

As Amended by House Committee

Session of 2023

SENATE BILL No. 189

By Committee on Judiciary

2-7

1 AN ACT concerning law enforcement; relating to applicants for a law
2 enforcement officer position; authorizing state and local law
3 enforcement agencies to receive certain files and information about the
4 applicant from agencies that received an application from the applicant
5 for a law enforcement position or conducted an employment
6 background investigation; amending K.S.A. 75-4379 and repealing the
7 existing section.
8

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

10 Section 1. K.S.A. 75-4379 is hereby amended to read as follows: 75-
11 4379. (a) (1) A hiring agency shall require each applicant interviewed by
12 such agency for a law enforcement officer position who has *submitted an*
13 *application for a law enforcement officer position with or been employed*
14 *in a law enforcement position* by another state or local law enforcement
15 agency or governmental agency to execute a written waiver that:

16 ~~(1)~~(A) Explicitly authorizes each state or local law enforcement
17 agency or governmental agency that has employed the applicant *in a law*
18 *enforcement position, received an application from the applicant for a law*
19 *enforcement position or conducted an employment background*
20 *investigation on the applicant* to disclose the applicant's files to the hiring
21 agency; and

22 ~~(2)~~(B) releases the hiring agency and each state or local law
23 enforcement agency or governmental agency ~~that employed the applicant~~
24 *described in subparagraph (A)* from any liability related to the use and
25 disclosure of the applicant's files.

26 (2) An applicant who refuses to execute the written waiver shall not
27 be considered for employment by the hiring agency.

28 (3) The hiring agency shall include the written waiver with each
29 request for information submitted to a state or local law enforcement
30 agency or governmental agency ~~that has employed the applicant~~.

31 (b) Except as provided in subsection (c), a state or local law
32 enforcement agency or governmental agency that receives a written waiver
33 described in subsection (a) shall disclose the applicant's files to the hiring
34 agency not more than 21 days after such receipt. Such law enforcement
35 agency or governmental agency may choose to disclose the applicant's
36 files by either:

1 (1) Providing copies to the hiring agency; or

2 (2) allowing the hiring agency to review the files at the law
3 enforcement agency's office or governmental agency's office.

4 (c) (1) A state or local law enforcement agency or governmental
5 agency is not required to disclose the applicant's files pursuant to
6 subsection (b) if such agency is prohibited from providing the files
7 pursuant to a binding nondisclosure agreement to which such agency is a
8 party, and such agreement was executed before July 1, 2018.

9 (2) A state or local law enforcement agency or governmental agency
10 is required to disclose the applicant's files pursuant to subsection (b) if
11 such files are subject to a binding nondisclosure agreement to which such
12 agency is a party, and such agreement was executed on or after July 1,
13 2018, but the disclosure shall be limited to files necessary to determine the
14 qualifications and fitness of the applicant for performance of duties in a
15 law enforcement officer position.

16 (3) A state or local law enforcement agency or governmental agency
17 may redact personally identifiable information of persons other than the
18 applicant in files disclosed to the hiring agency.

19 (d) A state or local law enforcement agency or governmental agency
20 shall not be liable for complying with the provisions of this section in good
21 faith or participating in an official oral interview with an investigator
22 regarding the applicant.

23 (e) Except as provided in subsection (f), or except as necessary for
24 such agency's internal hiring processes, files obtained pursuant to this
25 section shall not be disclosed by the hiring agency.

26 (f) Files obtained pursuant to this section shall constitute, for the
27 purposes of the open records act, a record of the state or local law
28 enforcement agency or governmental agency that made, maintained or
29 kept such files. Such files shall not be subject to a request for inspection
30 and copying under the open records act directed toward the hiring agency
31 obtaining the files. The official custodian of such files, for the purposes of
32 the open records act, shall be the official custodian of the records of such
33 state or local law enforcement agency or governmental agency. Except in a
34 civil action involving negligent hiring, such files shall not be subject to
35 discovery, subpoena or other process directed toward the hiring agency
36 obtaining the files.

37 (g) As used in this section:

38 (1) (A) "Files" means:

39 (i) All performance reviews or other files related to job performance,
40 commendations, administrative files, grievances, previous personnel
41 applications, personnel-related claims, disciplinary actions, internal
42 investigation files, suspensions, investigation-related leave, documents
43 concerning termination or other departure from employment, all

1 complaints and all early warning information; and

2 *(ii) regardless of whether the applicant was ultimately hired, the*
3 *employment application, background investigations, polygraph or voice*
4 *stress analysis examination results and law enforcement-related*
5 *psychological evaluation reports connected to the application process.*

6 *(B) "Files" shall does not include nonperformance documents or data,*
7 *including, but not limited to, medical files, psychological examination*
8 *reports not directly related to the applicant's suitability for law*
9 *enforcement employment or certification, schedules, pay and benefit*
10 *information or similar administrative data or information.*

11 (2) "Early warning information" means information from a ~~database~~
12 *database* management tool designed to identify officers who may be
13 exhibiting precursors of problems on the job that can result in providing
14 those officers with counseling or training to divert them away from
15 conduct that may become a disciplinary matter.

16 (3) "Governmental agency" means the state or subdivision of the state
17 with oversight of the state or local law enforcement agency.

18 (4) "Hiring agency" means a state or local law enforcement agency
19 processing an application for employment, regardless of whether the
20 applicant is ultimately hired.

21 (5) "State or local law enforcement agency" means any public agency
22 employing a law enforcement officer as defined in K.S.A. 74-5602, and
23 amendments thereto.

24 Sec. 2. K.S.A. 75-4379 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~~ **Kansas register**.