

SENATE BILL No. 286

By Committee on Commerce

1-17

1 AN ACT pertaining to the use of credit history; enacting the fair use of
2 credit history act; amending K.S.A. 50-703 and repealing the existing
3 section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. (a) Except as provided in subsection (b), no
7 employer, labor organization or employment agency shall use an
8 applicant's or employee's consumer report in determining whether to:

- 9 (1) Deny employment to the applicant;
10 (2) discharge the employee; or
11 (3) determine compensation or the terms, conditions or privileges of
12 employment.

13 (b) (1) An employer labor organization or employment agency may
14 request or use an applicant's or employee's consumer report if:

- 15 (A) The applicant has received an offer of employment; and
16 (B) the consumer report will be used for a purpose other than a
17 purpose prohibited by subsection (a); or
18 (2) the employer, labor organization or employment agency has a
19 *bona fide* purpose for requesting or using information in the consumer
20 report that is:

- 21 (A) Substantially job-related; and
22 (B) disclosed in writing to the employee or applicant.
23 (c) For the purposes of this subsection, a position for which an
24 employer, labor organization or employment agency has a *bona fide*
25 purpose that is substantially job-related for requesting or using information
26 in a consumer report includes a position that:

- 27 (1) Is a law enforcement officer;
28 (2) Is managerial and involves setting the direction or control of a
29 business, or a department, division, unit or agency of a business;
30 (3) involves access to personal information of a customer, employee
31 or employer, except for personal information customarily provided in a
32 retail transaction;

33 (4) involves a fiduciary responsibility to the employer, including the
34 authority to issue payments, collect debts, transfer money or enter into
35 contracts; and

36 (5) has access to information that:

1 (A) Is a trade secret; or

2 (B) contains other confidential business information.

3 (d) This section shall not be construed to prohibit an employer, labor
4 organization or employment agency from performing an employment-
5 related background investigation that:

6 (1) Includes use of a consumer report or investigative consumer
7 report;

8 (2) is authorized under the federal fair credit reporting act; and

9 (3) does not involve investigation of credit information.

10 (e) The provisions of this section shall not apply to an employer,
11 labor organization or employment agency that is:

12 (1) Required to inquire into an applicant's or employee's credit report
13 or credit history under federal law or any provision of the laws of this state
14 law for the purpose of employment;

15 (2) a financial institution as such term is defined in K.S.A. 16-117,
16 and amendments thereto; or

17 (3) an entity, or an affiliate of the entity, that is registered as an
18 investment advisor with the United States securities and exchange
19 commission.

20 New Sec. 2. Whenever an employer, labor organization or
21 employment agency uses or relies upon an applicant's or employee's credit
22 information to make an adverse employment decision as specified in
23 subsection (a) of section 1, and amendments thereto, such employer, labor
24 organization or employment agency shall notify in writing such applicant
25 or employee that the adverse action was taken. The notification required
26 by this section shall be made within 10 days of the decision to take such
27 adverse action and shall be made in the same manner as the applicant's or
28 employee's application was received.

29 New Sec. 3. A landlord may use a person's consumer report only for
30 the purpose of assessing such person's payment history with prior
31 landlords. If a landlord relies upon a person's consumer report to reject
32 such person as a prospective tenant, such landlord shall disclose that fact
33 in writing to the prospective tenant within 10 days of such rejection.

34 New Sec. 4. (a) Any person whose credit information has been
35 obtained or used contrary to the provisions of this act may file a complaint
36 with the secretary of labor. The complaint shall contain such information
37 as required by the secretary of labor as specified in rules and regulations.

38 (b) Upon receipt of a complaint, the secretary shall investigate the
39 complaint promptly. If the secretary determines that the employer, labor
40 organization or employment agency has willfully or negligently violated
41 subsection (a), the secretary shall try to resolve the matter informally.

42 (c) On or before the first day of the legislative session, the secretary
43 of labor shall submit a report to the governor and the chairperson of

1 senate standing committee on commerce and the house standing
2 committee on commerce and economic development a report on the
3 implementation of this act including:

4 (1) The number of complaints received under this act during the
5 preceding calendar year;

6 (2) the number of complaints investigated under this act during the
7 preceding calendar year;

8 (3) the number of complaints resolved under this act during the
9 preceding calendar year; and

10 (4) such other information as the secretary deems appropriate.

11 (d) The secretary of labor shall adopt rules and regulations necessary
12 to administer this act. Such rules and regulations shall be adopted in
13 accordance with the rules and regulations filing act within one year after
14 the effective date of this act.

15 New Sec. 5. As used in this act:

16 (a) "Consumer" shall have the meaning as defined in K.S.A. 50-702,
17 and amendments thereto.

18 (b) "Consumer report" shall have the meaning as defined in K.S.A.
19 50-702, and amendments thereto.

20 (c) "Employer" shall have the meaning as defined in K.S.A. 79-3295,
21 and amendments thereto.

22 (d) "Employment agency" shall have the meaning as defined in
23 K.S.A. 44-401, and amendments thereto.

24 (e) "Financial institution" shall have the meaning as defined in
25 K.S.A. 16-117, and amendments thereto.

26 (f) "Investigative consumer report" shall have the meaning as defined
27 in K.S.A. 50-702, and amendments thereto.

28 (g) "Labor organization" shall have the meaning as defined in K.S.A.
29 44-802, and amendments thereto.

30 (h) "Law enforcement officer" shall have the meaning as defined in
31 K.S.A 2011 Supp. 21-5111, and amendments thereto.

32 (i) "Personal information" shall have the meaning as defined in
33 K.S.A 2011 Supp. 50- 7a01, and amendments thereto.

34 (j) "Trade secret" shall have the meaning as defined in K.S.A. 60-
35 3320, and amendments thereto.

36 New Sec. 6. Sections 1 through 6, and amendments thereto, shall be
37 known and may be cited as the fair use of credit history act.

38 Sec. 7. K.S.A. 50-703 is hereby amended to read as follows: 50-703.
39 A consumer reporting agency may furnish a consumer report under the
40 following circumstances and no other:

41 (a) In response to the order of a court having jurisdiction to issue such
42 an order;

43 (b) in accordance with the written instructions of the consumer to

1 whom it relates; and

2 (c) to a person which it has reason to believe:

3 (1) Intends to use the information in connection with a credit
4 transaction involving the consumer on whom the information is to be
5 furnished and involving the extension of credit to, or review or collection
6 of an account of, the consumer; ~~or~~

7 (2) intends to use the information for employment purposes; ~~or~~

8 (3) intends to use the information in connection with the underwriting
9 of insurance involving the consumer; ~~or~~

10 (4) intends to use the information in connection with a determination
11 of the consumer's eligibility for a license or other benefit granted by a
12 governmental instrumentality required by law to consider an applicant's
13 financial responsibility or status; ~~or~~

14 (5) otherwise has a legitimate business need for the information in
15 connection with a business transaction involving the consumer; *or*

16 (6) *intends to use the information as authorized by the fair use of*
17 *credit history act.*

18 Sec. 8. K.S.A. 50-703 is hereby repealed.

19 Sec. 9. This act shall take effect and be in force from and after its
20 publication in the statute book.

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