

## HOUSE BILL No. 2343

By Committee on Veterans, Military and Homeland Security

2-13

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

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

5 Section 1. As used in this act:

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 any person regularly employing five or more  
14 persons; any person acting as an agent of an employer, directly or  
15 indirectly; any person undertaking for compensation to procure employees  
16 or opportunities for employment; or the state of Kansas, a state agency or a  
17 municipality.

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

23 (e) "Vendor" means any vendor, contractor or supplier of goods or  
24 services to the state of Kansas, a state agency or a municipality.

25 Sec. 2. (a) An employer shall not conduct background checks on  
26 applicants unless the employer has made a good faith determination that  
27 the relevant position is of such sensitivity that a background check is  
28 warranted or if a background check is required by any federal or state law.

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

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

1 (d) An employer shall not use the following criminal records in  
2 relation to a background check unless otherwise required by law: Records  
3 of arrest not followed by a valid conviction, sealed, dismissed or expunged  
4 convictions. An employer shall not use the following criminal records in  
5 relation to a background check unless multiple and clearly and  
6 convincingly relevant to the position, or required by state or federal law:  
7 Misdemeanor convictions where no jail sentence can be imposed, and  
8 infractions.

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

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

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

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

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

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

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

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

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

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

36 (4) provide the applicant with an individualized assessment pursuant  
37 to subsection (c).

38 (c) (1) A job-related conviction shall not be the basis for an adverse  
39 action if the applicant can show mitigation or rehabilitation and present  
40 fitness to perform the duties of the position sought. The applicant shall  
41 have 10 business days, after issuance of the notice, to respond with any  
42 information rebutting the basis for the adverse action, including  
43 challenging the accuracy of the information and submitting mitigation or

1 rehabilitation evidence. The employer shall hold the position open until it  
2 makes the final employment decision based on an individualized  
3 assessment of the information submitted by the applicant.

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

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

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

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

14 (e) If denied employment by the employer, applicants may appeal  
15 adverse decisions as provided by law.

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

20 Sec. 4. (a) The state of Kansas, state agencies and municipalities shall  
21 do business only with vendors that have adopted and employ conviction  
22 history policies, practices and standards that are consistent with the  
23 standards outlined in this act.

24 (b) During the bid or contracting process, the state of Kansas, state  
25 agency or municipality shall review all vendors' conviction history policies  
26 for consistency with the provisions of this act. The vendors' conviction  
27 history standards shall be part of the criteria to be evaluated when  
28 determining whether to award a contract. Evaluation of a vendor's  
29 execution of the conviction history standards shall be a part of the  
30 performance criteria of the contract. A vendor's deviation from these  
31 conviction history standards shall be grounds for rejection, rescission,  
32 revocation or any other termination of the contract, or ineligibility for  
33 future contracts.

34 Sec. 5. (a) The secretary of administration shall administer and  
35 enforce the provisions of this act.

36 (b) The employer shall retain application forms, records of  
37 employment and other pertinent data and records required under this act,  
38 including, but not limited to, communication with the applicant, for a  
39 minimum of three years, and shall allow the secretary of administration  
40 access to such records to monitor compliance with this act. Any person  
41 who is aggrieved by a violation of this act may contact the secretary of  
42 administration to report any problems, concerns or suggestions regarding  
43 the implementation, compliance and impact of the provisions of this act,

1 and the secretary of administration shall keep a record. The secretary of  
2 administration shall conduct periodic reviews to assess compliance with  
3 these sections and shall investigate and review complaints.

4 (c) Each employer shall maintain a record of the number of positions  
5 requiring background checks and for those positions shall maintain a  
6 record of the number of applicants and the number of applicants who were  
7 provided a conditional offer. In addition, each employer shall maintain a  
8 record of the number of applicants with a record for a position: (1) Who  
9 were provided a pre-adverse action notice; (2) who provided evidence of  
10 mitigation or rehabilitation; (3) who were provided a final adverse notice;  
11 and (4) who were hired.

12 (d) (1) The secretary of administration shall regularly conduct a  
13 confidential, anonymous survey of employees in positions with the state of  
14 Kansas, state agencies or municipalities, in which background checks are  
15 not conducted, to determine the number of people with records hired.

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

19 Sec. 6. (a) The secretary of administration may issue a fine of up to  
20 \$1,000 for a first violation of this act by a private employer and provide  
21 counseling to the private employer to ensure future compliance.  
22 Subsequent violations by private employers are subject to fines of up to  
23 \$2,000 per violation. In addition, an individual may bring a civil action in  
24 any court of competent jurisdiction against the employer or other person  
25 violating this act, and upon prevailing, shall be entitled to such legal or  
26 equitable relief as may be appropriate to remedy the violation, including,  
27 but not limited to, damages, injunctive relief, reasonable attorney fees and  
28 costs as permitted by law. Where an employer does not maintain or retain  
29 adequate records documenting compliance or does not allow the secretary  
30 of administration reasonable access to such records, it shall be presumed  
31 that the employer did not comply, absent clear and convincing evidence  
32 otherwise.

33 (b) Proceedings under this section shall be in accordance with the  
34 Kansas administrative procedure act, and orders issued by the secretary of  
35 administration shall be subject to review under the Kansas judicial review  
36 act.

37 Sec. 7. The secretary of administration shall adopt rules and  
38 regulations necessary to implement, administer and enforce the provisions  
39 of this act.

40 Sec. 8. This act shall take effect and be in force from and after its  
41 publication in the statute book.