

SENATE BILL No. 180

AN ACT concerning law enforcement; relating to hiring practices and consideration of prior employment records; open records act; Kansas law enforcement training act; central registry; amending K.S.A. 2017 Supp. 45-220, as amended by section 2 of 2018 House Bill No. 2459, and 74-5611a and repealing the existing sections.

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

New Section 1. (a) A hiring agency shall require each applicant interviewed by such agency for a law enforcement officer position who has been employed by another state or local law enforcement agency or governmental agency to execute a written waiver that: (1) Explicitly authorizes each state or local law enforcement agency or governmental agency that has employed the applicant to disclose the applicant's files to the hiring agency; and (2) releases the hiring agency and each state or local law enforcement agency or governmental agency that employed the applicant from any liability related to the use and disclosure of the applicant's files. An applicant who refuses to execute the written waiver shall not be considered for employment by the hiring agency. The hiring agency shall include the written waiver with each request for information submitted to a state or local law enforcement agency or governmental agency that has employed the applicant.

(b) Except as provided in subsection (c), a state or local law enforcement agency or governmental agency that receives a written waiver described in subsection (a) shall disclose the applicant's files to the hiring agency not more than 21 days after such receipt. Such law enforcement agency or governmental agency may choose to disclose the applicant's files by either: (1) Providing copies to the hiring agency; or (2) allowing the hiring agency to review the files at the law enforcement agency's office or governmental agency's office.

(c) (1) A state or local law enforcement agency or governmental agency is not required to disclose the applicant's files pursuant to subsection (b) if such agency is prohibited from providing the files pursuant to a binding nondisclosure agreement to which such agency is a party, and such agreement was executed before July 1, 2018.

(2) A state or local law enforcement agency or governmental agency is required to disclose the applicant's files pursuant to subsection (b) if such files are subject to a binding nondisclosure agreement to which such agency is a party, and such agreement was executed on or after July 1, 2018, but the disclosure shall be limited to files necessary to determine the qualifications and fitness of the applicant for performance of duties in a law enforcement officer position.

(3) A state or local law enforcement agency or governmental agency may redact personally identifiable information of persons other than the applicant in files disclosed to the hiring agency.

(d) A state or local law enforcement agency or governmental agency shall not be liable for complying with the provisions of this section in good faith or participating in an official oral interview with an investigator regarding the applicant.

(e) Except as provided in subsection (f), or except as necessary for such agency's internal hiring processes, files obtained pursuant to this section shall not be disclosed by the hiring agency.

(f) Files obtained pursuant to this section shall constitute, for the purposes of the open records act, a record of the state or local law enforcement agency or governmental agency that made, maintained or kept such files. Such files shall not be subject to a request for inspection and copying under the open records act directed toward the hiring agency obtaining the files. The official custodian of such files, for the purposes of the open records act, shall be the official custodian of the records of such state or local law enforcement agency or governmental agency. Except in a civil action involving negligent hiring, such files shall not be subject to discovery, subpoena or other process directed toward the hiring agency obtaining the files.

(g) As used in this section:

(1) "Files" means all performance reviews or other files related to job performance, commendations, administrative files, grievances, previous personnel applications, personnel-related claims, disciplinary actions, internal investigation files, suspensions, investigation-related leave, documents concerning termination or other departure from employment, all complaints and all early warning information. "Files" shall not include nonperformance documents or data, including, but not limited to, med-

ical files, schedules, pay and benefit information or similar administrative data or information.

(2) “Early warning information” means information from a databased management tool designed to identify officers who may be exhibiting precursors of problems on the job that can result in providing those officers with counseling or training to divert them away from conduct that may become a disciplinary matter.

(3) “Governmental agency” means the state or subdivision of the state with oversight of the state or local law enforcement agency.

(4) “Hiring agency” means a state or local law enforcement agency processing an application for employment, regardless of whether the applicant is ultimately hired.

(5) “State or local law enforcement agency” means any public agency employing a law enforcement officer as defined in K.S.A. 74-5602, and amendments thereto.

Sec. 2. K.S.A. 2017 Supp. 45-220, as amended by section 2 of 2018 House Bill No. 2459, is hereby amended to read as follows: 45-220. (a) Each public agency shall adopt procedures to be followed in requesting access to and obtaining copies of public records, which procedures shall provide full access to public records, protect public records from damage and disorganization, prevent excessive disruption of the agency’s essential functions, provide assistance and information upon request and insure efficient and timely action in response to applications for inspection of public records.

(b) A public agency may require a written request for inspection of public records but shall not otherwise require a request to be made in any particular form. Except as otherwise provided by subsection (c), a public agency shall not require that a request contain more information than the requester’s name and address and the information necessary to ascertain the records to which the requester desires access and the requester’s right of access to the records. A public agency may require proof of identity of any person requesting access to a public record. No request shall be returned, delayed or denied because of any technicality unless it is impossible to determine the records to which the requester desires access.

(c) If access to public records of an agency or the purpose for which the records may be used is limited pursuant to K.S.A. 45-221 or K.S.A. 2017 Supp. 45-230, and amendments thereto, the agency may require a person requesting the records or information therein to provide written certification that:

(1) The requester has a right of access to the records and the basis of that right; or

(2) the requester does not intend to, and will not: (A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or (B) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed.

(d) A public agency shall establish, for business days when it does not maintain regular office hours, reasonable hours when persons may inspect and obtain copies of the agency’s records. The public agency may require that any person desiring to inspect or obtain copies of the agency’s records during such hours so notify the agency, but such notice shall not be required to be in writing and shall not be required to be given more than 24 hours prior to the hours established for inspection and obtaining copies.

(e) Each official custodian of public records shall designate such persons as necessary to carry out the duties of custodian under this act and shall ensure that a custodian is available during regular business hours of the public agency to carry out such duties.

(f) Each public agency shall provide, upon request of any person, the following information:

(1) The principal office of the agency, its regular office hours and any additional hours established by the agency pursuant to subsection (c).

(2) The title and address of the official custodian of the agency's records and of any other custodian who is ordinarily available to act on requests made at the location where the information is displayed.

(3) The fees, if any, charged for access to or copies of the agency's records.

(4) The procedures to be followed in requesting access to and obtaining copies of the agency's records, including procedures for giving notice of a desire to inspect or obtain copies of records during hours established by the agency pursuant to subsection (c).

(g) (1) Except for requests of summary data compiled from information submitted by multiple criminal justice agencies or as otherwise provided by law, requests for records submitted to the central repository or any other repositories supporting the criminal justice information system that are maintained by the Kansas bureau of investigation pursuant to K.S.A. 22-4704 and 22-4705, and amendments thereto, shall be directed to the criminal justice agency from which the records originated.

(2) As used in this subsection, the terms "central repository," "criminal justice agency" and "criminal justice information system" have the same meanings as defined in K.S.A. 22-4701, and amendments thereto.

(h) Except for requests of summary data compiled from information submitted by multiple law enforcement agencies or as otherwise provided by law, requests for records submitted to the Kansas asset seizure and forfeiture repository that are maintained by the Kansas bureau of investigation pursuant to section 1 of 2018 House Bill No. 2459, and amendments thereto, shall be directed to the law enforcement agency from which the records originated.

(i) *Requests for records defined as "files" pursuant to section 1, and amendments thereto, submitted to a state or local law enforcement agency or governmental agency shall be directed to the state or local law enforcement agency or governmental agency that made, maintained or kept such files, as required by section 1, and amendments thereto.*

Sec. 3. K.S.A. 2017 Supp. 74-5611a is hereby amended to read as follows: 74-5611a. (a) (1) The commission shall establish and maintain a central registry of all Kansas police officers or law enforcement officers.

(2) The purpose of the registry is to be a resource for all agencies who appoint or elect police or law enforcement officers to use when reviewing employment applications of such officers. The registry shall be made available only to those agencies who appoint or elect police or law enforcement officers; include all records received or created by the commission pursuant to this section and all records related to violations of the Kansas law enforcement training act, including, but not limited to, records of complaints received or maintained by the commission.

(3) All records contained in the registry are confidential and shall not be disclosed pursuant to the Kansas open records act, except such records may be disclosed as provided in subsections (a)(4) and (a)(5) and the Kansas administrative procedure act. The provisions of this paragraph shall expire on July 1, 2023, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2023.

(4) Records contained in the registry, other than investigative files, shall be disclosed:

(A) To an agency that certifies, appoints or elects police or law enforcement officers;

(B) to the person who is the subject of the information, but the commission may require disclosure in such a manner as to prevent identification of any other person who is the subject or source of the information;

(C) in any proceeding conducted by the commission in accordance with the Kansas administrative procedure act, or in an appeal of an order of the commission entered in a proceeding, or to a party in such proceeding or that party's attorney;

(D) to a municipal, state or federal licensing, regulatory or enforcement agency with jurisdiction over acts or conduct similar to acts or conduct that would constitute grounds for action under this act; and

(E) to the director of police training when such disclosure is relevant to the exercise of the authority granted in K.S.A. 74-5604a(b), and amendments thereto.

(5) *The following records may be disclosed to any person pursuant to the Kansas open records act:*

(A) *A record containing only:*

(i) *A police or law enforcement officer's name;*

(ii) *the name of a police or law enforcement officer's current employer;*

(iii) *the police or law enforcement officer's dates of employment with the police or law enforcement officer's current employer;*

(iv) *the name of previous law enforcement employers and the dates of employment with each employer;*

(v) *a summary of the trainings completed by the police or law enforcement officer as reported to the commission; and*

(vi) *the status of the police or law enforcement officer's certification under this act; and*

(B) *statewide summary data without personally identifiable information.*

(6) *The provisions of K.S.A. 45-221(a), and amendments thereto, shall apply to any records disclosed pursuant to subsection (a)(4) or (a)(5).*

(b) The director shall provide forms for registration and shall refuse any registration not submitted on such form in full detail.

(c) Within 30 days of appointment, election or termination, every city, county and state agency, every school district and every community college shall submit the name of any person appointed or elected to or terminated from the position of police officer or law enforcement officer within its jurisdiction.

(d) Upon termination, the agency head shall include a report explaining the circumstances under which the officer resigned or was terminated. Such termination report shall be available to the terminated officer and any law enforcement agency to which the terminated officer later applies for a position as a police officer or law enforcement officer. The terminated officer may submit a written statement in response to the termination and any such statement shall be included in the registry file concerning such officer. The director shall adopt a format for the termination report.

(e) The agency, agency head and any officer or employee of the agency shall be absolutely immune from civil liability:

(1) For the report made in accordance with subsection (d); and

(2) when responding in writing to a written request concerning a current or former officer from a prospective law enforcement agency of that officer for the report made in accordance with subsection (d) and for the disclosure of such report.

Sec. 4. K.S.A. 2017 Supp. 45-220, as amended by section 2 of 2018 House Bill No. 2459, and 74-5611a are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.