

SENATE BILL No. 64

By Senators Faust-Goudeau and Haley

1-23

1 AN ACT concerning employment; relating to fair consideration for
2 persons with a record of criminal conviction.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. As used in sections 1 through 6, and amendments thereto:

6 (a) "Adverse action" means to refuse to hire, to not promote, to
7 discharge a person, or to revoke an applicant's conditional offer of
8 employment.

9 (b) "Applicant" means any person considered for, or who requests to
10 be considered for, employment or any employee considered for, or who
11 requests to be considered for, another employment position by the
12 employer.

13 (c) "Employer" means the state of Kansas or a state agency.

14 (d) "Employment" means any occupation, vocation, job or work for
15 pay, including temporary or seasonal work, contracted work, contingent
16 work and work through the services of a temporary or other employment
17 agency; or any form of vocational or educational training with or without
18 pay.

19 Sec. 2. (a) An employer shall not conduct background checks on an
20 applicant unless the employer has made a good faith determination that the
21 relevant position is of such sensitivity that a background check is
22 warranted or if a background check is required by any federal or state law.

23 (b) All job announcements and position descriptions shall contain the
24 following information if the position requires a background check, unless
25 otherwise required by law: "This position is subject to a background check
26 for any convictions directly related to its duties and responsibilities. Only
27 job-related convictions will be considered and will not automatically
28 disqualify the candidate."

29 (c) Job applications shall not inquire into an applicant's conviction
30 history.

31 (d) An employer shall not use the following criminal records in
32 relation to a background check unless otherwise required by law: Records
33 of arrest not followed by a valid conviction; sealed; dismissed or expunged
34 convictions. An employer shall not use the following criminal records in
35 relation to a background check unless multiple and clearly and
36 convincingly relevant to the position, or required by state or federal law:

1 Misdemeanor convictions where no jail sentence can be imposed; and
2 infractions.

3 Sec. 3. (a) An employer shall not inquire into or consider an
4 applicant's conviction history until after the applicant has received a
5 conditional offer. Prior to any conviction history check, the employer shall
6 send the applicant a conditional offer letter, notice of rights under this act,
7 and a request for authorization to conduct a background check, if so
8 required.

9 (b) If the employer is considering the conviction history of the
10 applicant, the employer shall only consider job-related convictions, except
11 that if federal or state law requires that certain convictions are automatic
12 bars to employment, then those convictions shall also be considered. No
13 person shall be disqualified from employment, solely or in part because of
14 a prior conviction, unless it is a job-related conviction. In determining if a
15 conviction is job-related, the employer shall consider:

16 (1) Whether the conviction is directly related to the duties and
17 responsibilities of that employment position;

18 (2) whether the position offers the opportunity for the same or a
19 similar offense to occur;

20 (3) whether circumstances leading to the conduct for which the
21 person was convicted will recur while in the position; and

22 (4) the length of time since the offense occurred.

23 (b) If an applicant's conviction history contains information that may
24 be the basis for an adverse action, the employer shall:

25 (1) Identify the conviction or convictions that are the basis for the
26 potential adverse action;

27 (2) provide a copy of the conviction history report, if any;

28 (3) provide examples of mitigation or rehabilitation evidence that the
29 applicant may voluntarily provide; and

30 (4) provide the applicant with an individualized assessment pursuant
31 to subsection (c).

32 (c) (1) A job-related conviction shall not be the basis for an adverse
33 action if the applicant can show mitigation or rehabilitation and present
34 fitness to perform the duties of the position sought. The applicant shall
35 have 10 business days, after issuance of the notice, to respond with any
36 information rebutting the basis for the adverse action, including
37 challenging the accuracy of the information and submitting mitigation or
38 rehabilitation evidence. The employer shall hold the position open until it
39 makes the final employment decision based on an individualized
40 assessment of the information submitted by the applicant.

41 (2) Evidence of mitigation or rehabilitation may include:

42 (A) Evidence showing that at least one year has elapsed since release
43 from any correctional institution without subsequent conviction of a crime

1 and evidence showing compliance with terms and conditions of probation
2 or parole; or

3 (B) any other evidence of mitigation or rehabilitation and present
4 fitness provided, including, but not limited to, letters of reference.

5 (d) If the employer makes an adverse decision, the applicant shall be
6 informed of the final decision and that such applicant may be eligible for
7 other positions.

8 (e) If denied employment by the employer, an applicant may appeal
9 such adverse decision as provided by law.

10 (f) Any information pertaining to an applicant's background check
11 obtained in conjunction with the hiring process shall remain confidential,
12 and shall not be used, distributed or disseminated by the employer or any
13 of its agencies or its vendors, to any other entity, except as required by law.

14 Sec. 4. (a) The secretary of administration shall administer and
15 enforce the provisions of this act.

16 (b) The employer shall retain application forms, records of
17 employment and other pertinent data and records required under this act,
18 including, but not limited to, communication with the applicant, for a
19 minimum of three years, and shall allow the secretary of administration
20 access to such records to monitor compliance with this act. Any person
21 who is aggrieved by a violation of this act may contact the secretary of
22 administration to report any problems, concerns or suggestions regarding
23 the implementation, compliance and impact of the provisions of this act,
24 and the secretary of administration shall keep a record. The secretary of
25 administration shall conduct periodic reviews to assess compliance with
26 these sections and shall investigate and review complaints.

27 (c) Each employer shall maintain a record of the number of positions
28 requiring background checks and for those positions shall maintain a
29 record of the number of applicants and the number of applicants who were
30 provided a conditional offer. In addition, each employer shall maintain a
31 record of the number of applicants with a record for a position: (1) Who
32 were provided a pre-adverse action notice; (2) who provided evidence of
33 mitigation or rehabilitation; (3) who were provided a final adverse notice;
34 and (4) who were hired.

35 (d) (1) The secretary of administration shall regularly conduct a
36 confidential, anonymous survey of employees in positions with the state of
37 Kansas or state agencies in which background checks are not conducted, to
38 determine the number of people with criminal records hired.

39 (2) The secretary shall annually submit a report to the legislature, in
40 the month of January, on the status of employment of persons with
41 criminal records and a review of hiring practices of persons with criminal
42 records for the prior year.

43 Sec. 5. (a) An individual may bring a civil action in any court of

1 competent jurisdiction against the employer or other person violating this
2 act, and upon prevailing, shall be entitled to such legal or equitable relief
3 as may be appropriate to remedy the violation, including, but not limited
4 to, damages, injunctive relief, reasonable attorney fees and costs as
5 permitted by law. Where an employer does not maintain or retain adequate
6 records documenting compliance or does not allow the secretary of
7 administration reasonable access to such records, it shall be presumed that
8 the employer did not comply, absent clear and convincing evidence
9 otherwise.

10 (b) Proceedings under this section shall be in accordance with the
11 Kansas administrative procedure act, and orders issued by the secretary of
12 administration shall be subject to review under the Kansas judicial review
13 act.

14 Sec. 6. The secretary of administration shall adopt rules and
15 regulations necessary to implement, administer and enforce the provisions
16 of this act.

17 Sec. 7. This act shall take effect and be in force from and after its
18 publication in the statute book.