

SENATE BILL No. 189

AN ACT concerning law enforcement; relating to applicants for a law enforcement officer position; authorizing state and local law enforcement agencies to receive certain files and information about the applicant from agencies that received an application from the applicant for a law enforcement position or conducted an employment background investigation; amending K.S.A. 75-4379 and repealing the existing section.

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

Section 1. K.S.A. 75-4379 is hereby amended to read as follows: 75-4379. (a) (1) A hiring agency shall require each applicant interviewed by such agency for a law enforcement officer position who has *submitted an application for a law enforcement officer position with or* been employed in a law enforcement position by another state or local law enforcement agency or governmental agency to execute a written waiver that:

(1)(A) Explicitly authorizes each state or local law enforcement agency or governmental agency that has employed the applicant *in a law enforcement position, received an application from the applicant for a law enforcement position or conducted an employment background investigation on the applicant* to disclose the applicant's files to the hiring agency; and

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

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

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

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

(1) Providing copies to the hiring agency; or

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

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

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

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

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

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

(f) Files obtained pursuant to this section shall constitute, for the purposes of the open records act, a record of the state or local law enforcement agency or governmental agency that made, maintained or kept such files. Such files shall not be subject to a request for inspection and copying under the open records act directed toward the hiring agency obtaining the files. The official custodian of such files, for the purposes of the open records act, shall be the official custodian of the records of such state or local law enforcement agency or governmental agency. Except in a civil action involving negligent hiring, such files shall not be subject to discovery, subpoena or other process directed toward the hiring agency obtaining the files.

(g) As used in this section:

(1) (A) "Files" means:

(i) All performance reviews or other files related to job performance, commendations, administrative files, grievances, previous personnel applications, personnel-related claims, disciplinary actions, internal investigation files, suspensions, investigation-related leave, documents concerning termination or other departure from employment, all complaints and all early warning information; *and*

(ii) *regardless of whether the applicant was ultimately hired, the employment application, background investigations, polygraph or voice stress analysis examination results and law enforcement-related psychological evaluation reports connected to the application process.*

(B) "Files" ~~shall~~ *does not* include nonperformance documents or data, including, but not limited to, medical files, *psychological examination reports not directly related to the applicant's suitability for law enforcement employment or certification*, schedules, pay and benefit information or similar administrative data or information.

(2) "Early warning information" means information from a ~~database~~ *database* management tool designed to identify officers who may be exhibiting precursors of problems on the job that can result in providing those officers with counseling or training to divert them away from conduct that may become a disciplinary matter.

(3) "Governmental agency" means the state or subdivision of the state with oversight of the state or local law enforcement agency.

(4) "Hiring agency" means a state or local law enforcement agency processing an application for employment, regardless of whether the applicant is ultimately hired.

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

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

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted

Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE

as amended _____

HOUSE adopted

Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.