conference Committee retained this amendment.]

### ***Senate Committee on Ways and Means***

In the Senate Committee hearing, the Attorney General testified as a **proponent**, stating the Act currently requires certain charitable organizations, professional fundraisers, and professional solicitors to register with the state and to disclose financial contributions from those entities. The Attorney General further indicated the Office of the Secretary of State currently manages that registration process and, unlike when the Act was first enacted in 1988, the Office of the Attorney General now manages a variety of registration programs. Additionally, the Attorney General outlined the

efficiencies in operations and effectiveness that would come with consolidating those responsibilities.

A representative of the Office of the Attorney General also testified as a proponent, stating the Safe at Home program that currently resides in the Office of the Secretary of State would be better suited in the Victim Services Division of the Office of the Attorney General, because the Division has specialized staff that work with victims of crime, and it currently provides victims of domestic violence, sexual assault, human trafficking, or stalking with resources to obtain and use a confidential address to receive mail or service of process.

A representative of the Office of the Secretary of State also provided proponent testimony, indicating the Office serves only as the Safe At Home program administrator under current law, with no oversight or enforcement capabilities. The representative stated the Office of the Attorney General would be a better fit for the Safe at Home program and responsibilities in the Act because of its capacity to work with the communities served by those programs.

Lastly, a representative of The Philanthropy Roundtable testified as a proponent, stating the Office of the Attorney General has the expertise and resources to manage the responsibilities that would be transferred to it.

No other testimony was provided.

The Senate Committee amended the bill based on a suggestion by The Philanthropy Roundtable to add a provision prohibiting imposition of certain annual filing or reporting requirements. [*Note:* The Conference Committee retained this amendment.]

*HB 2080 (Charitable Organizations and Solicitations Act)*

HB 2080 was introduced by the House Committee on Judiciary at the request of the Office of the Attorney General.

**House Committee on Judiciary.** In the House Committee hearing, the Attorney General and a representative of the Secretary of State testified as **proponents** of HB 2080, stating the bill was the result of conversations between the two offices, and it would increase efficiency and effectiveness.

No other testimony was provided.

*SB 264 (Kansas Fights Addiction Act)*

This bill was introduced by the Senate Committee on Ways and Means at the request of Senator Claeyes on behalf of the Attorney General.

[*Note:* The bill contains provisions similar to those of HB 2412.]

*Senate Committee on Ways and Means*

In the Senate Committee hearing on March 24, 2021, the Attorney General and representatives of the Association of Community Mental Health Centers of Kansas and the Kansas Alliance of Boys & Girls Clubs 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 Behavioral Health Association of Kansas 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 provided a proposed amendment regarding municipalities with separate opioid litigation;
- State Board Board of Pharmacy requested funding for K-TRACS.

**Opponent** testimony was provided by one private citizen who encouraged limited government intervention related to the subject of the bill.

On March 29, 2021, the Senate 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 the members of the Board, based on suggestions of the Kansas Association of Addiction Professionals; and
- Establish the PMP Fund and add a provision to require an annual transfer of moneys from the KFA Fund to the PMP Fund, based on the suggestions of the State Board of Pharmacy.

[*Note:* The Conference Committee retained these amendments.]

***SB 56 (Human Trafficking Notices)***

The bill was introduced by the Senate Committee on Judiciary at the request of the OAG.

*Senate Committee on Judiciary*

In the Senate Committee hearing on February 2, 2021, a representative of the Human Trafficking Advisory Board within the Office of the Attorney General and a representative of the Topeka Shawnee County Anti-Human Trafficking Coalition testified as **proponents** of the bill. Representatives of Fuel True, Kansas Hospital Association, Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association provided written-only proponent testimony.

No other testimony was provided.

On February 3, 2021, the Senate Committee recommended the bill be placed on the Consent Calendar.

On March 31, 2021, the bill was stricken from the Calendar pursuant to House Rule 1507.

*House Committee on Judiciary*

In the House Committee hearing on March 22, 2021, a representative of the Human Trafficking Advisory Board within the Office of the Attorney General testified as a **proponent**. Representatives of Fuel True, Johnson County Sheriff's Office, Kansas Catholic Conference, Kansas Hospital Association, and Topeka Shawnee County Anti-Human Trafficking Coalition and a representative of Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association provided written-only **proponent** testimony.

On March 23, 2021, the House Committee amended the bill to make it effective upon publication in the *Kansas Register*. [Note: The Conference Committee retained this amendment.]

## **Fiscal Information**

### ***HB 2079 (Safe at Home Program)***

According to the fiscal note prepared by the Division of the Budget on HB 2079 as introduced, enactment of the bill would save the Office of the Secretary of State approximately \$4,400 per year, based on FY 2020 actual expenditures for the Safe at Home program. The Office of the Attorney General indicates costs of housing the Safe at Home program within its Victim Services Division could be absorbed within existing resources.

Any fiscal effect associated with enactment of HB 2079 is not reflected in *The FY 2022 Governor's Budget Report*.

### ***HB 2080 (Charitable Organizations and Solicitations Act)***

According to the fiscal note prepared by the Division of the Budget on HB 2080, enactment of the bill would reduce State General Fund revenues by \$89,075, because current registration and related fees would no longer be received, and the new registration fees would be deposited into the Charitable Organizations Fee Fund, which the Office of the Attorney General estimates would receive \$128,225 from the registration fees.

The Office of the Attorney General states this revenue would be used to manage the registration program and enforcement expenses associated with the Act. The Office would require 1.0 FTE position to manage the program, at a cost of \$73,363 annually for salary and benefits. The Office anticipates additional annual expenses of \$15,765 for other



expenses, except for \$2,839 used for one-time start-up costs. The remaining revenues would be used to offset a portion of the salary and wage expenditures of investigators and attorneys who currently investigate and enforce violations of the Act or to increase public awareness and education regarding fraudulent charities and the Act.

Any fiscal effect associated with enactment of HB 2080 is not reflected in *The FY 2022 Governor's Budget Report*.

***SB 264 (Kansas Fights Addiction Act)***

According to the fiscal note prepared by the Division of the Budget on SB 264 as introduced, the Office of the Attorney General indicates it is likely the funds recovered by Kansas through opioid litigation could be in the millions of dollars. Because the bill allows the Office to contract with the Sunflower Foundation for administration of grant funds, the administrative costs to the Office 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 indicates enactment of the bill would result in the agency 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*.

***SB 56 (Human Trafficking Notices)***

According to the fiscal note prepared by the Division of Budget on SB 56, as introduced, the Office of the Attorney General estimates enactment of the bill would require additional printing and postage expenditures from the State General Fund ranging from \$2,990 to \$6,590 for FY 2021 and FY 2022.

The provision requiring posting in state-sponsored rest areas and visitor centers could require additional expenditures from the Kansas Department of Transportation (KDOT) if the agency is required to print notices. KDOT is unable to provide an estimate because the content, size, and other characteristics of the notice would be set by the Attorney General at a later date. All expenditures would be from the State Highway Fund. KDOT indicates it could absorb additional expenditures within its current expenditure limitation.

The Department of Labor (Department) indicates enactment of the bill would have no fiscal effect on the agency, but states current law requires the Department to develop and implement an education plan regarding human trafficking. The Department states this education plan currently does not exist and therefore \$80,000 from the State General Fund is needed in FY 2022 to complete this process. Of that amount, \$32,000 would be for salary and wage expenditures for a 0.50 FTE position and \$48,000 would be for related operating expenditures to complete and develop the education plan.

The Kansas Human Rights Commission indicates enactment of the bill would have no fiscal effect on its agency. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Attorney General; Secretary of State; Safe at Home program; Charitable Organizations and Solicitations Act; Charitable Organizations Fee Fund; Kansas Fights Addiction Act; opioid litigation; Kansas Fights Addiction Fund; Prescription Monitoring Program Fund; K-TRACS; Kansas Fights Addiction Grant Review Board; substance abuse or addiction; grants; Sunflower Foundation; human trafficking; notice

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