

## 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.