

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

MR. CHAIRMAN:

I move to amend **SB 438**, as amended by House Committee, on page 1, following line 5, by inserting:

"New Section 1. Sections 1 through 7, and amendments thereto, shall be known and may be cited as the fair consideration of the unemployed act.

New Sec. 2. No employer, employment agency or labor organization shall inquire into or shall use a job applicant's unemployment status or gap in employment history as a basis to refuse to hire or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or terms, privileges, or conditions of employment.

New Sec. 3. No employer, employment agency or labor organization, including any agent or employee thereof, shall publish or cause to be published in any newspaper, magazine or other periodical, broadcast or cause to be broadcast by radio or television, or post electronically on the internet an employment advertisement that includes any of the following:

(a) A statement or provision stating or suggesting that current employment is a job qualification.

(b) A statement or provision stating or suggesting that an application from a job applicant who is currently unemployed will not be considered or reviewed and the applicant will not be considered for an interview or be hired.

(c) A provision stating or suggesting that only applications for employment from applicants who are currently employed will be considered or reviewed.

New Sec. 4. The provisions of sections 2 and 3, and amendments thereto, shall not prohibit an

employer, employment agency or labor organization from:

- (1) Granting a preference in employment decisions to current employees of such employer, employment agency or labor organization; or
- (2) requiring previous experience that is relevant to the employment.

New Sec. 5. (a) Any employer, employment agency or labor organization, including any agent or employee thereof, that violates any provision of this act shall incur, in addition to any other penalty provided by law, a civil penalty in an amount of up to \$5,000 for the first violation and, up to \$10,000 for each subsequent violation.

(b) The secretary, upon a finding that any employer, employment agency or labor organization, including any agent or employee thereof, has violated any provision of this act, and amendments thereto, may impose a penalty within the limits provided in this section, which penalty shall constitute an actual and substantial economic deterrent to the violation for which it is assessed.

(c) No penalty shall be imposed pursuant to this section except upon the written order of the secretary to the employer, employment agency or labor organization, including any agent or employee thereof, who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such employer, employment agency or labor organization, including any agent or employee thereof, to appeal to a hearing before the secretary. Within 15 days after service of the order, any such employer, employment agency or labor organization, including any agent or employee thereof, may appeal such order by making written request to the secretary for a hearing thereon. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(d) Any action of the secretary pursuant to subsection (c) is subject to review in accordance with the Kansas judicial review act.

New Sec. 6. (a) This act shall be administered by the secretary.

(b) The secretary is hereby authorized to adopt rules and regulations necessary to implement the provisions of this act. Such rules and regulations shall be adopted and become effective on or before July 1, 2013.

(c) Any person who believes that any employer, employment agency or labor organization, including any agent or employee thereof, has violated any provision of this section, may file a complaint with the secretary. Such complaint shall be in writing and signed by the individual filing the complaint. The secretary shall review and may investigate any such complaints. If, after an investigation, the secretary determines that a violation of this section has occurred, the secretary shall notify the employer, employment agency or labor organization, including any agent or employee thereof, who has been found to be in violation of this section that such employer, employment agency or labor organization, including any agent or employee thereof, has been found to be in violation of this section and subject to a civil penalty pursuant to section 5, and amendments thereto.

New Sec. 7. For the purposes of sections 1 through 7, and amendments thereto:

(a) "Employer" shall have the meaning ascribed to such term in K.S.A. 44-313, and amendments thereto.

(b) "Employment agency" shall have the meaning ascribed to the term "private employment agency" in K.S.A. 44-401, and amendments thereto.

(c) "Labor organization" shall have the meaning ascribed to such term in K.S.A. 44-802, and amendments thereto.

(d) "Gap in employment" means a period of time between periods of employment during which a person was not employed.

(e) "Secretary" means the secretary of labor.

(f) "Unemployment" means the status of being unemployed or not working for an employer.

New Sec. 8. (a) Except as provided in subsection (b), no employer, labor organization or

employment agency shall use an applicant's or employee's consumer report in determining whether to:

- (1) Deny employment to the applicant;
- (2) discharge the employee; or
- (3) determine compensation or the terms, conditions or privileges of employment.

(b) (1) An employer labor organization or employment agency may request or use an applicant's or employee's consumer report if:

(A) The applicant has received an offer of employment; and

(B) the consumer report will be used for a purpose other than a purpose prohibited by subsection (a); or

(2) the employer, labor organization or employment agency has a *bona fide* purpose for requesting or using information in the consumer report that is:

(A) Substantially job-related; and

(B) disclosed in writing to the employee or applicant.

(c) For the purposes of this subsection, a position for which an employer, labor organization or employment agency has a *bona fide* purpose that is substantially job-related for requesting or using information in a consumer report includes a position that:

(1) Is a law enforcement officer;

(2) Is managerial and involves setting the direction or control of a business, or a department, division, unit or agency of a business;

(3) involves access to personal information of a customer, employee or employer, except for personal information customarily provided in a retail transaction;

(4) involves a fiduciary responsibility to the employer, including the authority to issue payments, collect debts, transfer money or enter into contracts; and

(5) has access to information that:

(A) Is a trade secret; or

(B) contains other confidential business information.

(d) This section shall not be construed to prohibit an employer, labor organization or employment agency from performing an employment-related background investigation that:

(1) Includes use of a consumer report or investigative consumer report;

(2) is authorized under the federal fair credit reporting act; and

(3) does not involve investigation of credit information.

(e) The provisions of this section shall not apply to an employer, labor organization or employment agency that is:

(1) Required to inquire into an applicant's or employee's credit report or credit history under federal law or any provision of the laws of this state law for the purpose of employment;

(2) a financial institution as such term is defined in K.S.A. 16-117, and amendments thereto;

or

(3) an entity, or an affiliate of the entity, that is registered as an investment advisor with the United States securities and exchange commission.

New Sec. 9. Whenever an employer, labor organization or employment agency uses or relies upon an applicant's or employee's credit information to make an adverse employment decision as specified in subsection (a) of section 1, and amendments thereto, such employer, labor organization or employment agency shall notify in writing such applicant or employee that the adverse action was taken. The notification required by this section shall be made within 10 days of the decision to take such adverse action and shall be made in the same manner as the applicant's or employee's application was received.

New Sec. 10. A landlord may use a person's consumer report only for the purpose of assessing such person's payment history with prior landlords. If a landlord relies upon a person's consumer report

to reject such person as a prospective tenant, such landlord shall disclose that fact in writing to the prospective tenant within 10 days of such rejection.

New Sec. 11. (a) Any person whose credit information has been obtained or used contrary to the provisions of this act may file a complaint with the secretary of labor. The complaint shall contain such information as required by the secretary of labor as specified in rules and regulations.

(b) Upon receipt of a complaint, the secretary shall investigate the complaint promptly. If the secretary determines that the employer, labor organization or employment agency has willfully or negligently violated subsection (a), the secretary shall try to resolve the matter informally.

(c) On or before the first day of the legislative session, the secretary of labor shall submit a report to the governor and the chairperson of the senate standing committee on commerce and the house standing committee on commerce and economic development a report on the implementation of this act including:

- (1) The number of complaints received under this act during the preceding calendar year;
- (2) the number of complaints investigated under this act during the preceding calendar year;
- (3) the number of complaints resolved under this act during the preceding calendar year; and
- (4) such other information as the secretary deems appropriate.

(d) The secretary of labor shall adopt rules and regulations necessary to administer this act. Such rules and regulations shall be adopted in accordance with the rules and regulations filing act within one year after the effective date of this act.

New Sec. 12. As used in sections 8 through 13, and amendments thereto:

- (a) "Consumer" shall have the meaning as defined in K.S.A. 50-702, and amendments thereto.
- (b) "Consumer report" shall have the meaning as defined in K.S.A. 50-702, and amendments thereto.
- (c) "Employer" shall have the meaning as defined in K.S.A. 79-3295, and amendments

thereto.

(d) "Employment agency" shall have the meaning as defined in K.S.A. 44-401, and amendments thereto.

(e) "Financial institution" shall have the meaning as defined in K.S.A. 16-117, and amendments thereto.

(f) "Investigative consumer report" shall have the meaning as defined in K.S.A. 50-702, and amendments thereto.

(g) "Labor organization" shall have the meaning as defined in K.S.A. 44-802, and amendments thereto.

(h) "Law enforcement officer" shall have the meaning as defined in K.S.A 2011 Supp. 21-5111, and amendments thereto.

(i) "Personal information" shall have the meaning as defined in K.S.A 2011 Supp. 50- 7a01, and amendments thereto.

(j) "Trade secret" shall have the meaning as defined in K.S.A. 60-3320, and amendments thereto.

New Sec. 13. Sections 8 through 13, and amendments thereto, shall be known and may be cited as the fair use of credit history act.

Sec. 14. K.S.A. 50-703 is hereby amended to read as follows: 50-703. A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

- (a) In response to the order of a court having jurisdiction to issue such an order;
- (b) in accordance with the written instructions of the consumer to whom it relates; and
- (c) to a person which it has reason to believe;

(1) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or

review or collection of an account of, the consumer; ~~or~~

(2) intends to use the information for employment purposes; ~~or~~

(3) intends to use the information in connection with the underwriting of insurance involving the consumer; ~~or~~

(4) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; ~~or~~

(5) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer; or

(6) intends to use the information as authorized by the fair use of credit history act."

And by renumbering remaining sections accordingly;

On page 1, in line 26, after "K.S.A." by inserting "50-703 and K.S.A."; also in line 26, by striking "is" and inserting "are";

Also on page 1, in the title, in line 1, after "concerning" by inserting "employment; pertaining to"; in line 2, after the semicolon by inserting "pertaining to the use of credit information in certain employment decisions; pertaining to the use of employment history in certain employment decisions;"; also in line 2, after "K.S.A." by inserting "50-703 and K.S.A."

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