

March 27, 2015

The Honorable John Barker, Chairperson
House Committee on Judiciary
Statehouse, Room 149-S
Topeka, Kansas 66612

Dear Representative Barker:

SUBJECT: Fiscal Note for HB 2343 by House Committee on Veterans, Military and Homeland Security

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2343 is respectfully submitted to your committee.

HB 2343 would prohibit an employer from conducting a background check on applicants unless the employer had made a good faith effort determination that the relevant position is of such sensitivity that a background check is warranted or if a background check is required by any federal or state law. All job announcements and position descriptions would contain the following information if the position requires a background check, unless otherwise required by law: "This position is subject to a background check for any convictions directly related to its duties and responsibilities. Only job-related convictions will be considered and will not automatically disqualify the candidate."

Job applications could not inquire into an applicant's conviction history. When conducting a background check, an employer would not be allowed to consider records of arrests not followed by a valid conviction, sealed records, and dismissed or expunged convictions. Further, an employer would not be allowed to use infractions or misdemeanor convictions where no jail sentence could be imposed, unless those convictions are multiple and clearly and convincingly relevant to the position. The bill would not allow employers to inquire into or consider an applicant's conviction history until after the applicant has received a conditional offer. HB 2343 would establish certain procedures for the employer to follow after making an offer.

When an employer considers an applicant's conviction history, the employer would only be permitted to consider job-related convictions, unless other convictions are bars to employment under federal or state law. The bill establishes parameters that would be used in determining whether a conviction is job-related. If an applicant's conviction history contains information that creates the basis for an adverse action, the employer would be required to provide the applicant with a copy of the conviction history report, provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide, and provide the applicant with an individualized assessment as described in the bill.

When an employer seeks to pursue an adverse action based on an applicant's conviction history, the applicant would be allowed to present mitigation or rehabilitation evidence, as described in the bill. HB 2343 would require that the employer hold the position open until making a final employment decision based on an individualized assessment of the applicant's evidence. If the employer makes an adverse action, the applicant would be informed of the final decision and the applicant could be eligible for other positions. If the employer denies employment to the applicant, the applicant would be allowed to appeal the adverse decision as provided by law. Any information regarding the applicant's background check obtained in conjunction with the hiring process would remain confidential.

The State of Kansas, state agencies, and municipalities would be permitted to do business only with vendors that have adopted and employ conviction history policies, practices, and standards that are consistent with the standards outlined in the bill. A vendor's conviction history policy would be analyzed during the bid or contracting process. Deviation from approved conviction history standards would be grounds for rejection, rescission, revocation or termination of the contract, as well as ineligibility for future contracts.

Employers would be required to maintain relevant employment records for a minimum of three years and allow the Secretary of Administration to access the records upon request. Any person who is aggrieved by a violation of the bill would be allowed to contact the Secretary of Administration who would have the authority to investigate and review complaints. HB 2343 would require employers to track the number of positions requiring background checks and keep records regarding those positions. The Secretary of Administration would regularly conduct a confidential, anonymous survey of employees in positions with the State of Kansas, state agencies, or municipalities in which background checks were not required, in order to determine the number of people hired who have conviction histories. The Secretary of Administration would submit an annual report in January of each year to the Legislature. The report would detail the status of employment of individuals with records and a review of hiring practices of individuals with records for the prior year.

The Secretary of Administration would be allowed to issue a fine of up to \$1,000 for an initial violation of the bill by a private employer and up to \$2,000 for any subsequent violations by a private employer. Any individual would be allowed to bring a civil action against the employer or other person violating HB 2343 and, upon prevailing, could recover any legal or equitable relief, reasonable attorney fees, and costs permitted by law. If the employer fails to maintain records demonstrating compliance, there would be a presumption that the employer did not comply with the bill's provisions, absent clear and convincing evidence otherwise.

The Department of Administration states passage of HB 2343 would require the agency to implement several changes to the state's hiring process and indicates many agencies could be required to make changes to their agency specific hiring policies and procedures. The Department indicates certain state agencies with a large number of positions that require background checks would likely have to hire additional staff to administer the bill's provisions. To properly administer all of the provisions in HB 2343, the Department estimates additional State General Fund expenditures of \$160,500 in both FY 2016 and FY 2017 for salaries and wages for an additional 3.00 FTE positions. Two of the additional FTE positions would work in

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Page 3—HB 2343

the agency's Office of Personnel Services to ensure compliance with the survey mandated by the bill, review complaints, and develop a system by which fines would be administered to private employers for violations of the bill. The other FTE position would work in the agency's Office of the Chief Counsel. The position would assist with investigations and oversee the administration of any fines.

The Office of Procurements and Contracts within the Department of Administration estimates additional fee fund expenditures of \$51,000 in both FY 2016 and FY 2017, along with an additional FTE position. According to the Office, it would be required to review any vendor to determine if the vendor has a conviction history policy and whether the policy is in compliance. The additional position would be responsible for reviewing to ensure that vendors are complying with HB 2343.

The Kansas Department of Transportation states if HB 2343 is enacted, the agency estimates additional State Highway Fund expenditures of \$129,000 in FY 2016 and \$133,200 in FY 2017 for salaries and wages for an additional 2.00 FTE positions. The additional FTE positions would identify positions requiring a background check, document the reasons for the determination, and administer the background check process on a continuous basis. The additional FTE positions would also review vendor conviction standards policies for bid and contracting processes. If the bill is enacted, KDOT states it would need an increase in expenditure authority from the agency operations account of the State Highway Fund.

The League of Kansas Municipalities indicates cities could require additional staff time because of additional record keeping responsibilities and the need to provide various notices specified in the bill during the hiring process. According to the League, cities could be subject to civil lawsuits that allege violations of the bill's provisions.

The Office of Judicial Administration states passage of HB 2343 could result in additional civil lawsuits filed; however, until the courts have been given an opportunity to operate under the provisions of HB 2343, an accurate fiscal effect upon the Judicial Branch cannot be estimated at this time. Any fiscal effect associated with HB 2343 is not reflected in *The FY 2016 Governor's Budget Report*.

Sincerely,



Shawn Sullivan,
Director of the Budget

cc: Mary Rinehart, Judiciary
Ben Cleaves, Transportation
Larry Baer, League of Municipalities
Jackie Aubert, Children & Families
Colleen Becker, Department of Administration