

February 28, 2017

REVISED

The Honorable Blaine Finch, Chairperson
House Committee on Judiciary
Statehouse, Room 519-N
Topeka, Kansas 66612

Dear Representative Finch:

SUBJECT: Revised Fiscal Note for HB 2115 by Representative Finney

In accordance with KSA 75-3715a, the following revised fiscal note concerning HB 2115 is respectfully submitted to your committee.

HB 2115 would prohibit state agencies from conducting background checks on applicants for employment unless the agency has made a good faith determination that the position's job duties are sensitive enough to warrant a background check or a background check is required by state or federal law. All job announcements must state that the position is subject to a background check and only job-related convictions would be considered and would not automatically disqualify the candidate. Job applications must not include questions about an applicant's conviction history. The bill would prohibit state agencies from using certain criminal records when conducting background checks. State agencies would be prohibited from asking about or considering an applicant's conviction history until after the applicant has received a conditional offer. The bill would prohibit using a job-related conviction as the basis for an adverse action if the applicant can show evidence of mitigation or rehabilitation and present fitness to perform the duties of the position. If an agency makes an adverse decision, the applicant must be notified of the final decision and that he or she may be eligible for other positions. An individual may bring a civil action against an agency or person for violations of the bill.

The Secretary of Administration would be responsible for enforcing the provisions of the bill. Employers would be required to retain application forms and other records for a minimum of three years and the Secretary would be allowed access to the records. Any person who is aggrieved by a violation of the bill could contact the Secretary. The Secretary would be required to conduct a confidential, anonymous survey of state employees in positions that do not require background checks to determine the number of people who were hired with criminal records. The Secretary must submit a report to the Legislature each January regarding the status of employment of persons with criminal records.

The Department of Administration indicates that the bill would add a number of delays and steps to the state hiring process; particularly as a result of not being allowed to begin a background check until after a conditional offer is made. Generally, when an agency makes a conditional offer to a candidate, the agency has already spent time processing applications, screening candidates for qualifications, conducting interviews and contacting references. Under the bill, if the results of a background check cause a candidate to be disqualified because of a certain conviction, agencies would have to re-start the process with a new candidate; this would cause delays in filling the position. The Department notes that while a conviction does not disqualify an applicant from all employment opportunities with the State of Kansas, for some positions it does.

Delays in hiring would affect all state agencies including most public safety agencies that require background checks or otherwise bar employment because of felony convictions. Affected positions could include correctional officers, law enforcement officers, various support or administrative staff in agencies with public safety functions, and certain staff at state hospitals. The Department also indicates that the bill may jeopardize federal funding for agencies that are required to follow federal requirements for background checks.

The Department estimates that it would require additional expenditures of at least \$125,000 in FY 2018 and FY 2019 for the salaries and wages of one human resource position and one attorney position, plus associated operating costs. Also, the definition of “employment” in the bill includes “contract work” and “work through the services of a temporary or other employment agency.” It is possible that the bill could impact the state procurement process. If it does, the Department states that an additional procurement officer would be needed at a cost of approximately \$60,000 annually.

According to the Department, other agencies may also need to hire additional human resource or legal staff; however, the Department does not have information regarding what those staffing needs would be. Agencies that could be affected include the Office of the Attorney General, the Department of Corrections, the Department on Aging and Disabilities, the Department for Children and Families, the Kansas Highway Patrol, the Kansas Bureau of Investigation, the Department of Revenue, the Kansas Lottery, the Kansas Racing and Gaming Commission and the Judicial Branch. The original fiscal note did not include the Judicial Branch in the list of agencies that could be affected by the bill. Any fiscal effect associated with HB 2115 is not reflected in *The FY 2018 Governor’s Budget Report*.

Sincerely,



Shawn Sullivan,
Director of the Budget