

As Amended by House Committee

As Amended by Senate Committee

Session of 2017

SENATE BILL No. 180

By Committee on Judiciary

2-10

1 AN ACT concerning law enforcement; relating to hiring practices and
2 consideration of prior employment records; ***open records act;***
3 ***amending K.S.A. 2017 Supp. 45-220 and repealing the existing***
4 ***section.***

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 ***New*** Section 1. (a) A hiring agency shall require each ~~candidate~~
8 ***applicant*** interviewed by such agency for a law enforcement officer
9 position who has been employed by another state or local law enforcement
10 agency or governmental agency to execute a written waiver that: (1)
11 Explicitly authorizes each state or local law enforcement agency or
12 governmental agency that has employed the ~~candidate~~ ***applicant*** to
13 disclose the applicant's files to the hiring agency; and (2) releases the
14 hiring agency and each state or local law enforcement agency or
15 governmental agency that employed the ~~candidate~~ ***applicant*** from any
16 liability related to the use and disclosure of the ***applicant's*** files. ~~A~~
17 ~~candidate~~ ***An applicant*** who refuses to execute the written waiver shall not
18 be considered for employment by the hiring agency. The hiring agency
19 shall include the written waiver with each request for information
20 submitted to a state or local law enforcement agency or governmental
21 agency that has employed the ~~candidate~~ ***applicant***.

22 (b) Except as provided in subsection (c), a state or local law
23 enforcement agency or governmental agency that receives a written waiver
24 described in subsection (a) shall disclose the ***applicant's*** files to the hiring
25 agency not more than 21 days after such receipt. Such law enforcement
26 agency or governmental agency may choose to disclose the applicant's
27 files by either: (1) Providing copies to the hiring agency; or (2) allowing
28 the hiring agency to review the files at the law enforcement agency's office
29 or governmental agency's office.

30 (c) ***(I)*** A state or local law enforcement agency or governmental
31 agency is not required to disclose the ***applicant's*** files pursuant to
32 subsection (b) if such agency is prohibited from providing the files
33 pursuant to a binding nondisclosure agreement to which such agency is a
34 party, and such agreement was executed before July 1, ~~2017~~ ***2018.***

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

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

11 (d) A state or local law enforcement agency or governmental agency
12 shall not be liable for complying with the provisions of this section in good
13 faith or participating in an official oral interview with an investigator
14 regarding the ~~candidate~~ **applicant**.

15 (e) Files obtained pursuant to this section shall not be disclosed by
16 the hiring agency, except as necessary for such agency's internal hiring
17 processes.

18 (f) Files obtained pursuant to this section shall constitute, for the
19 purposes of the open records act, a record of the state or local law
20 enforcement agency or governmental agency that made, maintained or
21 kept such files. Such files shall not be subject to a request for inspection
22 and copying under the open records act directed toward the hiring agency
23 obtaining the files, and shall not be subject to discovery, subpoena or other
24 process directed toward the hiring agency obtaining the files. The official
25 custodian of such files, for the purposes of the open records act, shall be
26 the official custodian of the records of such state or local law enforcement
27 agency or governmental agency.

28 (g) As used in this section:

29 (1) "Files" means all performance reviews or other files related to job
30 performance, commendations, administrative files, grievances, previous
31 personnel applications, personnel-related claims, disciplinary actions,
32 internal investigation files, suspensions, investigation-related leave,
33 documents concerning termination or other departure from employment
34 ~~and all complaints or early warnings~~, **all complaints and all early warning**
35 **information**. "Files" shall not include nonperformance documents or data,
36 including, but not limited to, medical files, schedules, pay and benefit
37 information or similar administrative data or information.

38 (2) **"Early warning information" means information from a**
39 **databased management tool designed to identify officers who may be**
40 **exhibiting precursors of problems on the job that can result in providing**
41 **those officers with counseling or training to divert them away from**
42 **conduct that may become a disciplinary matter.**

43 (3) "Governmental agency" means the state or subdivision of the state

1 with oversight of the state or local law enforcement agency.

2 ~~(3)~~(4) "Hiring agency" means a *state or local* law enforcement
3 agency processing an application for employment, regardless of whether
4 the applicant is ultimately hired.

5 ~~(4)~~(5) "State or local law enforcement agency" means any public
6 agency employing a law enforcement officer as defined in K.S.A. 74-5602,
7 and amendments thereto.

8 *Sec. 2. K.S.A. 2017 Supp. 45-220 is hereby amended to read as*
9 *follows: 45-220. (a) Each public agency shall adopt procedures to be*
10 *followed in requesting access to and obtaining copies of public records,*
11 *which procedures shall provide full access to public records, protect*
12 *public records from damage and disorganization, prevent excessive*
13 *disruption of the agency's essential functions, provide assistance and*
14 *information upon request and insure efficient and timely action in*
15 *response to applications for inspection of public records.*

16 *(b) A public agency may require a written request for inspection of*
17 *public records but shall not otherwise require a request to be made in*
18 *any particular form. Except as otherwise provided by subsection (c), a*
19 *public agency shall not require that a request contain more information*
20 *than the requester's name and address and the information necessary to*
21 *ascertain the records to which the requester desires access and the*
22 *requester's right of access to the records. A public agency may require*
23 *proof of identity of any person requesting access to a public record. No*
24 *request shall be returned, delayed or denied because of any technicality*
25 *unless it is impossible to determine the records to which the requester*
26 *desires access.*

27 *(c) If access to public records of an agency or the purpose for*
28 *which the records may be used is limited pursuant to K.S.A. 45-221 or*
29 *K.S.A. 2017 Supp. 45-230, and amendments thereto, the agency may*
30 *require a person requesting the records or information therein to*
31 *provide written certification that:*

32 *(1) The requester has a right of access to the records and the basis*
33 *of that right; or*

34 *(2) the requester does not intend to, and will not: (A) Use any list of*
35 *names or addresses contained in or derived from the records or*
36 *information for the purpose of selling or offering for sale any property*
37 *or service to any person listed or to any person who resides at any*
38 *address listed; or (B) sell, give or otherwise make available to any person*
39 *any list of names or addresses contained in or derived from the records*
40 *or information for the purpose of allowing that person to sell or offer for*
41 *sale any property or service to any person listed or to any person who*
42 *resides at any address listed.*

43 *(d) A public agency shall establish, for business days when it does*

1 *not maintain regular office hours, reasonable hours when persons may*
2 *inspect and obtain copies of the agency's records. The public agency*
3 *may require that any person desiring to inspect or obtain copies of the*
4 *agency's records during such hours so notify the agency, but such notice*
5 *shall not be required to be in writing and shall not be required to be*
6 *given more than 24 hours prior to the hours established for inspection*
7 *and obtaining copies.*

8 *(e) Each official custodian of public records shall designate such*
9 *persons as necessary to carry out the duties of custodian under this act*
10 *and shall ensure that a custodian is available during regular business*
11 *hours of the public agency to carry out such duties.*

12 *(f) Each public agency shall provide, upon request of any person,*
13 *the following information:*

14 *(1) The principal office of the agency, its regular office hours and*
15 *any additional hours established by the agency pursuant to subsection*
16 *(c).*

17 *(2) The title and address of the official custodian of the agency's*
18 *records and of any other custodian who is ordinarily available to act on*
19 *requests made at the location where the information is displayed.*

20 *(3) The fees, if any, charged for access to or copies of the agency's*
21 *records.*

22 *(4) The procedures to be followed in requesting access to and*
23 *obtaining copies of the agency's records, including procedures for giving*
24 *notice of a desire to inspect or obtain copies of records during hours*
25 *established by the agency pursuant to subsection (c).*

26 *(g) (1) Except for requests of summary data compiled from*
27 *information submitted by multiple criminal justice agencies or as*
28 *otherwise provided by law, requests for records submitted to the central*
29 *repository or any other repositories supporting the criminal justice*
30 *information system which are maintained by the Kansas bureau of*
31 *investigation pursuant to K.S.A. 22-4704 and 22-4705, and amendments*
32 *thereto, shall be directed to the criminal justice agency from which the*
33 *records originated.*

34 ~~(h)(2)~~ *As used in this—section subsection, the terms "central*
35 *repository," "criminal justice agency" and "criminal justice*
36 *information system" have the same meanings as defined in K.S.A. 22-*
37 *4701, and amendments thereto.*

38 *(h) Requests for records defined as "files" pursuant to section 1, and*
39 *amendments thereto, submitted to a state or local law enforcement agency*
40 *or governmental agency shall be directed to the state or local law*
41 *enforcement agency or governmental agency that made, maintained or*
42 *kept such files, as required by section 1, and amendments thereto.*

43 **Sec. 3. K.S.A. 2017 Supp. 45-220 is hereby repealed.**

1 Sec.~~2~~ **4**. This act shall take effect and be in force from and after its
2 publication in the ~~statute book~~ **Kansas register**.