

SENATE BILL No. 486

By Senator Holscher

2-4

1 AN ACT concerning civil rights; creating a civil cause of action for
2 violations of the constitution or laws of the United States by any person
3 acting under the color of law.

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

6 Section 1. (a) (1) Any person who, under the color of law, subjects or
7 causes to be subjected any person to the deprivation of any rights,
8 privileges or immunities secured by the constitution or laws of the United
9 States or by the constitution or laws of Kansas, or whose exercise or
10 enjoyment of those rights, privileges or immunities has been interfered
11 with or attempted to be interfered with, by threats, intimidation or coercion
12 by such person acting under the color of law, shall be liable to the injured
13 person in an action at law, suit in equity or other proper proceeding for
14 redress.

15 (2) Interference or attempted interference with the exercise or
16 enjoyment of any rights, privileges or immunities under subsection (a) (1)
17 includes, but is not limited to, physical force or violence against a person,
18 damage or destruction of property or trespass on property, threatening
19 physical force or violence against a person, threatening damage or
20 destruction of property or trespass on property or engaging in any conduct
21 that would cause a reasonable person to suffer emotional distress or to fear
22 death or bodily injury to that person or to an immediate family member of
23 such person.

24 (b) If the injured person is incapacitated, deceased or otherwise
25 unavailable as a matter of law, an action under subsection (a) may be
26 brought by and in the name of the surviving spouse, child, parent or
27 guardian or personal representative of the injured party and on behalf of
28 the spouse, children or parents, or if none of these survive, on behalf of the
29 injured person's estate.

30 (c) In addition to any damages, civil penalty, injunction or other
31 appropriate relief awarded in an action brought pursuant to subsection (a),
32 the court may award the prevailing plaintiff reasonable attorney fees and
33 costs.

34 (d) The attorney general may bring a civil action for any violation
35 under subsection (a) for damages, injunctive relief or other appropriate
36 relief. The civil action shall be brought in the name of this state and may

1 be brought on behalf of the injured party. If the attorney general proceeds
2 with and prevails in an action brought pursuant to this section, the court
3 shall order the distribution of any award of damages to the injured party
4 and award reasonable attorney fees and costs to the attorney general.

5 (e) It shall not be a defense or immunity to any action brought under
6 this section that:

7 (1) The defendant was acting in good faith or believed, reasonably or
8 otherwise, that their conduct was lawful at the time when it was
9 committed;

10 (2) the rights, privileges or immunities secured by the constitution or
11 laws of the United States or by the constitution or laws of this state were
12 not clearly established at the time of their deprivation or interference or
13 attempted interference by the defendant, or

14 (3) the state of the law was otherwise such that the defendant could
15 not reasonably have been expected to know whether their conduct was
16 lawful.

17 (f) Punitive damages may be awarded in actions under this section
18 where it is proven by clear and convincing evidence that the defendant's
19 course of conduct was motivated by the victim's race, gender, religion,
20 sexual orientation, nationality, ethnicity or disability.

21 Sec. 2. This act shall take effect and be in force from and after its
22 publication in the statute book.