

HOUSE BILL No. 2259

By Representative Finney

2-12

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 a background check on an
20 applicant unless:

21 (1) The employer has made a good faith determination that the
22 relevant position is of such sensitivity that a background check is
23 warranted; or

24 (2) if a background check is required by any federal or state law.

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

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

33 (d) An employer shall not use the following criminal records in
34 relation to a background check unless otherwise required by law: Records
35 of arrest not followed by a valid conviction; sealed records; dismissed
36 cases; or expunged convictions. An employer shall not use the following

1 criminal records in relation to a background check unless multiple and
2 clearly and convincingly relevant to the position, or required by state or
3 federal law: Misdemeanor convictions where no jail sentence can be
4 imposed; and infractions.

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

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

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

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

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

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

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

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

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

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

32 (4) provide the applicant with an individualized assessment pursuant
33 to subsection (c).

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

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

1 (A) Evidence showing that at least one year has elapsed since release
2 from any correctional institution without subsequent conviction of a crime
3 and evidence showing compliance with terms and conditions of probation
4 or parole; or

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

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

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

12 (f) (1) Any information pertaining to an applicant's background check
13 obtained in conjunction with the hiring process shall remain confidential,
14 and shall not be used, distributed or disseminated by the employer or any
15 of its agencies or its vendors to any other entity, except as required by law.

16 (2) The provisions of this subsection shall expire on June 30, 2024,
17 unless the legislature acts to reenact such provision. The provisions of this
18 paragraph shall be reviewed by the legislature prior to July 1, 2024.

19 Sec. 4. (a) The secretary of administration shall administer and
20 enforce the provisions of sections 1 through 6, and amendments thereto.

21 (b) The employer shall retain application forms, records of
22 employment and other pertinent data and records required under this act,
23 including, but not limited to, communication with the applicant, for a
24 minimum of three years, and shall allow the secretary of administration
25 access to such records to monitor compliance with sections 1 through 6,
26 and amendments thereto. Any person who is aggrieved by a violation of
27 sections 1 through 6, and amendments thereto, may contact the secretary
28 of administration to report any problems, concerns or suggestions
29 regarding the implementation, compliance and impact of the provisions of
30 sections 1 through 6, and amendments thereto, and the secretary of
31 administration shall keep a record of such reports. The secretary of
32 administration shall conduct periodic reviews to assess compliance with
33 sections 1 through 6, and amendments thereto, and shall investigate and
34 review complaints.

35 (c) Each employer shall maintain a record of the number of positions
36 requiring background checks and, for those positions, shall maintain a
37 record of the number of applicants and the number of applicants who were
38 provided a conditional offer. In addition, each employer shall maintain a
39 record of the number of applicants with a record for a position: (1) Who
40 were provided a pre-adverse action notice; (2) who provided evidence of
41 mitigation or rehabilitation; (3) who were provided a final adverse notice;
42 and (4) who were hired.

43 (d) (1) The secretary of administration shall regularly conduct a

1 confidential, anonymous survey of employees in positions with the state of
2 Kansas or state agencies in which background checks are not conducted, to
3 determine the number of people with criminal records who were hired.

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

8 Sec. 5. (a) An individual may appeal a decision by an employer or
9 other person violating this act, and upon prevailing, shall be entitled to
10 such legal or equitable relief as may be appropriate to remedy the
11 violation, including, but not limited to, damages, injunctive relief,
12 reasonable attorney fees and costs as permitted by law. Where an employer
13 does not maintain or retain adequate records documenting compliance or
14 does not allow the secretary of administration reasonable access to such
15 records, it shall be presumed that the employer did not comply, absent
16 clear and convincing evidence otherwise.

17 (b) Proceedings under this section shall be in accordance with the
18 Kansas administrative procedure act, and orders issued by the secretary of
19 administration shall be subject to review under the Kansas judicial review
20 act.

21 Sec. 6. The secretary of administration shall adopt rules and
22 regulations necessary to implement, administer and enforce the provisions
23 of sections 1 through 6, and amendments thereto.

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