

## 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.

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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.