

HOUSE BILL No. 2685

By Representative Rhiley

2-4

1 AN ACT concerning public officials; enacting the public official
2 accountability act; providing that public officials are personally liable
3 for actions that violate constitutional rights or exceed such official's
4 lawful duties.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. (a) This section shall be known and may be cited as the
8 public official accountability act. The purpose of this act is to promote
9 accountability in government by ensuring that public officials are
10 personally liable for actions that violate constitutional rights or exceed
11 such official's lawful duties without the shield of office for misuse or
12 abuse.

13 (b) As used in this act:

14 (1) "Action outside of appropriate duties" means any conduct by a
15 public official that is not authorized by law, exceeds the scope of such
16 official's authority or constitutes misuse or abuse of office, including, but
17 not limited, to corruption, discrimination or gross negligence;

18 (2) "misuse or abuse of office" includes actions taken for personal
19 gain, with malice or in reckless disregard of rights, as determined by a
20 preponderance of the evidence;

21 (3) "public official" means any elected or appointed officer, employee
22 or agent of the state, any county, city or other political subdivision, acting
23 in their official capacity, including, but not limited, to law enforcement
24 officers, prosecutors, judges, legislators and administrative personnel; and

25 (4) "unconstitutional action" means any act or omission by a public
26 official that deprives a person of rights secured by the constitution of the
27 United States or the constitution of the state of Kansas.

28 (c) (1) A public official shall be personally liable in a civil action for
29 damages caused by any unconstitutional action or action outside of
30 appropriate duties.

31 (2) A civil action pursuant to this act may be brought in the district
32 court of the county in which the alleged unconstitutional action or action
33 outside of appropriate duties occurred or where the plaintiff resides. Such
34 action shall be brought within two years of the alleged unconstitutional
35 action or action outside of appropriate duties.

36 (3) The attorney general or district attorney may intervene if the case

1 involves significant public interest.

2 (d) (1) Except as provided further, qualified immunity, sovereign
3 immunity or any other form of official immunity shall not be a defense to
4 liability under this act for such actions.

5 (2) Judicial immunity and legislative immunity shall be a defense if
6 the action was related to a core function.

7 (3) This act creates a new cause of action under state law and does
8 not affect federal immunities for claims under 42 U.S.C. § 1983 or similar
9 federal statutes.

10 (e) (1) Liability shall attach only if the plaintiff proves by a
11 preponderance of the evidence that the official's conduct was knowing,
12 willful or in reckless disregard of the law, and not a good faith error in
13 judgment. No liability attaches for discretionary policy decisions made in
14 accordance with law, absent proof of unconstitutional motive or abuse.

15 (2) This act does not apply to actions taken in good faith pursuant to a
16 court order, warrant or statutory directive that was valid at the time of such
17 action.

18 (3) Damages may include compensatory damages, punitive damages,
19 attorney fees and court costs. Punitive damages shall not exceed three
20 times compensatory damages or \$500,000, whichever is greater. If the
21 plaintiff prevails, the court shall award the plaintiff reasonable attorney
22 fees and costs. If the action is found frivolous, the court may award the
23 defendant reasonable attorney fees and costs.

24 (4) Public entities may not indemnify officials found liable under this
25 act, except for compensatory damages if the official acted without malice.

26 (f) The provisions of this act are severable. If any portion of this act is
27 held by a court to be unconstitutional or invalid, or the application of any
28 portion of this act to any person or circumstance is held by a court to be
29 unconstitutional or invalid, the invalidity shall not affect other portions of
30 this act that can be given effect without the invalid portion or application
31 and the applicability of such other portions of this act to any person or
32 circumstance remains valid and enforceable.

33 Sec. 2. This act shall take effect and be in force from and after its
34 publication in the Kansas register.