

SENATE BILL No. 535

By Committee on Federal and State Affairs

2-22

1 AN ACT concerning law enforcement; relating to applicants for law
2 enforcement officer positions; requiring hiring agencies to determine
3 whether applicants have been employed in law enforcement and
4 examine certain records; amending K.S.A. 75-4379 and repealing the
5 existing section.

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

8 Section 1. K.S.A. 75-4379 is hereby amended to read as follows: 75-
9 4379. (a) (1) *A hiring agency that interviews an applicant for a law
10 enforcement officer position shall conduct a review of such applicant's
11 records as required by this subsection prior to hiring such applicant.*

12 (2) *The hiring agency shall determine whether an applicant has been
13 employed in law enforcement in any state or United States territory or by
14 the federal government and whether such applicant's name is listed in the
15 national decertification index of the international association of directors
16 of law enforcement standards and training. The Kansas commission on
17 peace officers' standards and training shall assist the hiring agency with
18 the determination of whether such applicant's name is listed in the
19 national decertification index.*

20 (3) *The hiring agency shall determine whether an applicant has been
21 employed by another state or local law enforcement or governmental
22 agency, review any records concerning such applicant that are contained
23 in the registry established by K.S.A. 74-5611a, and amendments thereto,
24 and review such applicant's available files pursuant to this section.*

25 (b) (1) A hiring agency shall require each applicant interviewed by
26 such agency for a law enforcement officer position who has been
27 employed by another state or local law enforcement agency or
28 governmental agency to execute a written waiver that:

29 ~~(1)(A)~~ Explicitly authorizes each state or local law enforcement
30 agency or governmental agency that has employed the applicant to
31 disclose the applicant's files to the hiring agency; and

32 ~~(2)(B)~~ releases the hiring agency and each state or local law
33 enforcement agency or governmental agency that employed the applicant
34 from any liability related to the use and disclosure of the applicant's files.

35 (2) An applicant who refuses to execute the written waiver shall not
36 be considered for employment by the hiring agency.

1 (3) The hiring agency shall include the written waiver with each
2 request for information submitted to a state or local law enforcement
3 agency or governmental agency that has employed the applicant.

4 ~~(b)~~(c) Except as provided in subsection~~(e)~~ (d), a state or local law
5 enforcement agency or governmental agency that receives a written waiver
6 described in subsection~~(a)~~ (b) shall disclose the applicant's files to the
7 hiring agency not more than 21 days after such receipt. Such law
8 enforcement agency or governmental agency may choose to disclose the
9 applicant's files by either:

10 (1) Providing copies to the hiring agency; or

11 (2) allowing the hiring agency to review the files at the law
12 enforcement agency's office or governmental agency's office.

13 ~~(e)~~(d) (1) A state or local law enforcement agency or governmental
14 agency is not required to disclose the applicant's files pursuant to
15 subsection~~(b)~~ (c) if such agency is prohibited from providing the files
16 pursuant to a binding nondisclosure agreement to which such agency is a
17 party, and such agreement was executed before July 1, 2018.

18 (2) A state or local law enforcement agency or governmental agency
19 is required to disclose the applicant's files pursuant to subsection~~(b)~~ (c) if
20 such files are subject to a binding nondisclosure agreement to which such
21 agency is a party, and such agreement was executed on or after July 1,
22 2018, but the disclosure shall be limited to files necessary to determine the
23 qualifications and fitness of the applicant for performance of duties in a
24 law enforcement officer position.

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

28 ~~(d)~~(e) A state or local law enforcement agency or governmental
29 agency shall not be liable for complying with the provisions of this section
30 in good faith or participating in an official oral interview with an
31 investigator regarding the applicant.

32 ~~(e)~~(f) (1) Except as provided in ~~subsection (f) paragraph (2)~~, or
33 except as necessary for such agency's internal hiring processes, files
34 obtained pursuant to this section shall not be disclosed by the hiring
35 agency.

36 ~~(f)~~(2) Files obtained pursuant to this section shall constitute, for the
37 purposes of the open records act, a record of the state or local law
38 enforcement agency or governmental agency that made, maintained or
39 kept such files. Such files shall not be subject to a request for inspection
40 and copying under the open records act directed toward the hiring agency
41 obtaining the files. The official custodian of such files, for the purposes of
42 the open records act, shall be the official custodian of the records of such
43 state or local law enforcement agency or governmental agency. Except in a

1 civil action involving negligent hiring, such files shall not be subject to
2 discovery, subpoena or other process directed toward the hiring agency
3 obtaining the files.

4 (g) As used in this section:

5 (1) "Files" means all performance reviews or other files related to job
6 performance, commendations, administrative files, grievances, previous
7 personnel applications, personnel-related claims, disciplinary actions,
8 internal investigation files, suspensions, investigation-related leave,
9 documents concerning termination or other departure from employment,
10 all complaints and all early warning information. "Files"~~shall~~ *does* not
11 include nonperformance documents or data, including, but not limited to,
12 medical files, schedules, pay and benefit information or similar
13 administrative data or information-;

14 (2) "early warning information" means information from a databased
15 management tool designed to identify officers who may be exhibiting
16 precursors of problems on the job that can result in providing those
17 officers with counseling or training to divert them away from conduct that
18 may become a disciplinary matter-;

19 (3) "governmental agency" means the state or subdivision of the state
20 with oversight of the state or local law enforcement agency-;

21 (4) "hiring agency" means a state or local law enforcement agency
22 processing an application for employment, regardless of whether the
23 applicant is ultimately hired-; *and*

24 (5) "state or local law enforcement agency" means any public agency
25 employing a law enforcement officer as defined in K.S.A. 74-5602, and
26 amendments thereto.

27 Sec. 2. K.S.A. 75-4379 is hereby repealed.

28 Sec. 3. This act shall take effect and be in force from and after its
29 publication in the statute book.