

Substitute for HOUSE BILL No. 2669

By Committee on Commerce and Labor

3-16

10 AN ACT [**concerning employment;**] establishing the Kansas employ-
11 ment initiative act ~~and~~]; creating the Kansas employment first over-
12 sight commission [**relating to discrimination; amending K.S.A. 44-**
13 **1001, 44-1002 and 44-1006 and repealing the existing sections**].
14

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

16 Section 1. (a) This act shall be known as and cited as the Kansas
17 employment first initiative act.

18 (b) It is hereby declared to be the policy of the state of Kansas that
19 competitive and integrated employment shall be considered its first op-
20 tion when serving persons with disabili-
21 ties who are of working age to obtain employment. This policy applies to
22 state programs and services that support the employment of persons with
23 disabilities. All state agencies shall follow this policy and ensure that it is
24 effectively implemented in their programs and services.

25 Sec. 2. (a) All state agencies shall coordinate efforts and shall collab-
26 orate within and among such agencies to ensure that state programs,
27 policies, procedures and funding support competitive and integrated em-
28 ployment of individuals with disabilities. All state agencies shall, whenever
29 feasible, share data and information across systems in order to track pro-
30 gress toward full implementation of the act.

31 (b) State agencies are authorized to adopt rules and regulations to
32 implement this act.

33 Sec. 3. (a) There is hereby established a Kansas employment first
34 oversight commission consisting of five voting members. The commission
35 shall consist of the following members who shall serve for two-year terms:

36 (1) Four members who are persons with a disability or who are knowl-
37 edgeable of disability issues and who are not state employees, of whom:

38 (A) One shall be appointed by the speaker of the house of
39 representatives;

40 (B) one shall be appointed by the minority leader of the house of
41 representatives;

42 (C) one shall be appointed by the president of the senate; and

43 (D) one shall be appointed by the minority leader of the senate;

1 (2) one member who is experienced with employment service pro-
2 grams and who is not a state employee shall be appointed by the governor.

3 (b) The governor shall designate one member to convene and organ-
4 ize the first meeting of the commission at which the commission shall
5 elect a chairperson and a vice-chairperson from among its voting mem-
6 bers. The commission shall meet at least four times a year and additionally
7 on call of the chairperson.

8 A quorum shall consist of three members. All actions of the commission
9 shall be taken by a majority of the voting members of the commission.

10 (c) Each member of the commission who is not a state employee and
11 who is a person with a disability or who has a family member with a
12 disability shall be paid mileage and other expenses as provided by K.S.A.
13 75-3212, and amendments thereto. Members shall otherwise serve with-
14 out compensation.

15 (d) The commission shall establish measurable goals and objectives
16 for the state of Kansas to ensure implementation of this act. The com-
17 mission shall track the measurable progress of public agencies in imple-
18 menting this act. All state agencies shall fully cooperate with and provide
19 data and information to assist the commission in carrying out its duties.

20 (e) The commission shall issue an annual report on or before January
21 1 each year which shall be presented to the governor and members of
22 the state legislature. The report shall detail progress toward the goals and
23 objectives and full implementation of this act. All state agencies shall
24 cooperate with the commission on the creation and dissemination of the
25 annual report. The report also shall identify barriers to achieving the
26 outcomes along with the effective strategies and policies that can help
27 realize the employment first initiative.

28 (f) The department of social and rehabilitation services shall be the
29 lead agency responsible for compiling data and coordinating the prepara-
30 tion of the annual report at the direction of the commission.

31 (g) The provisions of section 3, and amendments thereto, shall expire
32 on July 1, 2013.

33 **[Sec. 4. K.S.A. 44-1001 is hereby amended to read as follows:**
34 **44-1001. This act shall be known as the Kansas act against discrim-**
35 **ination. It shall be deemed an exercise of the police power of the**
36 **state for the protection of the public welfare, safety, health and**
37 **peace of the people of this state. The practice or policy of discrim-**
38 **ination against individuals in employment relations, in relation to**
39 **free and public accommodations, in housing by reason of race,**
40 **religion, color, sex, disability, national origin or ancestry or on the**
41 **basis of disability, or in housing by reason of familial status is a mat-**
42 **ter of concern to the state, since such discrimination threatens not**
43 **only the rights and privileges of the inhabitants of the state of**

1 **Kansas but menaces the institutions and foundations of a free dem-**
2 **ocratic state. It is hereby declared to be the policy of the state of**
3 **Kansas to eliminate and prevent discrimination in all employment**
4 **relations, to eliminate and prevent discrimination, segregation, or**
5 **separation in all places of public accommodations covered by this**
6 **act, and to eliminate and prevent discrimination, segregation or**
7 **separation in housing.**

8 **[It is also declared to be the policy of this state to assure equal**
9 **opportunities and encouragement to every citizen regardless of**
10 **race, religion, color, sex, ~~disability~~, national origin or ancestry or on**
11 **the basis of disability, in securing and holding, without discrimina-**
12 **tion, employment in any field of work or labor for which a person**
13 **is properly qualified, to assure equal opportunities to all persons**
14 **within this state to full and equal public accommodations, and to**
15 **assure equal opportunities in housing without distinction on ac-**
16 **count of race, religion, color, sex, ~~disability~~, familial status, national**
17 **origin or ancestry or on the basis of disability. It is further declared**
18 **that the opportunity to secure and to hold employment, the op-**
19 **portunity for full and equal public accommodations as covered by**
20 **this act and the opportunity for full and equal housing are civil**
21 **rights of every citizen.**

22 **[To protect these rights, it is hereby declared to be the purpose**
23 **of this act to establish and to provide a state commission having**
24 **power to eliminate and prevent segregation and discrimination, or**
25 **separation in employment, in all places of public accommodations**
26 **covered by this act, in housing because of race, religion, color, sex,**
27 **~~disability~~, national origin or ancestry or on the basis of disability, and**
28 **in housing because of familial status, either by employers, labor**
29 **organizations, employment agencies, realtors, financial institu-**
30 **tions or other persons as hereinafter provided.**

31 **[Sec. 5. K.S.A. 44-1002 is hereby amended to read as follows:**
32 **44-1002. When used in this act:**

33 **[(a) “Person” includes one or more individuals, partnerships,**
34 **associations, organizations, corporations, legal representatives,**
35 **trustees, trustees in bankruptcy or receivers.**

36 **[(b) “Employer” includes any person in this state employing**
37 **four or more persons and any person acting directly or indirectly**
38 **for an employer, labor organizations, nonsectarian corporations,**
39 **organizations engaged in social service work and the state of Kan-**
40 **sas and all political and municipal subdivisions thereof, but shall**
41 **not include a nonprofit fraternal or social association or**
42 **corporation.**

43 **[(c) “Employee” does not include any individual employed by**

1 such individual's parents, spouse or child or in the domestic service
2 of any person.

3 [(d) "Labor organization" includes any organization which ex-
4 exists for the purpose, in whole or in part, of collective bargaining,
5 of dealing with employers concerning grievances, terms or con-
6 ditions of employment or of other mutual aid or protection in re-
7 lation to employment.

8 [(e) "Employment agency" includes any person or govern-
9 mental agency undertaking, with or without compensation, to pro-
10 cure opportunities to work or to procure, recruit, refer or place
11 employees.

12 [(f) "Commission" means the Kansas human rights commission
13 created by this act.

14 [(g) "Unlawful employment practice" includes only those un-
15 lawful practices and acts specified in K.S.A. 44-1009 and amend-
16 ments thereto and includes segregate or separate.

17 [(h) "Public accommodations" means any person who caters or
18 offers goods, services, facilities and accommodations to the public.
19 Public accommodations include, but are not limited to, any lodging
20 establishment or food service establishment, as defined by K.S.A
21 36-501 and amendments thereto; any bar, tavern, barbershop,
22 beauty parlor, theater, skating rink, bowling alley, billiard parlor,
23 amusement park, recreation park, swimming pool, lake, gymna-
24 sium, mortuary or cemetery which is open to the public; or any
25 public transportation facility. Public accommodations do not in-
26 clude a religious or nonprofit fraternal or social association or
27 corporation.

28 [(i) "Unlawful discriminatory practice" means: (1) Any discrim-
29 ination against persons, by reason of their race, religion, color, sex,
30 ~~disability~~, national origin ~~or~~, ancestry *or on the basis of disability*;

31 [(A) In any place of public accommodations; or

32 [(B) in the full and equal use and enjoyment of the services,
33 facilities, privileges and advantages of any institution, department
34 or agency of the state of Kansas or any political subdivision or
35 municipality thereof; and

36 [(2) any discrimination against persons in regard to member-
37 ship in a nonprofit recreational or social association or corporation
38 by reason of race, religion, sex, color, ~~disability~~, national origin ~~or~~,
39 ancestry *or on the basis of disability* if such association or corporation
40 has 100 or more members and: (A) Provides regular meal service;
41 and (B) receives payment for dues, fees, use of space, use of facility,
42 services, meals or beverages, directly or indirectly, from or on be-
43 half of nonmembers.

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

3 [(j) “Disability” means, with respect to an individual:

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

6 [(2) a record of such an impairment; or

7 [(3) being regarded as having such an impairment ~~by the person
8 or entity alleged to have committed the unlawful discriminatory practice
9 complained of.~~

10 [Disability does not include current, illegal use of a controlled
11 substance as defined in section 102 of the federal controlled sub-
12 stance act (21 U.S.C. 802), in housing discrimination. In employ-
13 ment and public accommodation discrimination, “disability” does
14 not include an individual who is currently engaging in the illegal
15 use of drugs where possession or distribution of such drugs is un-
16 lawful under the controlled substance act (21 U.S.C. 812), when
17 the covered entity acts on the basis of such use.

18 [(k) “Reasonable accommodation” means:

19 [(1) Making existing facilities used by employees readily acces-
20 sible to and usable by individuals with disabilities; and

21 [(2) job restructuring; part-time or modified work schedules;
22 reassignment to a vacant position; acquisition or modification of
23 equipment or devices; appropriate adjustment or modifications of
24 examinations, training materials or policies; provision of qualified
25 readers or interpreters; and other similar accommodations for in-
26 dividuals with disabilities.

27 [(l) “Regarded as having such an impairment” means the ab-
28 sence of a physical or mental impairment but regarding or treating an
29 individual as though such an impairment exists.:

30 [(1) *An individual meets the requirement of “being regarded as hav-
31 ing such an impairment” if the individual establishes that the individual
32 has been subjected to an action prohibited under this act because of an
33 actual or perceived physical or mental impairment whether or not the
34 impairment limits or is perceived to limit a major life activity.*

35 [(2) *Paragraph (1) shall not apply to impairments that are transitory
36 or minor. A transitory impairment is an impairment with an actual or
37 expected duration of six months or less.*

38 [(m) (1) *“Major life activities” include, but are not limited to, caring
39 for oneself, performing manual tasks, seeing, hearing, eating, sleeping,
40 walking, standing, lifting, bending, speaking, breathing, learning, reading,
41 concentrating, thinking, communicating and working.*

42 [(2) *“Major life activities” include the operation of a major bodily
43 function, including but not limited to, functions of the immune system,*

1 normal cell growth, digestive, bowel, bladder, neurological, brain, respi-
2 ratory, circulatory, endocrine and reproductive functions.

3 [(n) **“Genetic screening or testing” means a laboratory test of**
4 **a person’s genes or chromosomes for abnormalities, defects or de-**
5 **ficiencies, including carrier status, that are linked to physical or**
6 **mental disorders or impairments, or that indicate a susceptibility**
7 **to illness, disease or other disorders, whether physical or mental,**
8 **which test is a direct test for abnormalities, defects or deficiencies,**
9 **and not an indirect manifestation of genetic disorders.**

10 [Sec. 6. K.S.A. 44-1006 is hereby amended to read as follows:
11 **44-1006. (a) The provisions of this act shall be construed liberally**
12 **for the accomplishment of the purposes thereof. Nothing con-**
13 **tained in this act shall be deemed to repeal any of the provisions**
14 **of any other law of this state relating to discrimination because of**
15 **race, religion, color, sex, disability, national origin or ancestry, un-**
16 **less the same is specifically repealed by this act.**

17 [(b) **Nothing in this act shall be construed to mean that an em-**
18 **ployer shall be forced to hire unqualified or incompetent person-**
19 **nel, or discharge qualified or competent personnel.**

20 [(c) *The definition of “disability” in K.S.A. 44-1002, and amendments*
21 *thereto, shall be construed in accordance with the following:*

22 [(1) *The definition of disability in this act shall be construed in favor*
23 *of broad coverage of individuals under this act, to the maximum extent*
24 *permitted by the terms of this act.*

25 [(2) *An impairment that substantially limits one major life activity*
26 *need not limit other major life activities in order to be considered a*
27 *disability.*

28 [(3) *An impairment that is episodic or in remission is a disability if it*
29 *would substantially limit a major life activity when active.*

30 [(4) (A) *The determination of whether an impairment substantially*
31 *limits a major life activity shall be made without regard to the ameliorative*
32 *effects of mitigating measures such as:*

33 [(i) *Medication, medical supplies, equipment or appliances, low-vi-*
34 *sion devices except ordinary eye glasses or contact lenses, prosthetics in-*
35 *cluding limbs and devices, hearing aids and cochlear implants or other*
36 *implantable hearing devices, mobility devices or oxygen therapy equip-*
37 *ment and supplies;*

38 [(ii) *use of assistive technology;*

39 [(iii) *reasonable accommodations or auxiliary aides or services; or*

40 [(iv) *learned behavioral or adaptive neurological modifications.*

41 [(B) *The ameliorative effects of the mitigating measures of ordinary*
42 *eye glasses or contact lenses shall be considered in determining whether*
43 *an impairment substantially limits a major life activity.*

- 1 [(C) *As used in this paragraph:*
- 2 [(i) *“Ordinary eyeglasses or contact lenses” means lenses that are in-*
- 3 *tended to fully correct visual acuity or eliminate refractive error; and*
- 4 [(ii) *“low-vision devices” means devices that magnify, enhance or oth-*
- 5 *erwise augment a visual image.*
- 6 [(d) *Covered employers are not required to reasonably accommodate*
- 7 *or reasonably modify policies, practices and procedures for any person*
- 8 *who solely meets the definition of disability under subsection (j)(3) of*
- 9 *K.S.A. 44-1002, and amendments thereto.*
- 10 [**Sec. 7. K.S.A. 44-1001, 44-1002 and 44-1006 are hereby**
- 11 **repealed.**]
- 12 Sec. ~~4~~ [8.] This act shall take effect and be in force from and after
- 13 its publication in the statute book.