

CHAPTER 133

SENATE Substitute for Substitute for HOUSE BILL No. 2509*

AN ACT creating a private cause of action for victims of child pornography.

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

Section 1. (a) Any person who, while under the age of 18, was a victim of an offense described in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, incest as defined in K.S.A. 21-3602, and amendments thereto, or aggravated incest as defined in subsection (a)(2) of K.S.A. 21-3603, and amendments thereto, where such offense resulted in a conviction and any portion of such offense was used in the production of child pornography, and who suffers personal or psychological injury as a result of the production, promotion, or possession of such child pornography, may bring an action in an appropriate state court against the producer, promoter or intentional possessor of such child pornography, regardless of whether the victim is now an adult.

(b) In any action brought under this section, a prevailing plaintiff shall recover the actual damages such person sustained and the cost of the suit, including reasonable attorney's fees. Any victim who is awarded damages under this section shall be deemed to have sustained damages of at least \$150,000.

(c) Notwithstanding any other provision of law, any action commenced under this section shall be filed within three years after the later of:

- (1) The conclusion of a related criminal case;
- (2) the notification to the victim by a member of a law enforcement agency of the creation, possession, or promotion of the child pornography; or
- (3) in the case of a victim younger than 18, within three years after the person reaches the age of 18.

(d) It is not a defense to a civil cause of action under this section that the respondent did not know the victim or commit the abuse depicted in the child pornography.

(e) At the victim's request, the attorney general may pursue cases on behalf of any Kansas victim under this section. All damages obtained shall go to the victim, and the attorney general may seek reasonable attorney's fees and costs.

(f) Any action brought under this section shall be subject to the provisions of K.S.A. 74-7312, and amendments thereto.

(g) As used in this section, "child pornography" includes, but is not limited to, any visual depiction, as described in subsection (a) of K.S.A. 21-3516, and amendments thereto, and any performance, as defined in subsection (b) of K.S.A. 21-3516, and amendments thereto.

(h) This section shall not apply to acts done in the performance of duty by any: (1) Law enforcement officer of the state of Kansas or any political subdivision thereof; (2) forensic examiner; (3) any prosecuting attorney, as defined in K.S.A. 22-2202, and amendments thereto; or (4) any bona fide child advocacy organization, including, but not limited to, the National Center for Missing and Exploited Children.

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

Approved May 13, 2010.
