

HOUSE BILL No. 2666

By Representative Parker

2-12

1 AN ACT concerning employment practices; prohibiting employers from
2 taking adverse employment action against an employee based on
3 employee's reproductive medical history; medical decisions; amending
4 K.S.A. 44-1009 and K.S.A. 2019 Supp. 44-1002 and repealing the
5 existing sections.
6

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

8 Section 1. K.S.A. 2019 Supp. 44-1002 is hereby amended to read as
9 follows: 44-1002. When used in this act:

10 (a) "Person" includes one or more individuals, partnerships,
11 associations, organizations, corporations, legal representatives, trustees,
12 trustees in bankruptcy or receivers.

13 (b) "Employer" includes any person in this state employing four or
14 more persons and any person acting directly or indirectly for an employer,
15 labor organizations, nonsectarian corporations, organizations engaged in
16 social service work and the state of Kansas and all political and municipal
17 subdivisions thereof, but shall not include a nonprofit fraternal or social
18 association or corporation.

19 (c) "Employee" does not include any individual employed by such
20 individual's parents, spouse or child or in the domestic service of any
21 person.

22 (d) "Labor organization" includes any organization ~~which~~ *that* exists
23 for the purpose, in whole or in part, of collective bargaining, of dealing
24 with employers concerning grievances, terms or conditions of employment
25 or of other mutual aid or protection in relation to employment.

26 (e) "Employment agency" includes any person or governmental
27 agency undertaking, with or without compensation, to procure
28 opportunities to work or to procure, recruit, refer or place employees.

29 (f) "Commission" means the Kansas human rights commission
30 created by this act.

31 (g) "Unlawful employment practice" includes only those unlawful
32 practices and acts specified in K.S.A. 44-1009, and amendments thereto,
33 and includes segregate or separate.

34 (h) "Public accommodations" means any person who caters or offers
35 goods, services, facilities and accommodations to the public. Public
36 accommodations include, but are not limited to, any lodging establishment

1 or food service establishment, as defined by K.S.A. 36-501, and
2 amendments thereto; any bar, tavern, barbershop, beauty parlor, theater,
3 skating rink, bowling alley, billiard parlor, amusement park, recreation
4 park, swimming pool, lake, gymnasium, mortuary or cemetery ~~which~~ *that*
5 is open to the public; or any public transportation facility. Public
6 accommodations do not include a religious or nonprofit fraternal or social
7 association or corporation.

8 (i) "Unlawful discriminatory practice" means: (1) Any discrimination
9 against persons, by reason of their race, religion, color, sex, disability,
10 national origin or ancestry:

11 (A) In any place of public accommodations; or

12 (B) in the full and equal use and enjoyment of the services, facilities,
13 privileges and advantages of any institution, department or agency of the
14 state of Kansas or any political subdivision or municipality thereof; and

15 (2) any discrimination against persons in regard to membership in a
16 nonprofit recreational or social association or corporation by reason of
17 race, religion, sex, color, disability, national origin or ancestry if such
18 association or corporation has 100 or more members and: (A) Provides
19 regular meal service; and (B) receives payment for dues, fees, use of
20 space, use of facility, services, meals or beverages, directly or indirectly,
21 from or on behalf of nonmembers.

22 This term shall not apply to a religious or private fraternal and
23 benevolent association or corporation.

24 (j) "Disability" means, with respect to an individual:

25 (1) A physical or mental impairment that substantially limits one or
26 more of the major life activities of such individual;

27 (2) a record of such an impairment; or

28 (3) being regarded as having such an impairment.

29 Disability does not include current, illegal use of a controlled substance
30 as defined in section 102 of the federal controlled substance act (21 U.S.C.
31 § 802), in housing discrimination. In employment and public
32 accommodation discrimination, "disability" does not include an individual
33 who is currently engaging in the illegal use of drugs where possession or
34 distribution of such drugs is unlawful under the controlled substance act
35 (21 U.S.C. § 812), when the covered entity acts on the basis of such use.

36 (k) (1) "Reasonable accommodation" means:

37 (A) Making existing facilities used by employees readily accessible
38 to and usable by individuals with disabilities; and

39 (B) job restructuring; part-time or modified work schedules;
40 reassignment to a vacant position; acquisition or modification of
41 equipment or devices; appropriate adjustment or modifications of
42 examinations, training materials or policies; provision of qualified readers
43 or interpreters; and other similar accommodations for individuals with

1 disabilities.

2 (2) A reasonable accommodation or a reasonable modification to
3 policies, practices or procedures need not be provided to an individual who
4 meets the definition of disability in K.S.A. 44-1002(j)(3), and amendments
5 thereto.

6 (l) "Regarded as having such an impairment" means the absence of a
7 physical or mental impairment but regarding or treating an individual as
8 though such an impairment exists. An individual meets the requirement of
9 "being regarded as having such an impairment" if the individual
10 establishes that such individual has been subjected to an action prohibited
11 under this act because of an actual or perceived physical or mental
12 impairment whether or not the impairment limits or is perceived to limit a
13 major life activity. Subsection (j)(3) shall not apply to impairments that are
14 transitory or minor. A transitory impairment is an impairment with an
15 actual or expected duration of six months or less.

16 (m) "Major life activities" means:

17 (1) "Major life activities" include, but are not limited to, caring for
18 oneself, performing manual tasks, seeing, hearing, eating, sleeping,
19 walking, standing, lifting, bending, speaking, breathing, learning, reading,
20 concentrating, thinking, communicating; and working.

21 (2) It also includes the operation of a major bodily function,
22 including, but not limited to, functions of the immune system, normal cell
23 growth, digestive, bowel, bladder, neurological, brain, respiratory,
24 circulatory, endocrine and reproductive functions.

25 (n) "Genetic screening or testing" means a laboratory test of a
26 person's genes or chromosomes for abnormalities, defects or deficiencies,
27 including carrier status, that are linked to physical or mental disorders or
28 impairments, or that indicate a susceptibility to illness, disease or other
29 disorders, whether physical or mental, which test is a direct test for
30 abnormalities, defects or deficiencies, and not an indirect manifestation of
31 genetic disorders.

32 (o) "*Adverse employment action*" means action taken by an employer
33 against an employee, including termination, demotion or refusal to
34 promote or advance, removal of career specialty, reassignment to a
35 different shift, reduction of wages or benefits, refusal to provide training
36 opportunities or transfer to a different department, adverse administrative
37 action or any other penalty, disciplinary or retaliatory action.

38 Sec. 2. K.S.A. 44-1009 is hereby amended to read as follows: 44-
39 1009. (a) It shall be an unlawful employment practice:

40 (1) For an employer, because of the race, religion, color, sex,
41 disability, national origin or ancestry of any person, to refuse to hire or
42 employ such person-to, bar or discharge such person from employment or
43 to otherwise discriminate against such person in compensation or in terms,

1 conditions or privileges of employment; to limit, segregate, separate,
2 classify or make any distinction in regards to employees; or to follow any
3 employment procedure or practice—~~which~~ *that*, in fact, results in
4 discrimination, segregation or separation without a valid business
5 necessity.

6 (2) For a labor organization, because of the race, religion, color, sex,
7 disability, national origin or ancestry of any person, to exclude or to expel
8 from its membership such person or to discriminate in any way against any
9 of its members or against any employer or any person employed by an
10 employer.

11 (3) For any employer, employment agency or labor organization to
12 print or circulate or cause to be printed or circulated any statement,
13 advertisement or publication, ~~or to~~ use any form of application for
14 employment or membership or ~~to~~ make any inquiry in connection with
15 prospective employment or membership, ~~which~~ *that* expresses, directly or
16 indirectly, any limitation, specification or discrimination as to race,
17 religion, color, sex, disability, national origin or ancestry, or any intent to
18 make any such limitation, specification or discrimination, unless based on
19 a bona fide occupational qualification.

20 (4) For any employer, employment agency or labor organization to
21 discharge, expel or otherwise discriminate against any person because such
22 person has opposed any practices or acts forbidden under this act or
23 because such person has filed a complaint, testified or assisted in any
24 proceeding under this act.

25 (5) For an employment agency to refuse to list and properly classify
26 for employment or to refuse to refer any person for employment or
27 otherwise discriminate against any person because of such person's race,
28 religion, color, sex, disability, national origin or ancestry; or to comply
29 with a request from an employer for a referral of applicants for
30 employment if the request expresses, either directly or indirectly, any
31 limitation, specification or discrimination as to race, religion, color, sex,
32 disability, national origin or ancestry.

33 (6) For an employer, labor organization, employment agency; or
34 school ~~which~~ *that* provides, coordinates or controls apprenticeship, on-the-
35 job, or other training or retraining program, to maintain a practice of
36 discrimination, segregation or separation because of race, religion, color,
37 sex, disability, national origin or ancestry, in admission, hiring,
38 assignments, upgrading, transfers, promotion, layoff, dismissal,
39 apprenticeship or other training or retraining program, or in any other
40 terms, conditions or privileges of employment, membership,
41 apprenticeship or training; or to follow any policy or procedure ~~which~~ *that*,
42 in fact, results in such practices without a valid business motive.

43 (7) For any person, whether an employer or an employee or not, to

1 aid, abet, incite, compel or coerce the doing of any of the acts forbidden
2 under this act, or attempt to do so.

3 (8) For an employer, labor organization, employment agency or joint
4 labor-management committee to: (A) Limit, segregate or classify a job
5 applicant or employee in a way that adversely affects the opportunities or
6 status of such applicant or employee because of the disability of such
7 applicant or employee; (B) participate in a contractual or other
8 arrangement or relationship, including a relationship with an employment
9 or referral agency, labor union, an organization providing fringe benefits to
10 an employee or an organization providing training and apprenticeship
11 programs that has the effect of subjecting a qualified applicant or
12 employee with a disability to the discrimination prohibited by this act; (C)
13 utilize standards criteria, or methods of administration that have the effect
14 of discrimination on the basis of disability or that perpetuate the
15 discrimination of others who are subject to common administrative
16 control; (D) exclude or otherwise deny equal jobs or benefits to a qualified
17 individual because of the known disability of an individual with whom the
18 qualified individual is known to have a relationship or association; (E) not
19 make reasonable accommodations to the known physical or mental
20 limitations of an otherwise qualified individual with a disability who is an
21 applicant or employee, unless such employer, labor organization,
22 employment agency or joint labor-management committee can
23 demonstrate that the accommodation would impose an undue hardship on
24 the operation of the business thereof; (F) deny employment opportunities
25 to a job applicant or employee who is an otherwise qualified individual
26 with a disability, if such denial is based on the need to make reasonable
27 accommodation to the physical or mental impairments of the employee or
28 applicant; (G) use qualification standards, employment tests or other
29 selection criteria that screen out or tend to screen out an individual with a
30 disability or a class of individuals with disabilities unless the standard, test
31 or other selection criteria, as used, is shown to be job-related for the
32 position in question and is consistent with business necessity; or (H) fail to
33 select and administer tests concerning employment in the most effective
34 manner to ensure that, when such test is administered to a job applicant or
35 employee who has a disability that impairs sensory, manual or speaking
36 skills, the test results accurately reflect the skills, aptitude or whatever
37 other factor of such applicant or employee that such test purports to
38 measure, rather than reflecting the impaired sensory, manual or speaking
39 skills of such employee or applicant (except where such skills are the
40 factors that the test purports to measure).

41 (9) For any employer to:

42 (A) Seek to obtain, ~~to~~ obtain or ~~to~~ use genetic screening or testing
43 information of an employee or a prospective employee to distinguish

1 between or discriminate against or restrict any right or benefit otherwise
2 due or available to an employee or a prospective employee; or

3 (B) subject, directly or indirectly, any employee or prospective
4 employee to any genetic screening or test.

5 (10) *For any employer to:*

6 (A) *Take any adverse employment action against an employee based*
7 *on the use of any drug, device or medical service related to reproductive*
8 *health by the employee or the employee's spouse or dependent; or*

9 (B) *require an employee to sign a waiver or other document that*
10 *purports to deny an employee, or an employee's spouse or dependents, the*
11 *right to make their own reproductive healthcare decisions, including*
12 *whether to use any particular drug, device or medical service.*

13 (b) It shall not be an unlawful employment practice to fill vacancies
14 in such way as to eliminate or reduce imbalance with respect to race,
15 religion, color, sex, disability, national origin or ancestry.

16 (c) It shall be an unlawful discriminatory practice:

17 (1) For any person, as defined herein being the owner, operator,
18 lessee, manager, agent or employee of any place of public
19 accommodation, to refuse, deny or make a distinction, directly or
20 indirectly, in offering its goods, services, facilities, and accommodations to
21 any person as covered by this act because of race, religion, color, sex,
22 disability, national origin or ancestry, except where a distinction because of
23 sex is necessary because of the intrinsic nature of such accommodation.

24 (2) For any person, whether or not specifically enjoined from
25 discriminating under any provisions of this act, to aid, abet, incite, compel
26 or coerce the doing of any of the acts forbidden under this act, or to
27 attempt to do so.

28 (3) For any person; to refuse, deny, make a distinction, directly or
29 indirectly, or discriminate in any way against persons because of the race,
30 religion, color, sex, disability, national origin or ancestry of such persons
31 in the full and equal use and enjoyment of the services, facilities,
32 privileges and advantages of any institution, department or agency of the
33 state of Kansas or any political subdivision or municipality thereof.

34 Sec. 3. K.S.A. 44-1009 and K.S.A. 2019 Supp. 44-1002 are hereby
35 repealed.

36 Sec. 4. This act shall take effect and be in force from and after its
37 publication in the statute book.