

HOUSE BILL No. 2640

By General Government Budget Committee

2-8

1 AN ACT concerning the Kansas human rights commission; relating to
2 complaints; authorizing electronic submission of materials to the
3 commission; amending K.S.A. 2015 Supp. 44-1005 and repealing the
4 existing section.
5

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

7 Section 1. K.S.A. 2015 Supp. 44-1005 is hereby amended to read as
8 follows: 44-1005. (a) Any person claiming to be aggrieved by an alleged
9 unlawful employment practice or by an alleged unlawful discriminatory
10 practice, and who can articulate a prima facie case pursuant to a
11 recognized legal theory of discrimination, may, personally or by an
12 attorney-at-law, make, sign and file with the commission a verified
13 complaint in writing *or electronically by facsimile or email of a scanned*
14 *copy*, articulating the prima facie case, which shall also state the name and
15 address of the person, employer, labor organization or employment agency
16 alleged to have committed the unlawful employment practice complained
17 of or the name and address of the person alleged to have committed the
18 unlawful discriminatory practice complained of, and which shall set forth
19 the particulars thereof and contain such other information as may be
20 required by the commission. *The commission may in its discretion allow*
21 *for the electronic submission of other materials in a case filed with the*
22 *commission. The submitter of any electronic material shall retain the*
23 *original submission for five years after the date the commission closes its*
24 *file on the case and shall produce the original upon request by the*
25 *commission or its representative.*

26 (b) The commission upon its own initiative or the attorney general
27 may, in like manner, make, sign and file such complaint. Whenever the
28 attorney general has sufficient reason to believe that any person as herein
29 defined is engaged in a practice of discrimination, segregation or
30 separation in violation of this act, the attorney general may make, sign and
31 file a complaint. Any employer whose employees or some of whom, refuse
32 or threaten to refuse to cooperate with the provisions of this act, may file
33 with the commission a verified complaint asking for assistance by
34 conciliation or other remedial action.

35 (c) Whenever any problem of discrimination because of race,
36 religion, color, sex, disability, national origin or ancestry arises, or

1 whenever the commission has, in its own judgment, reason to believe that
2 any person has engaged in an unlawful employment practice or an
3 unlawful discriminatory practice in violation of this act, or has engaged in
4 a pattern or practice of discrimination, the commission may conduct an
5 investigation without filing a complaint and shall have the same powers
6 during such investigation as provided for the investigation of complaints.
7 The person to be investigated shall be advised of the nature and scope of
8 such investigation prior to its commencement. The purpose of the
9 investigation shall be to resolve any such problems promptly. In the event
10 such problems cannot be resolved within a reasonable time, the
11 commission may issue a complaint whenever the investigation has
12 revealed a violation of the Kansas act against discrimination has occurred.
13 The information gathered in the course of the first investigation may be
14 used in processing the complaint.

15 (d) After the filing of any complaint by an aggrieved individual, by
16 the commission, or by the attorney general, the commission shall, within
17 seven days after the filing of the complaint, serve a copy on each of the
18 parties alleged to have violated this act, and shall designate one of the
19 commissioners to make, with the assistance of the commission's staff,
20 prompt investigation of the alleged act of discrimination. If the
21 commissioner shall determine after such investigation that no probable
22 cause exists for crediting the allegations of the complaint, such
23 commissioner, within 10 business days from such determination, shall
24 cause to be issued and served upon the complainant and respondent written
25 notice of such determination.

26 (e) If such commissioner after such investigation, shall determine that
27 probable cause exists for crediting the allegations for the complaint, the
28 commissioner or such other commissioner as the commission may
29 designate, shall immediately endeavor to eliminate the unlawful
30 employment practice or the unlawful discriminatory practice complained
31 of by conference and conciliation. The complainant, respondent and
32 commission shall have 45 days from the date respondent is notified in
33 writing of a finding of probable cause to enter into a conciliation
34 agreement signed by all parties in interest. The parties may amend a
35 conciliation agreement at any time prior to the date of entering into such
36 agreement. Upon agreement by the parties the time for entering into such
37 agreement may be extended. The members of the commission and its staff
38 shall not disclose what has transpired in the course of such endeavors.

39 (f) In case of failure to eliminate such practices by conference and
40 conciliation, or in advance thereof, if in the judgment of the commissioner
41 or the commission circumstances so warrant, the commissioner or the
42 commission shall commence a hearing in accordance with the provisions
43 of the Kansas administrative procedure act naming as parties the

1 complainant and the person, employer, labor organization, employment
2 agency, realtor or financial institution named in such complaint,
3 hereinafter referred to as respondent. A copy of the complaint shall be
4 served on the respondent. At least four commissioners or a presiding
5 officer from the office of administrative hearings shall be designated as the
6 presiding officer. The place of such hearing shall be in the county where
7 respondent is doing business and the acts complained of occurred.

8 (g) The complainant or respondent may apply to the presiding officer
9 for the issuance of a subpoena for the attendance of any person or the
10 production or examination of any books, records or documents pertinent to
11 the proceeding at the hearing. Upon such application the presiding officer
12 shall issue such subpoena.

13 (h) The case in support of the complaint shall be presented before the
14 presiding officer by one of the commission's attorneys or agents, or by
15 private counsel, if any, of the complainant, and the commissioner who
16 shall have previously made the investigation shall not participate in the
17 hearing except as a witness. Any endeavors at conciliation shall not be
18 received in evidence.

19 (i) Any complaint filed pursuant to this act must be so filed within six
20 months after the alleged act of discrimination, unless the act complained of
21 constitutes a continuing pattern or practice of discrimination in which
22 event it will be from the last act of discrimination. Complaints filed with
23 the commission may be dismissed by the commission on its own initiative,
24 and shall be dismissed by the commission upon the written request of the
25 complainant, if the commission has not issued a finding of probable cause
26 or no probable cause or taken other administrative action dismissing the
27 complaint within 300 days of the filing of the complaint. The commission
28 shall mail written notice to all parties of dismissal of a complaint within
29 five days of dismissal. Any such dismissal of a complaint in accordance
30 with this section shall constitute final action by the commission which
31 shall be deemed to exhaust all administrative remedies under the Kansas
32 act against discrimination for the purpose of allowing subsequent filing of
33 the matter in court by the complainant, without the requirement of filing a
34 petition for reconsideration pursuant to K.S.A. 44-1010, and amendments
35 thereto. Dismissal of a complaint in accordance with this section shall not
36 be subject to appeal or judicial review by any court under the provisions of
37 K.S.A. 44-1011, and amendments thereto. The provisions of this section
38 shall not apply to complaints alleging discriminatory housing practices
39 filed with the commission pursuant to K.S.A. 44-1015 et seq., and
40 amendments thereto.

41 (j) The respondent may file a written verified answer to the complaint
42 and appear at such hearing in person or otherwise, with or without counsel,
43 and submit testimony. The complainant shall appear at such hearing in

1 person, with or without counsel, and submit testimony. The presiding
2 officer or the complainant shall have the power reasonably and fairly to
3 amend any complaint, and the respondent shall have like power to amend
4 such respondent's answer. The presiding officer shall be bound by the rules
5 of evidence prevailing in courts of law or equity, and only relevant
6 evidence of reasonable probative value shall be received.

7 (k) If the presiding officer finds a respondent has engaged in or is
8 engaging in any unlawful employment practice or unlawful discriminatory
9 practice as defined in this act, the presiding officer shall render an order
10 requiring such respondent to cease and desist from such unlawful
11 employment practice or such unlawful discriminatory practice and to take
12 such affirmative action, including but not limited to the hiring,
13 reinstatement, or upgrading of employees, with or without back pay, and
14 the admission or restoration to membership in any respondent labor
15 organizations; the admission to and full and equal enjoyment of the goods,
16 services, facilities, and accommodations offered by any respondent place
17 of public accommodation denied in violation of this act, as, in the
18 judgment of the presiding officer, will effectuate the purposes of this act,
19 and including a requirement for report of the manner of compliance. Such
20 order may also include an award of damages for pain, suffering and
21 humiliation which are incidental to the act of discrimination, except that an
22 award for such pain, suffering and humiliation shall in no event exceed the
23 sum of \$2,000.

24 (l) Any state, county or municipal agency may pay a complainant
25 back pay if it has entered into a conciliation agreement for such purposes
26 with the commission, and may pay such back pay if it is ordered to do so
27 by the commission.

28 (m) If the presiding officer finds that a respondent has not engaged in
29 any such unlawful employment practice, or any such unlawful
30 discriminatory practice, the presiding officer shall render an order
31 dismissing the complaint as to such respondent.

32 (n) The commission shall review an initial order rendered under
33 subsection (k) or (m). In addition to the parties, a copy of any final order
34 shall be served on the attorney general and such other public officers as the
35 commission may deem proper.

36 (o) The commission shall, except as otherwise provided, establish
37 rules of practice to govern, expedite and effectuate the foregoing
38 procedure and its own actions thereunder. The rules of practice shall be
39 available, upon written request, within 30 days after the date of adoption.

40 Sec. 2. K.S.A. 2015 Supp. 44-1005 is hereby repealed.

41 Sec. 3. This act shall take effect and be in force from and after its
42 publication in the statute book.