AN ACT concerning employment practices; prohibiting employers from taking adverse employment action against an employee based on employee's reproductive medical history; medical decisions; amending K.S.A. 44-1009 and K.S.A. 2019 Supp. 44-1002 and repealing the existing sections.

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

Section 1. K.S.A. 2019 Supp. 44-1002 is hereby amended to read as follows: 44-1002. When used in this act:
(a) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.
(b) "Employer" includes any person in this state employing four or more persons and any person acting directly or indirectly for an employer, labor organizations, nonsectarian corporations, organizations engaged in social service work and the state of Kansas and all political and municipal subdivisions thereof, but shall not include a nonprofit fraternal or social association or corporation.
(c) "Employee" does not include any individual employed by such individual's parents, spouse or child or in the domestic service of any person.
(d) "Labor organization" includes any organization which that exists for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in relation to employment.
(e) "Employment agency" includes any person or governmental agency undertaking, with or without compensation, to procure opportunities to work or to procure, recruit, refer or place employees.
(f) "Commission" means the Kansas human rights commission created by this act.
(g) "Unlawful employment practice" includes only those unlawful practices and acts specified in K.S.A. 44-1009, and amendments thereto, and includes segregate or separate.
(h) "Public accommodations" means any person who caters or offers goods, services, facilities and accommodations to the public. Public accommodations include, but are not limited to, any lodging establishment
or food service establishment, as defined by K.S.A. 36-501, and
amendments thereto; any bar, tavern, barbershop, beauty parlor, theater,
skating rink, bowling alley, billiard parlor, amusement park, recreation
park, swimming pool, lake, gymnasium, mortuary or cemetery which is open to
the public; or any public transportation facility. Public
accommodations do not include a religious or nonprofit fraternal or social
association or corporation.

(i) "Unlawful discriminatory practice" means: (1) Any discrimination
against persons, by reason of their race, religion, color, sex, disability,
national origin or ancestry:
   (A) In any place of public accommodations; or
   (B) 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; and
(2) any discrimination against persons in regard to membership in a
nonprofit recreational or social association or corporation by reason of
race, religion, sex, color, disability, national origin or ancestry if such
association or corporation has 100 or more members and: (A) Provides
regular meal service; and (B) receives payment for dues, fees, use of
space, use of facility, services, meals or beverages, directly or indirectly,
from or on behalf of nonmembers.

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

(j) "Disability" means, with respect to an individual:
(1) A physical or mental impairment that substantially limits one or
more of the major life activities of such individual;
(2) a record of such an impairment; or
(3) being regarded as having such an impairment.

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

(k) (1) "Reasonable accommodation" means:
(A) Making existing facilities used by employees readily accessible
to and usable by individuals with disabilities; and
(B) job restructuring; part-time or modified work schedules;
reassignment to a vacant position; acquisition or modification of
equipment or devices; appropriate adjustment or modifications of
examinations, training materials or policies; provision of qualified readers
or interpreters; and other similar accommodations for individuals with
disabilities.

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

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

(m) "Major life activities" means:

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

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

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

(o) "Adverse employment action" means action taken by an employer against an employee, including termination, demotion or refusal to promote or advance, removal of career specialty, reassignment to a different shift, reduction of wages or benefits, refusal to provide training opportunities or transfer to a different department, adverse administrative action or any other penalty, disciplinary or retaliatory action.

Sec. 2. 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,
(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).

(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:
(A) take any adverse employment action against an employee based
on the use of any drug, device or medical service related to reproductive
health by the employee or the employee's spouse or dependent; or
(B) require an employee to sign a waiver or other document that
purports to deny an employee, or an employee's spouse or dependents, the
right to make their own reproductive healthcare decisions, including
whether to use any particular drug, device or medical service.
(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
try 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. 3. K.S.A. 44-1009 and K.S.A. 2019 Supp. 44-1002 are hereby
repealed.
Sec. 4. This act shall take effect and be in force from and after its
publication in the statute book.