AN ACT concerning employment; relating to fair consideration for persons with a record of criminal conviction.

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

Section 1. As used in sections 1 through 6, and amendments thereto:
(a) "Adverse action" means to refuse to hire, to not promote, to discharge a person, or to revoke an applicant's conditional offer of employment.
(b) "Applicant" means any person considered for, or who requests to be considered for, employment or any employee considered for, or who requests to be considered for, another employment position by the employer.
(c) "Employer" means the state of Kansas or a state agency.
(d) "Employment" means any occupation, vocation, job or work for pay, including temporary or seasonal work, contracted work, contingent work and work through the services of a temporary or other employment agency; or any form of vocational or educational training with or without pay.

Sec. 2. (a) An employer shall not conduct background checks on an applicant unless the employer has made a good faith 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.
(b) All job announcements and position descriptions shall 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."
(c) Job applications shall not inquire into an applicant's conviction history.
(d) An employer shall not use the following criminal records in relation to a background check unless otherwise required by law: Records of arrest not followed by a valid conviction; sealed; dismissed or expunged convictions. An employer shall not use the following criminal records in relation to a background check unless multiple and clearly and convincingly relevant to the position, or required by state or federal law:
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Misdemeanor convictions where no jail sentence can be imposed; and infractions.

Sec. 3. (a) An employer shall not inquire into or consider an applicant's conviction history until after the applicant has received a conditional offer. Prior to any conviction history check, the employer shall send the applicant a conditional offer letter, notice of rights under this act, and a request for authorization to conduct a background check, if so required.

(b) If the employer is considering the conviction history of the applicant, the employer shall only consider job-related convictions, except that if federal or state law requires that certain convictions are automatic bars to employment, then those convictions shall also be considered. No person shall be disqualified from employment, solely or in part because of a prior conviction, unless it is a job-related conviction. In determining if a conviction is job-related, the employer shall consider:

1. Whether the conviction is directly related to the duties and responsibilities of that employment position;
2. whether the position offers the opportunity for the same or a similar offense to occur;
3. whether circumstances leading to the conduct for which the person was convicted will recur while in the position; and
4. the length of time since the offense occurred.

(b) If an applicant's conviction history contains information that may be the basis for an adverse action, the employer shall:

1. Identify the conviction or convictions that are the basis for the potential adverse action;
2. provide a copy of the conviction history report, if any;
3. provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide; and
4. provide the applicant with an individualized assessment pursuant to subsection (c).

(c) (1) A job-related conviction shall not be the basis for an adverse action if the applicant can show mitigation or rehabilitation and present fitness to perform the duties of the position sought. The applicant shall have 10 business days, after issuance of the notice, to respond with any information rebutting the basis for the adverse action, including challenging the accuracy of the information and submitting mitigation or rehabilitation evidence. The employer shall hold the position open until it makes the final employment decision based on an individualized assessment of the information submitted by the applicant.

(2) Evidence of mitigation or rehabilitation may include:

(A) Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime
and evidence showing compliance with terms and conditions of probation or parole; or
(B) any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to, letters of reference.
(d) If the employer makes an adverse decision, the applicant shall be informed of the final decision and that such applicant may be eligible for other positions.
(e) If denied employment by the employer, an applicant may appeal such adverse decision as provided by law.
(f) Any information pertaining to an applicant's background check obtained in conjunction with the hiring process shall remain confidential, and shall not be used, distributed or disseminated by the employer or any of its agencies or its vendors, to any other entity, except as required by law.
Sec. 4. (a) The secretary of administration shall administer and enforce the provisions of this act.
(b) The employer shall retain application forms, records of employment and other pertinent data and records required under this act, including, but not limited to, communication with the applicant, for a minimum of three years, and shall allow the secretary of administration access to such records to monitor compliance with this act. Any person who is aggrieved by a violation of this act may contact the secretary of administration to report any problems, concerns or suggestions regarding the implementation, compliance and impact of the provisions of this act, and the secretary of administration shall keep a record. The secretary of administration shall conduct periodic reviews to assess compliance with these sections and shall investigate and review complaints.
(c) Each employer shall maintain a record of the number of positions requiring background checks and for those positions shall maintain a record of the number of applicants and the number of applicants who were provided a conditional offer. In addition, each employer shall maintain a record of the number of applicants with a record for a position: (1) Who were provided a pre-adverse action notice; (2) who provided evidence of mitigation or rehabilitation; (3) who were provided a final adverse notice; and (4) who were hired.
(d) (1) The secretary of administration shall regularly conduct a confidential, anonymous survey of employees in positions with the state of Kansas or state agencies in which background checks are not conducted, to determine the number of people with criminal records hired.
(2) The secretary shall annually submit a report to the legislature, in the month of January, on the status of employment of persons with criminal records and a review of hiring practices of persons with criminal records for the prior year.
Sec. 5. (a) An individual may bring a civil action in any court of
competent jurisdiction against the employer or other person violating this act, and upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, but not limited to, damages, injunctive relief, reasonable attorney fees and costs as permitted by law. Where an employer does not maintain or retain adequate records documenting compliance or does not allow the secretary of administration reasonable access to such records, it shall be presumed that the employer did not comply, absent clear and convincing evidence otherwise.

(b) Proceedings under this section shall be in accordance with the Kansas administrative procedure act, and orders issued by the secretary of administration shall be subject to review under the Kansas judicial review act.

Sec. 6. The secretary of administration shall adopt rules and regulations necessary to implement, administer and enforce the provisions of this act.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.