

**SENATE BILL No. 472**

By Committee on Federal and State Affairs

2-18

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1 AN ACT concerning discrimination; relating to family caregivers;  
2 amending K.S.A. 44-1001 and 44-1009 and K.S.A. 2015 Supp. 44-  
3 1002 and repealing the existing sections.  
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 44-1001 is hereby amended to read as follows: 44-  
7 1001. This act shall be known as the Kansas act against discrimination. It  
8 shall be deemed an exercise of the police power of the state for the  
9 protection of the public welfare, safety, health and peace of the people of  
10 this state. The practice or policy of discrimination against individuals in  
11 employment relations, in relation to free and public accommodations, in  
12 housing by reason of race, religion, color, sex, disability, national origin or  
13 ancestry or in housing by reason of familial status is a matter of concern to  
14 the state, since such discrimination threatens not only the rights and  
15 privileges of the inhabitants of the state of Kansas but menaces the  
16 institutions and foundations of a free democratic state. It is hereby  
17 declared to be the policy of the state of Kansas to eliminate and prevent  
18 discrimination in all employment relations *and to ensure that anti-*  
19 *retaliation provisions that protect discrimination complaints based on*  
20 *other protected classifications also apply to protect family caregivers,* to  
21 eliminate and prevent discrimination, segregation, or separation in all  
22 places of public accommodations covered by this act, and to eliminate and  
23 prevent discrimination, segregation or separation in housing.

24 It is also declared to be the policy of this state to assure equal  
25 opportunities and encouragement to every citizen regardless of race,  
26 religion, color, sex, disability, national origin—~~or~~, ancestry *or family*  
27 *caregiver status,* in securing and holding, without discrimination,  
28 employment in any field of work or labor for which a person is properly  
29 qualified, to assure equal opportunities to all persons within this state to  
30 full and equal public accommodations, and to assure equal opportunities in  
31 housing without distinction on account of race, religion, color, sex,  
32 disability, familial status, national origin or ancestry. It is further declared  
33 that the opportunity to secure and to hold employment, the opportunity for  
34 full and equal public accommodations as covered by this act and the  
35 opportunity for full and equal housing are civil rights of every citizen.

36 To protect these rights, it is hereby declared to be the purpose of this act

1 to establish and to provide a state commission having power to eliminate  
2 and prevent segregation and discrimination, or separation in employment,  
3 in all places of public accommodations covered by this act, in housing  
4 because of race, religion, color, sex, disability, national origin or ancestry  
5 and in housing because of familial status, either by employers, labor  
6 organizations, employment agencies, realtors, financial institutions or  
7 other persons as hereinafter provided.

8 Sec. 2. K.S.A. 2015 Supp. 44-1002 is hereby amended to read as  
9 follows: 44-1002. When used in this act:

10 (a) "Person" includes one or more individuals, partnerships,  
11 associations, organizations, corporations, legal representatives, trustees,  
12 trustees in bankruptcy or receivers.

13 (b) "Employer" includes any person in this state employing four or  
14 more persons and any person acting directly or indirectly for an employer,  
15 labor organizations, nonsectarian corporations, organizations engaged in  
16 social service work and the state of Kansas and all political and municipal  
17 subdivisions thereof, but shall not include a nonprofit fraternal or social  
18 association or corporation.

19 (c) "Employee" does not include any individual employed by such  
20 individual's parents, spouse or child or in the domestic service of any  
21 person.

22 (d) "Labor organization" includes any organization which exists for  
23 the purpose, in whole or in part, of collective bargaining, of dealing with  
24 employers concerning grievances, terms or conditions of employment or  
25 of other mutual aid or protection in relation to employment.

26 (e) "Employment agency" includes any person or governmental  
27 agency undertaking, with or without compensation, to procure  
28 opportunities to work or to procure, recruit, refer or place employees.

29 (f) "Commission" means the Kansas human rights commission  
30 created by this act.

31 (g) "Unlawful employment practice" includes only those unlawful  
32 practices and acts specified in K.S.A. 44-1009, and amendments thereto,  
33 and includes segregate or separate.

34 (h) "Public accommodations" means any person who caters or offers  
35 goods, services, facilities and accommodations to the public. Public  
36 accommodations include, but are not limited to, any lodging establishment  
37 or food service establishment, as defined by K.S.A. 36-501, and  
38 amendments thereto; any bar, tavern, barbershop, beauty parlor, theater,  
39 skating rink, bowling alley, billiard parlor, amusement park, recreation  
40 park, swimming pool, lake, gymnasium, mortuary or cemetery which is  
41 open to the public; or any public transportation facility. Public  
42 accommodations do not include a religious or nonprofit fraternal or social  
43 association or corporation.

1 (i) "Unlawful discriminatory practice" means: (1) Any discrimination  
2 against persons, by reason of their race, religion, color, sex, disability,  
3 national origin~~or~~, ancestry *or family caregiver status*;

4 (A) In any place of public accommodations; or

5 (B) in the full and equal use and enjoyment of the services, facilities,  
6 privileges and advantages of any institution, department or agency of the  
7 state of Kansas or any political subdivision or municipality thereof; and

8 (2) any discrimination against persons in regard to membership in a  
9 nonprofit recreational or social association or corporation by reason of  
10 race, religion, sex, color, disability, national origin~~or~~, ancestry *or family*  
11 *caregiver status* if such association or corporation has 100 or more  
12 members and: (A) Provides regular meal service; and (B) receives  
13 payment for dues, fees, use of space, use of facility, services, meals or  
14 beverages, directly or indirectly, from or on behalf of nonmembers.

15 This term shall not apply to a religious or private fraternal and  
16 benevolent association or corporation.

17 (j) "Disability" means, with respect to an individual:

18 (1) A physical or mental impairment that substantially limits one or  
19 more of the major life activities of such individual;

20 (2) a record of such an impairment; or

21 (3) being regarded as having such an impairment.

22 Disability does not include current, illegal use of a controlled substance  
23 as defined in section 102 of the federal controlled substance act (21 U.S.C.  
24 § 802), in housing discrimination. In employment and public  
25 accommodation discrimination, "disability" does not include an individual  
26 who is currently engaging in the illegal use of drugs where possession or  
27 distribution of such drugs is unlawful under the controlled substance act  
28 (21 U.S.C. § 812), when the covered entity acts on the basis of such use.

29 (k) (1) "Reasonable accommodation" means:

30 (A) Making existing facilities used by employees readily accessible  
31 to and usable by individuals with disabilities; and

32 (B) job restructuring; part-time or modified work schedules;  
33 reassignment to a vacant position; acquisition or modification of  
34 equipment or devices; appropriate adjustment or modifications of  
35 examinations, training materials or policies; provision of qualified readers  
36 or interpreters; and other similar accommodations for individuals with  
37 disabilities.

38 (2) A reasonable accommodation or a reasonable modification to  
39 policies, practices or procedures need not be provided to an individual who  
40 meets the definition of disability in K.S.A. 44-1002(j)(3), and amendments  
41 thereto.

42 (l) "Regarded as having such an impairment" means the absence of a  
43 physical or mental impairment but regarding or treating an individual as

1 though such an impairment exists. An individual meets the requirement of  
2 "being regarded as having such an impairment" if the individual  
3 establishes that such individual has been subjected to an action prohibited  
4 under this act because of an actual or perceived physical or mental  
5 impairment whether or not the impairment limits or is perceived to limit a  
6 major life activity. Subsection (j)(3) shall not apply to impairments that are  
7 transitory or minor. A transitory impairment is an impairment with an  
8 actual or expected duration of six months or less.

9 (m) "Major life activities" means:

10 (1) Major life activities include, but are not limited to, caring for  
11 oneself, performing manual tasks, seeing, hearing, eating, sleeping,  
12 walking, standing, lifting, bending, speaking, breathing, learning, reading,  
13 concentrating, thinking, communicating, and working.

14 (2) It also includes the operation of a major bodily function,  
15 including, but not limited to, functions of the immune system, normal cell  
16 growth, digestive, bowel, bladder, neurological, brain, respiratory,  
17 circulatory, endocrine and reproductive functions.

18 (n) "Genetic screening or testing" means a laboratory test of a  
19 person's genes or chromosomes for abnormalities, defects or deficiencies,  
20 including carrier status, that are linked to physical or mental disorders or  
21 impairments, or that indicate a susceptibility to illness, disease or other  
22 disorders, whether physical or mental, which test is a direct test for  
23 abnormalities, defects or deficiencies, and not an indirect manifestation of  
24 genetic disorders.

25 (o) *"Family caregiver" means an individual who provides care to*  
26 *another who is related by blood, legal custody or marriage or a domestic*  
27 *partner or individual with whom the family caregiver lives in a familial*  
28 *relationship and who requires care due to infancy, youth, old age, serious*  
29 *health condition, disability or physical or mental impairment.*

30 Sec. 3. K.S.A. 44-1009 is hereby amended to read as follows: 44-  
31 1009. (a) It shall be an unlawful employment practice:

32 (1) For an employer, because of the race, religion, color, sex,  
33 disability, national origin-~~or~~, ancestry *or family caregiver status* of any  
34 person to refuse to hire or employ such person to bar or discharge such  
35 person from employment or to otherwise discriminate against such person  
36 in compensation or in terms, conditions or privileges of employment; to  
37 limit, segregate, separate, classify or make any distinction in regards to  
38 employees; or to follow any employment procedure or practice which, in  
39 fact, results in discrimination, segregation or separation without a valid  
40 business necessity.

41 (2) For a labor organization, because of the race, religion, color, sex,  
42 disability, national origin-~~or~~, ancestry *or family caregiver status* of any  
43 person, to exclude or to expel from its membership such person or to

1 discriminate in any way against any of its members or against any  
2 employer or any person employed by an employer.

3 (3) For any employer, employment agency or labor organization to  
4 print or circulate or cause to be printed or circulated any statement,  
5 advertisement or publication, or to use any form of application for  
6 employment or membership or to make any inquiry in connection with  
7 prospective employment or membership, which expresses, directly or  
8 indirectly, any limitation, specification or discrimination as to race,  
9 religion, color, sex, disability, national origin—~~or~~, ancestry *or family*  
10 *caregiver status*, or any intent to make any such limitation, specification or  
11 discrimination, unless based on a bona fide occupational qualification.

12 (4) For any employer, employment agency or labor organization to  
13 discharge, expel or otherwise discriminate against any person because such  
14 person has opposed any practices or acts forbidden under this act or  
15 because such person has filed a complaint, testified or assisted in any  
16 proceeding under this act.

17 (5) For an employment agency to refuse to list and properly classify  
18 for employment or to refuse to refer any person for employment or  
19 otherwise discriminate against any person because of such person's race,  
20 religion, color, sex, disability, national origin—~~or~~, ancestry *or family*  
21 *caregiver status*; or to comply with a request from an employer for a  
22 referral of applicants for employment if the request expresses, either  
23 directly or indirectly, any limitation, specification or discrimination as to  
24 race, religion, color, sex, disability, national origin—~~or~~, ancestry *or family*  
25 *caregiver status*.

26 (6) For an employer, labor organization, employment agency, or  
27 school which provides, coordinates or controls apprenticeship, on-the-job,  
28 or other training or retraining program, to maintain a practice of  
29 discrimination, segregation or separation because of race, religion, color,  
30 sex, disability, national origin—~~or~~, ancestry *or family caregiver status*, in  
31 admission, hiring, assignments, upgrading, transfers, promotion, layoff,  
32 dismissal, apprenticeship or other training or retraining program, or in any  
33 other terms, conditions or privileges of employment, membership,  
34 apprenticeship or training; or to follow any policy or procedure which, in  
35 fact, results in such practices without a valid business motive.

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

39 (8) For an employer, labor organization, employment agency or joint  
40 labor-management committee to: (A) Limit, segregate or classify a job  
41 applicant or employee in a way that adversely affects the opportunities or  
42 status of such applicant or employee because of the disability of such  
43 applicant or employee; (B) participate in a contractual or other

1 arrangement or relationship, including a relationship with an employment  
2 or referral agency, labor union, an organization providing fringe benefits to  
3 an employee or an organization providing training and apprenticeship  
4 programs that has the effect of subjecting a qualified applicant or  
5 employee with a disability to the discrimination prohibited by this act; (C)  
6 utilize standards criteria, or methods of administration that have the effect  
7 of discrimination on the basis of disability or that perpetuate the  
8 discrimination of others who are subject to common administrative  
9 control; (D) exclude or otherwise deny equal jobs or benefits to a qualified  
10 individual because of the known disability of an individual with whom the  
11 qualified individual is known to have a relationship or association; (E) not  
12 make reasonable accommodations to the known physical or mental  
13 limitations of an otherwise qualified individual with a disability who is an  
14 applicant or employee, unless such employer, labor organization,  
15 employment agency or joint labor-management committee can  
16 demonstrate that the accommodation would impose an undue hardship on  
17 the operation of the business thereof; (F) deny employment opportunities  
18 to a job applicant or employee who is an otherwise qualified individual  
19 with a disability, if such denial is based on the need to make reasonable  
20 accommodation to the physical or mental impairments of the employee or  
21 applicant; (G) use qualification standards, employment tests or other  
22 selection criteria that screen out or tend to screen out an individual with a  
23 disability or a class of individuals with disabilities unless the standard, test  
24 or other selection criteria, as used, is shown to be job-related for the  
25 position in question and is consistent with business necessity; or (H) fail to  
26 select and administer tests concerning employment in the most effective  
27 manner to ensure that, when such test is administered to a job applicant or  
28 employee who has a disability that impairs sensory, manual or speaking  
29 skills, the test results accurately reflect the skills, aptitude or whatever  
30 other factor of such applicant or employee that such test purports to  
31 measure, rather than reflecting the impaired sensory, manual or speaking  
32 skills of such employee or applicant—(except where such skills are the  
33 factors that the test purports to measure).

34 (9) For any employer to:

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

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

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

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

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

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

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

19 Sec. 4. K.S.A. 44-1001 and 44-1009 and K.S.A. 2015 Supp. 44-1002  
20 are hereby repealed.

21 Sec. 5. This act shall take effect and be in force from and after its  
22 publication in the statute book.