

SENATE BILL No. 378

By Committee on Judiciary

1-27

Proposed Amendments to SB 378
Senate Judiciary-KHRC Recommendations
February 17, 2016
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Revisor of Statutes Office

1 AN ACT concerning employment; relating to prohibiting discrimination or
2 retaliation; victims of domestic violence or sexual assault; complaint
3 procedure; application of Kansas act against discrimination; amending
4 K.S.A. 2015 Supp. 44-1131 and 44-1133 and repealing the existing
5 sections.

K.S.A. 44-1009 and

, 44-1132

44-1044,

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

8 ~~Section 1.~~ K.S.A. 2015 Supp. 44-1131 is hereby amended to read as
9 follows: 44-1131. As used in K.S.A. 44-1131 and 44-1132, and
10 amendments thereto:

Insert Attachment A

11 (a) "Domestic violence" ~~means shall have the meaning provided in~~
12 ~~K.S.A. 2015 Supp. 21-5111, and amendments thereto, and also shall~~
13 ~~include abuse as defined in K.S.A. 60-3102, and amendments thereto.~~

14 (b) "Sexual assault" ~~means any crime defined in K.S.A. 21-3502,~~
15 ~~prior to its repeal, or K.S.A. 2015 Supp. 21-5503, and amendments~~
16 ~~thereto, (rape), 21-3503, prior to its repeal, or subsection (a) of K.S.A.~~
17 ~~2015 Supp. 21-5506, and amendments thereto, (indecent liberties with a~~
18 ~~child), 21-3504, prior to its repeal, or subsection (b) of K.S.A. 2015 Supp.~~
19 ~~21-5506, and amendments thereto, (aggravated indecent liberties with a~~
20 ~~child), 21-3505, prior to its repeal, or subsection (a) of K.S.A. 2015 Supp.~~
21 ~~21-5504, and amendments thereto, (criminal sodomy), 21-3506, prior to its~~
22 ~~repeal, or subsection (b) of K.S.A. 2015 Supp. 21-5504, and amendments~~
23 ~~thereto, (aggravated criminal sodomy), 21-3602, prior to its repeal, or~~
24 ~~subsection (a) of K.S.A. 2015 Supp. 21-5604, and amendments thereto,~~
25 ~~(incest) or 21-3603, prior to its repeal, or subsection (b) of K.S.A. 2015~~
26 ~~Supp. 21-5604, and amendments thereto, (aggravated incest) a sex offense~~
27 ~~under article 35 of chapter 21 of the Kansas Statutes Annotated, prior to~~
28 ~~their repeal, article 55 of chapter 21 of the Kansas Statutes Annotated,~~
29 ~~and amendments thereto, or K.S.A. 2015 Supp. 21-5604 or 21-6419~~
30 ~~through 21-6422, and amendments thereto.~~

Insert Attachment B

31 ~~Sec. 2.~~ K.S.A. 2015 Supp. 44-1133 is hereby amended to read as
32 follows: 44-1133. The secretary of labor shall enforce K.S.A. 2015 Supp.
33 44-1131 and 44-1132, and amendments thereto, and may adopt rules and
34 regulations necessary to implement the provisions of K.S.A. 2015 Supp.
35 44-1132, and amendments thereto. (a) Any person aggrieved by any
36 alleged unlawful employment practice in violation of K.S.A. 2015 Supp.

ec. 3

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1 44-1132, and amendments thereto, may file a complaint in the manner
 2 provided for processing complaints of unlawful employment practices
 3 under the Kansas act against discrimination.

4 ~~(b) Reconsideration and judicial review of the Kansas human rights~~
 5 ~~commission's decision in the case shall be conducted in the manner~~
 6 ~~provided by K.S.A. 44-1010 and 44-1011, and amendments thereto.~~
 7 ~~Complaints filed with the commission on or after July 1, 2016, may be~~
 8 ~~dismissed by the commission on its own initiative, and shall be dismissed~~
 9 ~~by the commission upon the written request of the complainant, if the~~
 10 ~~commission has not issued a finding of probable cause or no probable~~
 11 ~~cause or taken other administrative action dismissing the complaint within~~
 12 ~~300 days of the filing of the complaint. The commission shall mail written~~
 13 ~~notice to all parties of dismissal of a complaint within five days of~~
 14 ~~dismissal. Dismissal of a complaint in accordance with this section shall~~
 15 ~~constitute final action by the commission which shall be deemed to~~
 16 ~~exhaust all administrative remedies under the Kansas act against~~
 17 ~~discrimination for the purpose of allowing subsequent filing of the matter~~
 18 ~~in court by the complainant, without the requirement of filing of a petition~~
 19 ~~for reconsideration pursuant to K.S.A. 44-1010, and amendments thereto.~~
 20 ~~Dismissal of a complaint in accordance with this section shall not be~~
 21 ~~subject to appeal or judicial review by any court under the provisions of~~
 22 ~~K.S.A. 44-1011, and amendments thereto.~~

23 (c) Contractors subject to the provisions of K.S.A. 44-1030, 44-1031
 24 and 44-1032, and amendments thereto, shall be required to agree to the
 25 same contract provisions with respect to K.S.A. 44-1132, and amendments
 26 thereto.

27 ~~(d) The commission shall have the powers provided by K.S.A. 44-~~
 28 ~~1030, 44-1031 and 44-1032, and amendments thereto, to enforce the~~
 29 ~~provisions of this section.~~

K.S.A. 2015 Supp. 44-1131 and 44-1132, and amendments thereto,
 shall be a part of and supplemental to the Kansas act against
 discrimination, and all provisions of such act pertaining to unlawful
 employment practices, including, but not limited to, jurisdiction,
 definitions, deadlines, procedures and remedies, shall apply to a
 complaint alleging a violation of K.S.A. 2015 Supp. 44-1132, and
 amendments thereto

Strike lines 27-29

44-1009 and K.S.A.

30 Sec. 3. K.S.A. 2015 Supp. 44-1131 and 44-1133 are hereby repealed.

31 Sec. 4. This act shall take effect and be in force from and after its
 32 publication in the statute book.

44-1044,

, 44-1132

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

- (1) For an employer, because of the race, religion, color, sex, disability, national origin or ancestry of any person to refuse to hire or employ such person to bar or discharge such person from employment or to otherwise discriminate against such person in compensation or in terms, conditions or privileges of employment; to limit, segregate, separate, classify or make any distinction in regards to employees; or to follow any employment procedure or practice which, in fact, results in discrimination, segregation or separation without a valid business necessity.
- (2) For a labor organization, because of the race, religion, color, sex, disability, national origin or ancestry of any person, to exclude or to expel from its membership such person or to discriminate in any way against any of its members or against any employer or any person employed by an employer.
- (3) For any employer, employment agency or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or membership or to make any inquiry in connection with prospective employment or membership, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, religion, color, sex, disability, national origin or ancestry, or any intent to make any such limitation, specification or discrimination, unless based on a bona fide occupational qualification.
- (4) For any employer, employment agency or labor organization to discharge, expel or otherwise discriminate against any person because such person has opposed any practices or acts forbidden under this act or because such person has filed a complaint, testified or assisted in any proceeding under this act.
- (5) For an employment agency to refuse to list and properly classify for employment or to refuse to refer any person for employment or otherwise discriminate against any person because of such person's race, religion, color, sex, disability, national origin or ancestry; or to comply with a request from an employer for a referral of applicants for employment if the request expresses, either directly or indirectly, any limitation, specification or discrimination as to race, religion, color, sex, disability, national origin or ancestry.
- (6) For an employer, labor organization, employment agency, or school which provides, coordinates or controls apprenticeship, on-the-job, or other training or retraining program, to maintain a practice of discrimination, segregation or separation because of race, religion, color, sex, disability, national origin or ancestry, in admission, hiring, assignments, upgrading, transfers, promotion, layoff, dismissal, apprenticeship or other training or retraining program, or in any other terms, conditions or privileges of employment, membership, apprenticeship or training; or to follow any policy or procedure which, in fact, results in such practices without a valid business motive.
- (7) For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or attempt to do so.
- (8) For an employer, labor organization, employment agency or joint labor-management committee to: (A) Limit, segregate or classify a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee; (B) participate in a contractual or other arrangement or relationship, including a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee or an organization providing training and apprenticeship programs that has the effect of subjecting a qualified applicant or employee with a disability to the discrimination prohibited by this act; (C) utilize standards criteria, or methods of administration that have the effect of discrimination on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control; (D) exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association; (E) not make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such employer, labor organization, employment agency or joint labor-management committee can demonstrate that the accommodation would impose an undue hardship on the operation of the business thereof; (F) deny employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need to make reasonable accommodation to the physical or mental impairments of the employee or applicant; (G) use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used, is shown to be job-related for the position in question and is consistent with business necessity; or (H) fail to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills, aptitude or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

Attachment A cont.

(9) For any employer to:

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

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

(10) For any employer to violate K.S.A. 2015 Supp. 44-1132, and amendments thereto.

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

(c) It shall be an unlawful discriminatory practice:

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

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

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

Sec. 2. K.S.A. 2015 Supp. 44-1044 is hereby amended to read as follows: 44-1044. Determinations under K.S.A. 44-1005 or 44-1019, and amendments thereto, including determinations with respect to alleged violations of K.S.A. 2015 Supp. 44-1132, and amendments thereto, by the Kansas human rights commission that no probable cause exists for crediting the allegations of a complaint under the Kansas act against discrimination or the Kansas age discrimination in employment act are hereby specifically exempted from the Kansas judicial review act (K.S.A. 77-601 through 77-627, and amendments thereto).