

SENATE BILL No. 442

By Committee on Ways and Means

3-13

1 AN ACT concerning labor and employment; enacting the Kansas
2 employee credit consideration act.

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

5 Section 1. For purposes of sections 1 through 6, and amendments
6 thereto:

7 (a) "Employee" means any person engaged in service to an employer
8 in a business of such employer.

9 (b) "Employer" means any person engaged in business who has one
10 or more employees, including the state or any political subdivision of the
11 state.

12 (c) "Financial institution" means any entity or affiliate of a state bank
13 and trust company, national banking association, state or federally
14 chartered savings bank, state or federally chartered savings and loan
15 association, state or federally chartered credit union, insurance company,
16 investment advisor, broker-dealer or an entity registered with the securities
17 and exchange commission.

18 (d) "Substantially related to the employee's current or potential job"
19 means the information contained in the credit report is related to the
20 position for which the employee or prospective employee who is the
21 subject of the report is being evaluated because the position:

22 (1) Is a managerial position which involves setting the direction or
23 control of a business, division, unit or an agency of a business;

24 (2) involves access to customers', employees' or the employer's
25 personal or financial information other than information customarily
26 provided in a retail transaction;

27 (3) involves a fiduciary responsibility to the employer, including, but
28 not limited to, the authority to issue payments, collect debts, transfer
29 money or enter into contracts;

30 (4) provides an expense account or corporate debit or credit card;

31 (5) provides access to:

32 (A) Confidential or proprietary business information; or

33 (B) information, including a formula, pattern, compilation, program,
34 device, method, technique, process or trade secret that:

35 (i) Derives independent economic value, actual or potential, from not
36 being generally known to, and not being readily ascertainable by proper

1 means by other persons who can obtain economic value from the
2 disclosure or use of the information; and

3 (ii) is the subject of efforts that are reasonable under the
4 circumstances to maintain its secrecy; or

5 (6) involves access to the employer's nonfinancial assets valued at
6 \$2,500 or more, including, but not limited to, museum and library
7 collections and to prescription drugs and other pharmaceuticals.

8 Sec. 2. No employer or employer's agent, representative or designee
9 may require an employee or prospective employee to consent to a request
10 for a credit report that contains information about the employee's or
11 prospective employee's credit score, credit account balances, payment
12 history, savings or checking account balances or savings or checking
13 account numbers as a condition of employment unless:

14 (a) The employer is a financial institution;

15 (b) the credit report is required by law;

16 (c) the employer reasonably believes that the employee has engaged
17 in specific activity that constitutes a violation of the law related to the
18 employee's employment;

19 (d) the credit report is substantially related to the employee's current
20 or potential job; or

21 (e) the employer has a bona fide purpose for requesting or using
22 information in the credit report that is substantially job-related and is
23 disclosed in writing to the employee or prospective employee.

24 Sec. 3. (a) No person shall violate any provision of this act or any
25 rule or regulation or order thereunder.

26 (b) Any employee or prospective employee may file a complaint with
27 the department of labor alleging a violation of the provisions of sections 1
28 through 4, and amendments thereto.

29 (c) No person shall discharge or in any manner discriminate against
30 any employee or prospective employee because such employee or
31 prospective employee has filed a complaint with, or furnished information
32 to, the secretary of labor concerning a violation of this act.

33 Sec. 4. (a) If the secretary of labor determines after investigation and
34 notice and opportunity for a hearing that any person has engaged or is
35 engaging in any act or practice constituting a violation of any provision of
36 this act or any rule and regulation or order thereunder, the secretary of
37 labor shall in the exercise of discretion, order any one or more of the
38 following:

39 (1) Payment of a civil penalty of not more than \$1,000 for each and
40 every act or violation, unless the person knew or reasonably should have
41 known such person was in violation of this act or any rule and regulation
42 or order thereunder, in which case the penalty shall be not more than
43 \$2,000 for each and every act or violation; or

1 (2) order that such person cease and desist from such prohibited act
2 or practice and that such person take such affirmative action as in the
3 judgment of the secretary of labor will carry out the purposes of this act
4 and remedy any harm caused an employee or prospective employee as the
5 result of such prohibited act or practice, including undoing any action
6 taken against an employee or prospective employee not in that employee
7 or prospective employee's favor that was based upon a prohibited act or
8 practice or performing an action not taken in favor of an employee or
9 prospective employee based upon a prohibited act or practice.

10 (b) A complaint brought pursuant to this section shall not constitute a
11 bar to enforcement of the provisions of this act or an action addressing the
12 harm caused an employee or prospective employee by any other
13 appropriate remedy, and upon request of the secretary of labor or the
14 complainant, the attorney general shall have the power to institute and
15 maintain in the name of the state any and all appropriate enforcement
16 procedures.

17 Sec. 5. The secretary of labor shall have authority to adopt rules and
18 regulations necessary to carry out the provisions of this act.

19 Sec. 6. Sections 1 through 6, and amendments thereto, shall be known
20 and may be cited as the Kansas employee credit consideration act.

21 Sec. 7. This act shall take effect and be in force from and after its
22 publication in the statute book.