

HOUSE BILL No. 2637

By Representative Neighbor

2-12

1 AN ACT concerning employment practices; prohibiting employers and
2 employment agencies from requiring or using compensation history of
3 job applicants; amending K.S.A. 44-1009 and repealing the existing
4 section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 44-1009 is hereby amended to read as follows: 44-
8 1009. (a) It shall be an unlawful employment practice:

9 (1) For an employer, because of the race, religion, color, sex,
10 disability, national origin or ancestry of any person to refuse to hire or
11 employ such person to bar or discharge such person from employment or
12 to otherwise discriminate against such person in compensation or in terms,
13 conditions or privileges of employment; to limit, segregate, separate,
14 classify or make any distinction in regards to employees; or to follow any
15 employment procedure or practice—~~which~~ *that*, in fact, results in
16 discrimination, segregation or separation without a valid business
17 necessity.

18 (2) For a labor organization, because of the race, religion, color, sex,
19 disability, national origin or ancestry of any person, to exclude or to expel
20 from its membership such person or to discriminate in any way against any
21 of its members or against any employer or any person employed by an
22 employer.

23 (3) For any employer, employment agency or labor organization to
24 print or circulate or cause to be printed or circulated any statement,
25 advertisement or publication, or to use any form of application for
26 employment or membership or to make any inquiry in connection with
27 prospective employment or membership, ~~which~~ *that* expresses, directly or
28 indirectly, any limitation, specification or discrimination as to race,
29 religion, color, sex, disability, national origin or ancestry, or any intent to
30 make any such limitation, specification or discrimination, unless based on
31 a bona fide occupational qualification.

32 (4) For any employer, employment agency or labor organization to
33 discharge, expel or otherwise discriminate against any person because such
34 person has opposed any practices or acts forbidden under this act or
35 because such person has filed a complaint, testified or assisted in any
36 proceeding under this act.

1 (5) For an employment agency to refuse to list and properly classify
2 for employment or to refuse to refer any person for employment or
3 otherwise discriminate against any person because of such person's race,
4 religion, color, sex, disability, national origin or ancestry; or to comply
5 with a request from an employer for a referral of applicants for
6 employment if the request expresses, either directly or indirectly, any
7 limitation, specification or discrimination as to race, religion, color, sex,
8 disability, national origin or ancestry.

9 (6) For an employer, labor organization, employment agency, or
10 school ~~which~~ *that* provides, coordinates or controls apprenticeship, on-the-
11 job, or other training or retraining program, to maintain a practice of
12 discrimination, segregation or separation because of race, religion, color,
13 sex, disability, national origin or ancestry, in admission, hiring,
14 assignments, upgrading, transfers, promotion, layoff, dismissal,
15 apprenticeship or other training or retraining program, or in any other
16 terms, conditions or privileges of employment, membership,
17 apprenticeship or training; or to follow any policy or procedure ~~which~~ *that*,
18 in fact, results in such practices without a valid business motive.

19 (7) For any person, whether an employer or an employee or not, to
20 aid, abet, incite, compel or coerce the doing of any of the acts forbidden
21 under this act, or attempt to do so.

22 (8) For an employer, labor organization, employment agency or joint
23 labor-management committee to: (A) Limit, segregate or classify a job
24 applicant or employee in a way that adversely affects the opportunities or
25 status of such applicant or employee because of the disability of such
26 applicant or employee; (B) participate in a contractual or other
27 arrangement or relationship, including a relationship with an employment
28 or referral agency, labor union, an organization providing fringe benefits to
29 an employee or an organization providing training and apprenticeship
30 programs that has the effect of subjecting a qualified applicant or
31 employee with a disability to the discrimination prohibited by this act; (C)
32 utilize standards criteria, or methods of administration that have the effect
33 of discrimination on the basis of disability or that perpetuate the
34 discrimination of others who are subject to common administrative
35 control; (D) exclude or otherwise deny equal jobs or benefits to a qualified
36 individual because of the known disability of an individual with whom the
37 qualified individual is known to have a relationship or association; (E) not
38 make reasonable accommodations to the known physical or mental
39 limitations of an otherwise qualified individual with a disability who is an
40 applicant or employee, unless such employer, labor organization,
41 employment agency or joint labor-management committee can
42 demonstrate that the accommodation would impose an undue hardship on
43 the operation of the business thereof; (F) deny employment opportunities

1 to a job applicant or employee who is an otherwise qualified individual
2 with a disability, if such denial is based on the need to make reasonable
3 accommodation to the physical or mental impairments of the employee or
4 applicant; (G) use qualification standards, employment tests or other
5 selection criteria that screen out or tend to screen out an individual with a
6 disability or a class of individuals with disabilities unless the standard, test
7 or other selection criteria, as used, is shown to be job-related for the
8 position in question and is consistent with business necessity; or (H) fail to
9 select and administer tests concerning employment in the most effective
10 manner to ensure that, when such test is administered to a job applicant or
11 employee who has a disability that impairs sensory, manual or speaking
12 skills, the test results accurately reflect the skills, aptitude or whatever
13 other factor of such applicant or employee that such test purports to
14 measure, rather than reflecting the impaired sensory, manual or speaking
15 skills of such employee or applicant (except where such skills are the
16 factors that the test purports to measure).

17 (9) For any employer to:

18 (A) Seek to obtain, to obtain or to use genetic screening or testing
19 information of an employee or a prospective employee to distinguish
20 between or discriminate against or restrict any right or benefit otherwise
21 due or available to an employee or a prospective employee; or

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

24 (10) (A) For any employer or employment agency to:

25 (i) Screen applicants based on their compensation histories,
26 including by requiring that an applicant's prior compensation satisfy
27 minimum or maximum criteria; or

28 (ii) Seek the compensation history of an applicant from the applicant
29 or a current or former employer for the purpose of setting compensation
30 to be offered to an applicant.

31 (B) For the purposes of this paragraph, if the employer can
32 demonstrate that the employment agency was informed of the
33 requirements of this section and instructed to comply, then the employer is
34 not liable for actions taken by an agency in violation of this paragraph,
35 unless there is a finding of a repeat violation with knowledge of the
36 employer.

37 (C) Nothing in this paragraph prohibits an employer or an
38 employment agency and an applicant from discussing and negotiating
39 compensation expectations provided that the employer or employment
40 agency does not request or require the applicant's compensation history as
41 part of that process.

42 (D) Nothing in this paragraph prohibits an employer or an
43 employment agency from seeking the applicant's compensation history

1 *after an offer of employment with terms of compensation has been*
2 *extended to the applicant and accepted.*

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

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

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

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

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

24 Sec. 2. K.S.A. 44-1009 is hereby repealed.

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