

HOUSE BILL No. 2714

By Committee on Federal and State Affairs

2-18

1 AN ACT concerning the Kansas act against discrimination; prohibiting
2 discrimination based on COVID-19 vaccination status; amending
3 K.S.A. 44-1001, 44-1002, 44-1004, 44-1005 and 44-1006 and repealing
4 the existing sections.
5

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

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

23 (b) It is also declared to be the policy of this state to assure equal
24 opportunities and encouragement to every citizen regardless of race,
25 religion, color, sex, disability, *COVID-19 vaccination status*, national
26 origin or ancestry, in securing and holding, without discrimination,
27 employment in any field of work or labor for which a person is properly
28 qualified, to assure equal opportunities to all persons within this state to
29 full and equal public accommodations; and to assure equal opportunities in
30 housing without distinction on account of race, religion, color, sex,
31 disability, *COVID-19 vaccination status*, familial status, national origin or
32 ancestry. It is further declared that the opportunity to secure and to hold
33 employment, the opportunity for full and equal public accommodations as
34 covered by this act and the opportunity for full and equal housing are civil
35 rights of every citizen.

36 (c) To protect these rights, it is hereby declared to be the purpose of

1 this act to establish and to provide a state commission having power to
2 eliminate and prevent segregation and discrimination, or separation in
3 employment, in all places of public accommodations covered by this act,
4 in housing because of race, religion, color, sex, disability, *COVID-19*
5 *vaccination status*, national origin or ancestry and in housing because of
6 familial status, either by employers, labor organizations, employment
7 agencies, realtors, financial institutions or other persons as ~~hereinafter~~
8 provided *in this act*.

9 Sec. 2. K.S.A. 44-1002 is hereby amended to read as follows: 44-
10 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~~ *does* not include a nonprofit fraternal or
19 social 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
38 establishment or food service establishment, as defined by K.S.A. 36-501,
39 and amendments thereto; any bar, tavern, barbershop, beauty parlor,
40 theater, skating rink, bowling alley, billiard parlor, amusement park,
41 recreation park, swimming pool, lake, gymnasium, mortuary or cemetery
42 which is 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:

3 (1) Any discrimination against persons, by reason of their race,
4 religion, color, sex, disability, *COVID-19 vaccination status*, national
5 origin or ancestry:

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

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

10 (2) any discrimination against persons in regard to membership in a
11 nonprofit recreational or social association or corporation by reason of
12 race, religion, sex, color, disability, *COVID-19 vaccination status*, national
13 origin or ancestry if such association or corporation has 100 or more
14 members and: (A) Provides regular meal service; and (B) receives
15 payment for dues, fees, use of space, use of facility, services, meals or
16 beverages, directly or indirectly, from or on behalf of nonmembers.

17 ~~This term shall~~ "*Unlawful discriminatory practice*" does not apply to a
18 religious or private fraternal and benevolent association or corporation.

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

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

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

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

24 "Disability" does not include current, illegal use of a controlled
25 substance as defined in section 102 of the federal controlled substance act
26 (21 U.S.C. § 802), in housing discrimination. In employment and public
27 accommodation discrimination, "disability" does not include an individual
28 who is currently engaging in the illegal use of drugs where possession or
29 distribution of such drugs is unlawful under the controlled substance act~~(~~,
30 21 U.S.C. § 812), when the covered entity acts on the basis of such use.

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

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

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

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

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

11 (m) "Major life activities" means:

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

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

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

27 (o) (1) *"COVID-19 vaccine" means an immunization, vaccination or*
28 *injection against disease caused by the novel coronavirus identified as*
29 *SARS-CoV-2 or disease caused by a variant of the virus.*

30 (2) *"COVID-19 vaccination status" means an indication of whether a*
31 *person has received one or more doses of a COVID-19 vaccine. "COVID-*
32 *19 vaccination status" includes, but is not limited to, the use of an item or*
33 *device implanted into a person's body that indicates whether such person*
34 *has received one or more doses of a COVID-19 vaccine.*

35 Sec. 3. K.S.A. 44-1004 is hereby amended to read as follows: 44-
36 1004. The commission shall have the following functions, powers and
37 duties:

38 (1) To establish and maintain its principal office in the city of Topeka,
39 and such other offices elsewhere within the state as it may deem necessary.

40 (2) To meet and function at any place within the state.

41 (3) To adopt, promulgate, amend and rescind suitable rules and
42 regulations to carry out the provisions of this act, and the policies and
43 practices of the commission in connection therewith.

1 (4) To receive, initiate, investigate and pass upon complaints alleging
2 discrimination in employment, public accommodations and housing
3 because of race, religion, color, sex, disability, *COVID-19 vaccination*
4 *status*, national origin or ancestry and complaints alleging discrimination
5 in housing because of familial status.

6 (5) To subpoena witnesses, compel their appearance and require the
7 production for examination of records, documents and other evidence or
8 possible sources of evidence and to examine, record and copy such
9 materials and take and record the testimony or statements of such persons.
10 The commission may issue subpoenas to compel access to or the
11 production of such materials, or the appearance of such persons, and may
12 issue interrogatories to a respondent to the same extent and subject to the
13 same limitations as would apply if the subpoena or interrogatories were
14 issued or served in aid of a civil action in the district court. The
15 commission shall have access at all reasonable times to premises and may
16 compel such access by application to a court of competent jurisdiction
17 provided that the commission first complies with the provisions of article
18 15 of the Kansas bill of rights and the fourth amendment to the United
19 States constitution relating to unreasonable searches and seizures. The
20 commission may administer oaths and take depositions to the same extent
21 and subject to the same limitations as would apply if the deposition was
22 taken in aid of a civil action in the district court. In case of the refusal of
23 any person to comply with any subpoena, interrogatory or search warrant
24 issued hereunder, or to testify to any matter regarding which such person
25 may be lawfully questioned, the district court of any county may, upon
26 application of the commission, order such person to comply with such
27 subpoena or interrogatory and to testify. Failure to obey the court's order
28 may be punished by the court as contempt. No person shall be prosecuted
29 or subjected to any penalty or forfeiture for or on account of any
30 transaction, matter or thing concerning which such person testifies or
31 produces evidence, except that such person so testifying shall not be
32 exempt from prosecution and punishment for perjury committed in so
33 testifying. The immunity herein provided shall extend only to natural
34 persons.

35 (6) To act in concert with other parties in interest in order to eliminate
36 and prevent discrimination and segregation, prohibited by this act, by
37 including any term in a conciliation agreement as could be included in a
38 final order under this act.

39 (7) To apply to the district court of the county where the respondent
40 resides or transacts business for enforcement of any conciliation agreement
41 by seeking specific performance of such agreement.

42 (8) To issue such final orders after a public hearing as may remedy
43 any existing situation found to violate this act and prevent its recurrence.

1 (9) To endeavor to eliminate prejudice among the various ethnic
2 groups and people with disabilities in this state and to further good will
3 among such groups. The commission in cooperation with the state
4 department of education shall prepare a comprehensive educational
5 program designed for the students of the public schools of this state and
6 for all other residents thereof, calculated to emphasize the origin of
7 prejudice against such groups, its harmful effects and its incompatibility
8 with American principles of equality and fair play.

9 (10) To create such advisory agencies and conciliation councils, local,
10 regional or statewide, as in its judgment will aid in effectuating the
11 purposes of this act; to study the problem of discrimination in all or
12 specific fields or instances of discrimination because of race, religion,
13 color, sex, disability, *COVID-19 vaccination status*, national origin or
14 ancestry; to foster, through community effort or otherwise, good will,
15 cooperation and conciliation among the groups and elements of the
16 population of this state; and to make recommendations to the commission
17 for the development of policies and procedures, and for programs of
18 formal and informal education, which the commission may recommend to
19 the appropriate state agency. Such advisory agencies and conciliation
20 councils shall be composed of representative citizens serving without pay.
21 The commission may itself make the studies and perform the acts
22 authorized by this paragraph. It may, by voluntary conferences with parties
23 in interest, endeavor by conciliation and persuasion to eliminate
24 discrimination in all the stated fields and to foster good will and
25 cooperation among all elements of the population of the state.

26 (11) To accept contributions from any person to assist in the
27 effectuation of this section and to seek and enlist the cooperation of
28 private, charitable, religious, labor, civic and benevolent organizations for
29 the purposes of this section.

30 (12) To issue such publications and such results of investigation and
31 research as in its judgment will tend to promote good will and minimize or
32 eliminate discrimination because of race, religion, color, sex, disability,
33 *COVID-19 vaccination status*, national origin or ancestry.

34 (13) To render each year to the governor and to the state legislature a
35 full written report of all of its activities and of its recommendations.

36 (14) To adopt an official seal.

37 (15) To receive and accept federal funds to effectuate the purposes of
38 the act and to enter into agreements with any federal agency for such
39 purpose.

40 Sec. 4. K.S.A. 44-1005 is hereby amended to read as follows: 44-
41 1005. (a) Any person claiming to be aggrieved by an alleged unlawful
42 employment practice or by an alleged unlawful discriminatory practice,
43 and who can articulate a prima facie case pursuant to a recognized legal

1 theory of discrimination, may, personally or by an attorney-at-law, make,
2 sign and file with the commission a verified complaint in writing,
3 articulating the prima facie case, which shall also state the name and
4 address of the person, employer, labor organization or employment agency
5 alleged to have committed the unlawful employment practice complained
6 of or the name and address of the person alleged to have committed the
7 unlawful discriminatory practice complained of, and which shall set forth
8 the particulars thereof and contain such other information as may be
9 required by the commission.

10 (b) The commission upon its own initiative or the attorney general
11 may, in like manner, make, sign and file such complaint. Whenever the
12 attorney general has sufficient reason to believe that any person as herein
13 defined is engaged in a practice of discrimination, segregation or
14 separation in violation of this act, the attorney general may make, sign and
15 file a complaint. Any employer whose employees or some of whom, refuse
16 or threaten to refuse to cooperate with the provisions of this act, may file
17 with the commission a verified complaint asking for assistance by
18 conciliation or other remedial action.

19 (c) Whenever any problem of discrimination because of race,
20 religion, color, sex, disability, *COVID-19 vaccination status*, national
21 origin or ancestry arises, or whenever the commission has, in its own
22 judgment, reason to believe that any person has engaged in an unlawful
23 employment practice or an unlawful discriminatory practice in violation of
24 this act, or has engaged in a pattern or practice of discrimination, the
25 commission may conduct an investigation without filing a complaint and
26 shall have the same powers during such investigation as provided for the
27 investigation of complaints. The person to be investigated shall be advised
28 of the nature and scope of such investigation prior to its commencement.
29 The purpose of the investigation shall be to resolve any such problems
30 promptly. In the event such problems cannot be resolved within a
31 reasonable time, the commission may issue a complaint whenever the
32 investigation has revealed a violation of the Kansas act against
33 discrimination has occurred. The information gathered in the course of the
34 first investigation may be used in processing the complaint.

35 (d) After the filing of any complaint by an aggrieved individual, by
36 the commission, or by the attorney general, the commission shall, within
37 seven days after the filing of the complaint, serve a copy on each of the
38 parties alleged to have violated this act, and shall designate one of the
39 commissioners to make, with the assistance of the commission's staff,
40 prompt investigation of the alleged act of discrimination. If the
41 commissioner shall determine after such investigation that no probable
42 cause exists for crediting the allegations of the complaint, such
43 commissioner, within 10 business days from such determination, shall

1 cause to be issued and served upon the complainant and respondent written
2 notice of such determination.

3 (e) If such commissioner after such investigation, shall determine that
4 probable cause exists for crediting the allegations for the complaint, the
5 commissioner or such other commissioner as the commission may
6 designate, shall immediately endeavor to eliminate the unlawful
7 employment practice or the unlawful discriminatory practice complained
8 of by conference and conciliation. The complainant, respondent and
9 commission shall have 45 days from the date respondent is notified in
10 writing of a finding of probable cause to enter into a conciliation
11 agreement signed by all parties in interest. The parties may amend a
12 conciliation agreement at any time prior to the date of entering into such
13 agreement. Upon agreement by the parties the time for entering into such
14 agreement may be extended. The members of the commission and its staff
15 shall not disclose what has transpired in the course of such endeavors.

16 (f) In case of failure to eliminate such practices by conference and
17 conciliation, or in advance thereof, if in the judgment of the commissioner
18 or the commission circumstances so warrant, the commissioner or the
19 commission shall commence a hearing in accordance with the provisions
20 of the Kansas administrative procedure act naming as parties the
21 complainant and the person, employer, labor organization, employment
22 agency, realtor or financial institution named in such complaint,
23 hereinafter referred to as respondent. A copy of the complaint shall be
24 served on the respondent. At least four commissioners or a presiding
25 officer from the office of administrative hearings shall be designated as the
26 presiding officer. The place of such hearing shall be in the county where
27 respondent is doing business and the acts complained of occurred.

28 (g) The complainant or respondent may apply to the presiding officer
29 for the issuance of a subpoena for the attendance of any person or the
30 production or examination of any books, records or documents pertinent to
31 the proceeding at the hearing. Upon such application the presiding officer
32 shall issue such subpoena.

33 (h) The case in support of the complaint shall be presented before the
34 presiding officer by one of the commission's attorneys or agents, or by
35 private counsel, if any, of the complainant, and the commissioner who
36 shall have previously made the investigation shall not participate in the
37 hearing except as a witness. Any endeavors at conciliation shall not be
38 received in evidence.

39 (i) Any complaint filed pursuant to this act ~~must~~ shall be so filed
40 within six months after the alleged act of discrimination, unless the act
41 complained of constitutes a continuing pattern or practice of
42 discrimination in which event it will be from the last act of discrimination.
43 Complaints filed with the commission may be dismissed by the

1 commission on its own initiative, and shall be dismissed by the
2 commission upon the written request of the complainant, if the
3 commission has not issued a finding of probable cause or no probable
4 cause or taken other administrative action dismissing the complaint within
5 300 days of the filing of the complaint. The commission shall mail written
6 notice to all parties of dismissal of a complaint within five days of
7 dismissal. Any such dismissal of a complaint in accordance with this
8 section shall constitute final action by the commission which shall be
9 deemed to exhaust all administrative remedies under the Kansas act
10 against discrimination for the purpose of allowing subsequent filing of the
11 matter in court by the complainant, without the requirement of filing a
12 petition for reconsideration pursuant to K.S.A. 44-1010, and amendments
13 thereto. Dismissal of a complaint in accordance with this section shall not
14 be subject to appeal or judicial review by any court under the provisions of
15 K.S.A. 44-1011, and amendments thereto. The provisions of this section
16 shall not apply to complaints alleging discriminatory housing practices
17 filed with the commission pursuant to K.S.A. 44-1015 et seq., and
18 amendments thereto.

19 (j) The respondent may file a written verified answer to the complaint
20 and appear at such hearing in person or otherwise, with or without counsel,
21 and submit testimony. The complainant shall appear at such hearing in
22 person, with or without counsel, and submit testimony. The presiding
23 officer or the complainant shall have the power reasonably and fairly to
24 amend any complaint, and the respondent shall have like power to amend
25 such respondent's answer. The presiding officer shall be bound by the rules
26 of evidence prevailing in courts of law or equity, and only relevant
27 evidence of reasonable probative value shall be received.

28 (k) If the presiding officer finds a respondent has engaged in or is
29 engaging in any unlawful employment practice or unlawful discriminatory
30 practice as defined in this act, the presiding officer shall render an order
31 requiring such respondent to cease and desist from such unlawful
32 employment practice or such unlawful discriminatory practice and to take
33 such affirmative action, including but not limited to the hiring,
34 reinstatement, or upgrading of employees, with or without back pay, and
35 the admission or restoration to membership in any respondent labor
36 organizations; the admission to and full and equal enjoyment of the goods,
37 services, facilities, and accommodations offered by any respondent place
38 of public accommodation denied in violation of this act, as, in the
39 judgment of the presiding officer, will effectuate the purposes of this act,
40 and including a requirement for report of the manner of compliance. Such
41 order may also include an award of damages for pain, suffering and
42 humiliation which are incidental to the act of discrimination, except that an
43 award for such pain, suffering and humiliation shall in no event exceed the

1 sum of \$2,000.

2 (l) Any state, county or municipal agency may pay a complainant
3 back pay if it has entered into a conciliation agreement for such purposes
4 with the commission, and may pay such back pay if it is ordered to do so
5 by the commission.

6 (m) If the presiding officer finds that a respondent has not engaged in
7 any such unlawful employment practice, or any such unlawful
8 discriminatory practice, the presiding officer shall render an order
9 dismissing the complaint as to such respondent.

10 (n) The commission shall review an initial order rendered under
11 subsection (k) or (m). In addition to the parties, a copy of any final order
12 shall be served on the attorney general and such other public officers as the
13 commission may deem proper.

14 (o) The commission shall, except as otherwise provided, establish
15 rules of practice to govern, expedite and effectuate the foregoing
16 procedure and its own actions thereunder. The rules of practice shall be
17 available, upon written request, within 30 days after the date of adoption.

18 Sec. 5. K.S.A. 44-1006 is hereby amended to read as follows: 44-
19 1006. (a) The provisions of this act shall be construed liberally for the
20 accomplishment of the purposes thereof. Nothing contained in this act
21 shall be deemed to repeal any of the provisions of any other law of this
22 state relating to discrimination because of race, religion, color, sex,
23 disability, *COVID-19 vaccination status*, national origin or ancestry, unless
24 the same is specifically repealed by this act.

25 (b) Nothing in this act shall be construed to mean that an employer
26 shall be forced to hire unqualified or incompetent personnel; or discharge
27 qualified or competent personnel.

28 (c) The definition of "disability" in K.S.A. 44-1002(j), and
29 amendments thereto, shall be construed in accordance with the following:

30 (1) The definition of disability in this act shall be construed in favor
31 of broad coverage of individuals under this act, to the maximum extent
32 permitted by the terms of this act;

33 (2) an impairment that substantially limits one major life activity need
34 not limit other major life activities in order to be considered a disability;

35 (3) an impairment that is episodic or in remission is a disability if it
36 would substantially limit a major life activity when active; and

37 (4) (A) The determination of whether an impairment substantially
38 limits a major life activity shall be made without regard to the ameliorative
39 effects of mitigating measures such as the following:

40 (i) Medication, medical supplies, equipment, or appliances, low-
41 vision devices (which do not include ordinary eye glasses or contact
42 lenses), prosthetics including limbs and devices, hearing aids and cochlear
43 implants or other implantable hearing devices, mobility devices, or oxygen

1 therapy equipment and supplies;

2 (ii) use of assistive technology;

3 (iii) reasonable accommodations or auxiliary aides or services; or

4 (iv) learned behavioral or adaptive neurological modifications.

5 (B) The ameliorative effects of the mitigating measures of ordinary
6 eyeglasses or contact lenses shall be considered in determining whether an
7 impairment substantially limits a major life activity.

8 (C) As used in this subparagraph:

9 (i) "Ordinary eyeglasses or contact lenses" means lenses that are
10 intended to fully correct visual acuity or eliminate refractive error; and

11 (ii) "low-vision devices" means devices that magnify, enhance, or
12 otherwise augment a visual image.

13 Sec. 6. K.S.A. 44-1001, 44-1002, 44-1004, 44-1005 and 44-1006 are
14 hereby repealed.

15 Sec. 7. This act shall take effect and be in force from and after its
16 publication in the Kansas register.