

SENATE BILL No. 486

By Committee on Federal and State Affairs

3-3

1 AN ACT concerning civil rights; amending the Kansas act against
2 discrimination; amending K.S.A. 44-1001 and 44-1009 and K.S.A.
3 2015 Supp. 44-1002 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 44-1001 is hereby amended to read as follows: 44-
7 1001. This act shall be known as the Kansas act against discrimination. It
8 shall be deemed an exercise of the police power of the state for the
9 protection of the public welfare, safety, health and peace of the people of
10 this state. The practice or policy of discrimination against individuals in
11 employment relations, in relation to free and public accommodations, in
12 housing by reason of race, religion, color, sex, disability, national origin or
13 ancestry *or family caregiver status* or in housing by reason of familial
14 status is a matter of concern to the state, since such discrimination
15 threatens not only the rights and privileges of the inhabitants of the state of
16 Kansas but menaces the institutions and foundations of a free democratic
17 state. It is hereby declared to be the policy of the state of Kansas to
18 eliminate and prevent discrimination in all employment relations, to
19 eliminate and prevent discrimination, segregation, or separation in all
20 places of public accommodations covered by this act, and to eliminate and
21 prevent discrimination, segregation or separation in housing.

22 It is also declared to be the policy of this state to assure equal
23 opportunities and encouragement to every citizen regardless of race,
24 religion, color, sex, disability, national origin or ancestry *or family*
25 *caregiver status*, in securing and holding, without discrimination,
26 employment in any field of work or labor for which a person is properly
27 qualified, *including ensuring that anti-retaliation provisions that protect*
28 *discrimination complaints based on other classifications apply to protect*
29 *family caregivers*, and to assure equal opportunities to all persons within
30 this state to full and equal public accommodations, and to assure equal
31 opportunities in housing without distinction on account of race, religion,
32 color, sex, disability, familial status, national origin or ancestry *or family*
33 *caregiver status*. It is further declared that the opportunity to secure and to
34 hold employment, the opportunity for full and equal public
35 accommodations as covered by this act and the opportunity for full and
36 equal housing are civil rights of every citizen.

1 To protect these rights, it is hereby declared to be the purpose of this act
2 to establish and to provide a state commission having power to eliminate
3 and prevent segregation and discrimination, or separation in employment,
4 in all places of public accommodations covered by this act, in housing
5 because of race, religion, color, sex, disability, national origin or ancestry
6 *or family caregiver status* and in housing because of familial status, either
7 by employers, labor organizations, employment agencies, realtors,
8 financial institutions or other persons as hereinafter provided.

9 Sec. 2. K.S.A. 2015 Supp. 44-1002 is hereby amended to read as
10 follows: 44-1002. When used in this act:

11 (a) "Person" includes one or more individuals, partnerships,
12 associations, organizations, corporations, legal representatives, trustees,
13 trustees in bankruptcy or receivers.

14 (b) "Employer" includes any person in this state employing four or
15 more persons and any person acting directly or indirectly for an employer,
16 labor organizations, nonsectarian corporations, organizations engaged in
17 social service work and the state of Kansas and all political and municipal
18 subdivisions thereof, but shall not include a nonprofit fraternal or social
19 association or corporation.

20 (c) "Employee" does not include any individual employed by such
21 individual's parents, spouse or child or in the domestic service of any
22 person.

23 (d) "Labor organization" includes any organization which exists for
24 the purpose, in whole or in part, of collective bargaining, of dealing with
25 employers concerning grievances, terms or conditions of employment or
26 of other mutual aid or protection in relation to employment.

27 (e) "Employment agency" includes any person or governmental
28 agency undertaking, with or without compensation, to procure
29 opportunities to work or to procure, recruit, refer or place employees.

30 (f) "Commission" means the Kansas human rights commission
31 created by this act.

32 (g) "Unlawful employment practice" includes only those unlawful
33 practices and acts specified in K.S.A. 44-1009, and amendments thereto,
34 and includes segregate or separate.

35 (h) "Public accommodations" means any person who caters or offers
36 goods, services, facilities and accommodations to the public. Public
37 accommodations include, but are not limited to, any lodging establishment
38 or food service establishment, as defined by K.S.A. 36-501, and
39 amendments thereto; any bar, tavern, barbershop, beauty parlor, theater,
40 skating rink, bowling alley, billiard parlor, amusement park, recreation
41 park, swimming pool, lake, gymnasium, mortuary or cemetery which is
42 open to the public; or any public transportation facility. Public
43 accommodations do not include a religious or nonprofit fraternal or social

1 association or corporation.

2 (i) "Unlawful discriminatory practice" means: (1) Any discrimination
3 against persons, by reason of their race, religion, color, sex, disability,
4 national origin or ancestry *or family caregiver status*:

5 (A) In any place of public accommodations; or

6 (B) in the full and equal use and enjoyment of the services, facilities,
7 privileges and advantages of any institution, department or agency of the
8 state of Kansas or any political subdivision or municipality thereof; and

9 (2) any discrimination against persons in regard to membership in a
10 nonprofit recreational or social association or corporation by reason of
11 race, religion, sex, color, disability, national origin or ancestry *or family*
12 *caregiver status* if such association or corporation has 100 or more
13 members and: (A) Provides regular meal service; and (B) receives
14 payment for dues, fees, use of space, use of facility, services, meals or
15 beverages, directly or indirectly, from or on behalf of nonmembers.

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

18 (j) "Disability" means, with respect to an individual:

19 (1) A physical or mental impairment that substantially limits one or
20 more of the major life activities of such individual;

21 (2) a record of such an impairment; or

22 (3) being regarded as having such an impairment.

23 Disability does not include current, illegal use of a controlled substance
24 as defined in section 102 of the federal controlled substance act (~~21 U.S.C.~~
25 ~~§—802~~), in housing discrimination. In employment and public
26 accommodation discrimination, "disability" does not include an individual
27 who is currently engaging in the illegal use of drugs where possession or
28 distribution of such drugs is unlawful under the controlled substance act
29 (~~21 U.S.C. § 812~~), when the covered entity acts on the basis of such use.

30 (k) (1) "Reasonable accommodation" means:

31 (A) Making existing facilities used by employees readily accessible
32 to and usable by individuals with disabilities; and

33 (B) job restructuring; part-time or modified work schedules;
34 reassignment to a vacant position; acquisition or modification of
35 equipment or devices; appropriate adjustment or modifications of
36 examinations, training materials or policies; provision of qualified readers
37 or interpreters; and other similar accommodations for individuals with
38 disabilities.

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

43 (l) "Regarded as having such an impairment" means the absence of a

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

10 (m) "Major life activities" means:

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

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

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

26 (o) *"Family caregiver" for the purposes of employment*
27 *antidiscrimination protections, means a person who provides cares for a*
28 *family member.*

29 (p) *"Family member" means a person who is related by blood, legal*
30 *custody, or marriage, a domestic partner or a person with whom the*
31 *caregiver lives in a familial relationship.*

32 Sec. 3. K.S.A. 44-1009 is hereby amended to read as follows: 44-
33 1009. (a) It shall be an unlawful employment practice:

34 (1) For an employer, because of the race, religion, color, sex,
35 disability, national origin or ancestry *or family caregiver status* of any
36 person to refuse to hire or employ such person to bar or discharge such
37 person from employment or to otherwise discriminate against such person
38 in compensation or in terms, conditions or privileges of employment; to
39 limit, segregate, separate, classify or make any distinction in regards to
40 employees; or to follow any employment procedure or practice which, in
41 fact, results in discrimination, segregation or separation without a valid
42 business necessity.

43 (2) For a labor organization, because of the race, religion, color, sex,

1 disability, national origin or ancestry *or family caregiver status* of any
2 person, to exclude or to expel from its membership such person or to
3 discriminate in any way against any of its members or against any
4 employer or any person employed by an employer.

5 (3) For any employer, employment agency or labor organization to
6 print or circulate or cause to be printed or circulated any statement,
7 advertisement or publication, or to use any form of application for
8 employment or membership or to make any inquiry in connection with
9 prospective employment or membership, which expresses, directly or
10 indirectly, any limitation, specification or discrimination as to race,
11 religion, color, sex, disability, national origin or ancestry *or family*
12 *caregiver status*, or any intent to make any such limitation, specification or
13 discrimination, unless based on a bona fide occupational qualification.

14 (4) For any employer, employment agency or labor organization to
15 discharge, expel or otherwise discriminate against any person because such
16 person has opposed any practices or acts forbidden under this act or
17 because such person has filed a complaint, testified or assisted in any
18 proceeding under this act.

19 (5) For an employment agency to refuse to list and properly classify
20 for employment or to refuse to refer any person for employment or
21 otherwise discriminate against any person because of such person's race,
22 religion, color, sex, disability, national origin or ancestry *or family*
23 *caregiver status*; or to comply with a request from an employer for a
24 referral of applicants for employment if the request expresses, either
25 directly or indirectly, any limitation, specification or discrimination as to
26 race, religion, color, sex, disability, national origin or ancestry *or family*
27 *caregiver status*.

28 (6) For an employer, labor organization, employment agency, or
29 school which provides, coordinates or controls apprenticeship, on-the-job,
30 or other training or retraining program, to maintain a practice of
31 discrimination, segregation or separation because of race, religion, color,
32 sex, disability, national origin or ancestry *or family caregiver status*, in
33 admission, hiring, assignments, upgrading, transfers, promotion, layoff,
34 dismissal, apprenticeship or other training or retraining program, or in any
35 other terms, conditions or privileges of employment, membership,
36 apprenticeship or training; or to follow any policy or procedure which, in
37 fact, results in such practices without a valid business motive.

38 (7) For any person, whether an employer or an employee or not, to
39 aid, abet, incite, compel or coerce the doing of any of the acts forbidden
40 under this act, or attempt to do so.

41 (8) For an employer, labor organization, employment agency or joint
42 labor-management committee to: (A) Limit, segregate or classify a job
43 applicant or employee in a way that adversely affects the opportunities or

1 status of such applicant or employee because of the disability of such
2 applicant or employee; (B) participate in a contractual or other
3 arrangement or relationship, including a relationship with an employment
4 or referral agency, labor union, an organization providing fringe benefits to
5 an employee or an organization providing training and apprenticeship
6 programs that has the effect of subjecting a qualified applicant or
7 employee with a disability to the discrimination prohibited by this act; (C)
8 utilize standards criteria, or methods of administration that have the effect
9 of discrimination on the basis of disability or that perpetuate the
10 discrimination of others who are subject to common administrative
11 control; (D) exclude or otherwise deny equal jobs or benefits to a qualified
12 individual because of the known disability of an individual with whom the
13 qualified individual is known to have a relationship or association; (E) not
14 make reasonable accommodations to the known physical or mental
15 limitations of an otherwise qualified individual with a disability who is an
16 applicant or employee, unless such employer, labor organization,
17 employment agency or joint labor-management committee can
18 demonstrate that the accommodation would impose an undue hardship on
19 the operation of the business thereof; (F) deny employment opportunities
20 to a job applicant or employee who is an otherwise qualified individual
21 with a disability, if such denial is based on the need to make reasonable
22 accommodation to the physical or mental impairments of the employee or
23 applicant; (G) use qualification standards, employment tests or other
24 selection criteria that screen out or tend to screen out an individual with a
25 disability or a class of individuals with disabilities unless the standard, test
26 or other selection criteria, as used, is shown to be job-related for the
27 position in question and is consistent with business necessity; or (H) fail to
28 select and administer tests concerning employment in the most effective
29 manner to ensure that, when such test is administered to a job applicant or
30 employee who has a disability that impairs sensory, manual or speaking
31 skills, the test results accurately reflect the skills, aptitude or whatever
32 other factor of such applicant or employee that such test purports to
33 measure, rather than reflecting the impaired sensory, manual or speaking
34 skills of such employee or applicant (except where such skills are the
35 factors that the test purports to measure).

36 (9) For any employer to:

37 (A) Seek to obtain, to obtain or to use genetic screening or testing
38 information of an employee or a prospective employee to distinguish
39 between or discriminate against or restrict any right or benefit otherwise
40 due or available to an employee or a prospective employee; or

41 (B) subject, directly or indirectly, any employee or prospective
42 employee to any genetic screening or test.

43 (b) It shall not be an unlawful employment practice to fill vacancies

1 in such way as to eliminate or reduce imbalance with respect to race,
2 religion, color, sex, disability, national origin or ancestry.

3 (c) It shall be an unlawful discriminatory practice:

4 (1) For any person, as defined herein being the owner, operator,
5 lessee, manager, agent or employee of any place of public accommodation
6 to refuse, deny or make a distinction, directly or indirectly, in offering its
7 goods, services, facilities, and accommodations to any person as covered
8 by this act because of race, religion, color, sex, disability, national origin or
9 ancestry *or family caregiver status*, except where a distinction because of
10 sex is necessary because of the intrinsic nature of such accommodation.

11 (2) For any person, whether or not specifically enjoined from
12 discriminating under any provisions of this act, to aid, abet, incite, compel
13 or coerce the doing of any of the acts forbidden under this act, or to
14 attempt to do so.

15 (3) For any person, to refuse, deny, make a distinction, directly or
16 indirectly, or discriminate in any way against persons because of the race,
17 religion, color, sex, disability, national origin or ancestry *or family*
18 *caregiver status* of such persons in the full and equal use and enjoyment of
19 the services, facilities, privileges and advantages of any institution,
20 department or agency of the state of Kansas or any political subdivision or
21 municipality thereof.

22 Sec. 4. K.S.A. 44-1001 and 44-1009 and K.S.A. 2015 Supp. 44-1002
23 are hereby repealed.

24 Sec. 5. This act shall take effect and be in force from and after its
25 publication in the statute book.