

HOUSE BILL No. 2331

By Committee on Judiciary

2-14

1 AN ACT concerning victims of sexual abuse; duly ordained ministers of
2 religion; civil action for victims non-disclosure agreements; reporting
3 of certain abuse or neglect of children; amending K.S.A. 2018 Supp.
4 38-2223 and repealing the existing section.

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

7 New Section 1. (a) Any person who, while under the age of 18, was a
8 victim of an offense described in article 35 of chapter 21 of the Kansas
9 Statutes Annotated, prior to its repeal, or article 55 of chapter 21 of the
10 Kansas Statutes Annotated, and amendments thereto, or K.S.A. 2018 Supp.
11 21-6419 through 21-6422, and amendments thereto, human trafficking, as
12 defined in K.S.A. 21-3446, prior to its repeal, or K.S.A. 2018 Supp. 21-
13 5426(a), and amendments thereto, aggravated human trafficking, as
14 defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2018 Supp. 21-
15 5426(b), and amendments thereto, incest as defined in K.S.A. 21-3602,
16 prior to its repeal, or K.S.A. 2018 Supp. 21-5604(a), and amendments
17 thereto, or aggravated incest as defined in K.S.A. 21-3603(a)(2), prior to
18 its repeal, or K.S.A. 2018 Supp. 21-5604(b)(2), and amendments thereto,
19 where such offense was committed by a duly ordained minister of religion
20 as defined in K.S.A. 60-429, and amendments thereto, may bring an action
21 in an appropriate state court against the person or persons who engaged in
22 such conduct if the victim suffered personal or psychological injury as a
23 result of the conduct, regardless of whether the victim is now an adult.

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

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

- 32 (1) The conclusion of a related criminal case;
- 33 (2) the date on which the victim turns 18 years of age; or
- 34 (3) the effective date of this act.

35 (d) At the victim's request, the attorney general may pursue cases on
36 behalf of any Kansas victim under this section. All damages obtained shall

1 go to the victim, and the attorney general may seek reasonable attorney
2 fees.

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

5 (g) This section does not preclude any other remedy available to the
6 victim under federal law or law of this state.

7 New Sec. 2. (a) No duly ordained minister of religion as defined in
8 K.S.A. 60-429, and amendments thereto, or religious organization may
9 make a request for a non-disclosure agreement as part of a settlement
10 agreement resulting from a claim of sexual abuse made against such duly
11 ordained minister of religion or religious organization. Nothing in this
12 section shall prohibit a claimant from requesting a non-disclosure
13 agreement as part of a settlement agreement resulting from a claim of
14 sexual abuse. If a non-disclosure agreement is entered into, nothing in such
15 agreement shall restrict either party from cooperating in any way with a
16 criminal investigation or proceeding.

17 (b) For the purposes of this section, "religious organization" means
18 any organization, church, body of communicants, or group, gathered in
19 common membership for mutual support and edification in piety, worship
20 and religious observances, or a society of individuals united for religious
21 purposes at a definite place and which religious organization maintains an
22 established place of worship within this state and has a regular schedule of
23 services or meetings at least on a weekly basis and has been determined to
24 be organized and created as a bona fide religious organization.

25 Sec. 3. K.S.A. 2018 Supp. 38-2223 is hereby amended to read as
26 follows: 38-2223. (a) *Persons making reports.* (1) When any of the
27 following persons has reason to suspect that a child has been harmed as a
28 result of physical, mental or emotional abuse or neglect or sexual abuse,
29 the person shall report the matter ~~promptly~~ *within 24 hours, or within*
30 *eight business hours, if the suspected abuse or neglect is discovered*
31 *during the person's non-business hours, as provided in subsections (b) and*
32 (c);

33 (A) The following persons providing medical care or treatment:
34 Persons licensed to practice the healing arts, dentistry and optometry,
35 persons engaged in postgraduate training programs approved by the state
36 board of healing arts, licensed professional or practical nurses and chief
37 administrative officers of medical care facilities;

38 (B) the following persons licensed by the state to provide mental
39 health services: Licensed psychologists, licensed masters level
40 psychologists, licensed clinical psychotherapists, licensed social workers,
41 licensed marriage and family therapists, licensed clinical marriage and
42 family therapists, licensed behavioral analysts, licensed assistant
43 behavioral analysts, licensed professional counselors, licensed clinical

1 professional counselors and registered alcohol and drug abuse counselors;

2 (C) teachers, school administrators or other employees of an
3 educational institution which the child is attending and persons licensed by
4 the secretary of health and environment to provide child care services or
5 the employees of persons so licensed at the place where the child care
6 services are being provided to the child;

7 (D) firefighters, emergency medical services personnel, law
8 enforcement officers, juvenile intake and assessment workers, court
9 services officers, community corrections officers, case managers appointed
10 under K.S.A. 2018 Supp. 23-3508, and amendments thereto, and mediators
11 appointed under K.S.A. 2018 Supp. 23-3502, and amendments thereto;
12 ~~and~~

13 (E) any person employed by or who works as a volunteer for any
14 organization, whether for profit or not-for-profit, that provides social
15 services to pregnant teenagers, including, but not limited to, counseling,
16 adoption services and pregnancy education and maintenance; *and*

17 (F) *any person, including a duly ordained minister of religion as*
18 *defined in K.S.A. 60-429, and amendments thereto, who is employed by a*
19 *religious organization as defined in section 2, and amendments thereto,*
20 *except that a duly ordained minister of religion who suspects abuse or*
21 *neglect based on a penitential communication is not required to violate*
22 *penitential communication privilege as provided in K.S.A. 60-429, and*
23 *amendments thereto, unless there is an ongoing risk of abuse or neglect of*
24 *the victim or of another child.*

25 (2) In addition to the reports required under subsection (a)(1), any
26 person who has reason to suspect that a child may be a child in need of
27 care may report the matter as provided in subsection (b) and (c).

28 (b) *Form of report.* (1) The report may be made orally and shall be
29 followed by a written report if requested. Every report shall contain, if
30 known: The names and addresses of the child and the child's parents or
31 other persons responsible for the child's care; the location of the child if
32 not at the child's residence; the child's gender, race and age; the reasons
33 why the reporter suspects the child may be a child in need of care; if abuse
34 or neglect or sexual abuse is suspected, the nature and extent of the harm
35 to the child, including any evidence of previous harm; and any other
36 information that the reporter believes might be helpful in establishing the
37 cause of the harm and the identity of the persons responsible for the harm.

38 (2) When reporting a suspicion that a child may be in need of care,
39 the reporter shall disclose protected health information freely and
40 cooperate fully with the secretary and law enforcement throughout the
41 investigation and any subsequent legal process.

42 (c) *To whom made.* Reports made pursuant to this section shall be
43 made to the secretary, except as follows:

1 (1) When the Kansas department for children and families is not open
2 for business, reports shall be made to the appropriate law enforcement
3 agency. On the next day that the department is open for business, the law
4 enforcement agency shall report to the department any report received and
5 any investigation initiated pursuant to K.S.A. 2018 Supp. 38-2226, and
6 amendments thereto. The reports may be made orally or, on request of the
7 secretary, in writing.

8 (2) Reports of child abuse or neglect occurring in an institution
9 operated by the Kansas department of corrections shall be made to the
10 attorney general or the secretary of corrections. Reports of child abuse or
11 neglect occurring in an institution operated by the Kansas department for
12 aging and disability services shall be made to the appropriate law
13 enforcement agency. All other reports of child abuse or neglect by persons
14 employed by the Kansas department for aging and disability services or
15 the Kansas department for children and families, or of children of persons
16 employed by either department, shall be made to the appropriate law
17 enforcement agency.

18 (d) *Death of child.* Any person who is required by this section to
19 report a suspicion that a child is in need of care and who knows of
20 information relating to the death of a child shall immediately notify the
21 coroner as provided by K.S.A. 22a-242, and amendments thereto.

22 (e) *Violations.* (1) Willful and knowing failure to make a report
23 required by this section is a class B misdemeanor. It is not a defense that
24 another mandatory reporter made a report.

25 (2) Intentionally preventing or interfering with the making of a report
26 required by this section is a class B misdemeanor.

27 (3) Any person who willfully and knowingly makes a false report
28 pursuant to this section or makes a report that such person knows lacks
29 factual foundation is guilty of a class B misdemeanor.

30 (f) *Immunity from liability.* Anyone who, without malice, participates
31 in the making of a report to the secretary or a law enforcement agency
32 relating to a suspicion a child may be a child in need of care or who
33 participates in any activity or investigation relating to the report or who
34 participates in any judicial proceeding resulting from the report shall have
35 immunity from any civil liability that might otherwise be incurred or
36 imposed.

37 Sec. 4. K.S.A. 2018 Supp. 38-2223 is hereby repealed.

38 Sec. 5. This act shall take effect and be in force from and after its
39 publication in the statute book.