



Background Check Laws: Kansas

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A Q&A guide to background check and employment reference law for private employers in Kansas. This Q&A addresses employers' obligations when conducting criminal and non-criminal background checks and penalties for violating these laws. Federal, local or municipal law may impose additional or different requirements.

Answers to questions can be compared across a number of jurisdictions (see Background Check Laws: State Q&A Tool).

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OVERVIEW OF STATE BACKGROUND CHECK LAW

1. Please list each state statute or regulation governing background checks (for example, state equivalents of the federal Fair Credit Reporting Act and state law governing criminal background checks or driving records). Include law governing both criminal background checks and non-criminal background checks. For each, please:

- Provide a brief description of the statute or regulation.
- Identify which employers are covered.
- Identify which employees are covered (for example, all employees or only those in specific job functions, such as commercial driving).
- Describe whether it provides for a private right of action.
- Identify the state agency or entity that administers the statute.

Fair Credit Reporting: Kan. Stat. § 50-701

Description

Employers may obtain consumer reports, including credit reports, for employment purposes, with certain limitations (*Kan. Stat. § 50-703*). For “employment purposes” means that the reports may be used to evaluate “a consumer for employment, promotion, reassignment or retention as an employee” (*Kan. Stat. § 50-702(g)*).

Employers may obtain consumer reports as long as it is clearly disclosed in writing to the consumer that such a report may be made, and mailed (or otherwise delivered) to the consumer not later than three days after the report is requested. The consumer has the right to then request information about the nature and

scope of the investigation requested. Alternatively, employers may obtain an investigative report if the report is for employment in a position for which the consumer has not specifically applied. After receiving the report, and upon request by the consumer, employers must disclose its scope. (*Kan. Stat. § 50-705*.)

Consumer reporting agencies may not report any of the following items of information except in connection with the employment of an individual receiving an annual salary of or expected to be \$20,000 or more:

- Bankruptcies adjudicated more than 14 years before the report.
- Suits and judgments entered more than seven years before the report or until the governing statute of limitations has expired, whichever is longer.
- Paid tax liens paid more than seven years before the report.
- Accounts placed for collection or charged to profit and loss more than seven years before the report.
- Records of arrest, indictment or conviction of crime that resulted in disposition, release, or parole more than seven years before the report.
- Any other adverse information dated more than seven years before the report.

(*Kan. Stat. § 50-704*).

Covered Employers

These laws apply to all employers in Kansas.

Covered Employees

These laws apply to all employees and applicants for employment in Kansas.

Private Right of Action

The law does not create a private right of action.

State Agency

There is no agency responsible for administering this law in Kansas.

Criminal Records Background Check, Generally: Kan. Stat. § 22-4701; Kan. Admin. Reg. § 10-12-1

Description

An employer may require a job applicant to sign a release allowing access to that individual's criminal history record information for purposes of determining the applicant's fitness for employment. Employers will not be liable for any employment decision based on criminal history records information, provided that the information reasonably bears on the employee's or applicant's trustworthiness, or the safety or well-being of the employer's employees or customers.

It is unlawful for any employer or prospective employer to require an employee or applicant to obtain and provide personal criminal history information to qualify for employment.

Covered Employers

These laws apply to all employers in Kansas.

Covered Employees

These laws apply to all employees and applicants for employment in Kansas.

Private Right of Action

The statute does not provide for a private right of action.

State Agency

The Kansas Bureau of Investigation oversees this law. Historical records of arrests and dispositions for criminal activity in Kansas are maintained in the Central Repository at The Kansas Bureau of Investigation.

Background Checks Pursuant to the Kansas Adult Care Home Act: Kan. Stat. § 39-970; Kan. Admin. Reg. § 26-41-102

Description

The operator of an adult care home (as defined by *Kan. Stat. § 39-923*) must request a criminal background check from the Kansas Department of Health and Environment for each employee and applicant unless all of the following are true:

- The employee or applicant is currently licensed or registered by a Kansas agency to provide and does provide professional services in a Kansas adult care home.
- The person has been subjected to a background check under this act within one year before application for employment with the adult care home.
- The person has been continuously employed by the employer since July 1, 1992.

(*Kan. Stat. § 39-970(j)*.)

The law requires that an adult care home operator who receives criminal history record information as part of a criminal background check under this act keep the information confidential, except that the operator may disclose it to the subject of the request for information (*Kan. Stat. § 39-970(k)*).

The operator of an adult care home is required to keep supporting

documentation for criminal background checks conducted pursuant to the act (*Kan. Admin. Reg. § 26-41-102*).

Covered Employers

The law covers those who operate an adult care home in Kansas.

Covered Employees

All adult care home employees and applicants are covered under this law unless:

- The employee or applicant is currently licensed or registered by a Kansas agency to provide professional services in Kansas and provides those services as part of the work which such person performs for the adult care home.
- The person has been the subject of a background check under this act within one year prior.
- The person has been continuously employed by the employer since July 1, 1992.

(*Kan. Stat. § 39-970(j)*.)

Private Right of Action

The law does not create a private right of action.

State Agency

The Kansas Bureau of Investigation ensures that the Kansas Secretary of Health and Environment has access to criminal history record information.

The Kansas Secretary of Health Environment must provide each operator requesting a criminal background check pursuant to this section such information in writing within three working days of receipt of the information from the Kansas Bureau of Investigation.

Background Checks Pursuant to the Kansas Home Health Licensure Law: Kan. Stat. § 65-5117

Description

The operator of a home health agency must request a criminal background check from the Department of Health and Environment for each employee and applicant unless all of the following are true:

- The employee or applicant is currently licensed or registered by a Kansas agency to provide and does provide professional services in a Kansas home health agency.
- The person has been subjected to a background check under this act within one year before the application for employment with the home health agency.
- The person has been continuously employed by the employer since July 1, 1992.

(*Kan. Stat. § 65-517(j)*.)

The provision specifically requires home health operators to request information regarding any convictions and adjudications of a juvenile offender, which if committed by an adult would have been a felony conviction for:

- Mistreatment of a dependent adult (*Kan. Stat. § 21-3437* prior to its repeal or *Kan. Stat. § 21-5417*).
- Sexual battery (*Kan. Stat. § 21-3517* prior to its repeal or *Kan. Stat. § 21-5505(a)*).
- Theft (*Kan. Stat. § 21-3701* prior to its repeal or *Kan. Stat. § 21-5801*).

The law requires an operator receiving criminal history record information to keep the information confidential, except that the operator may disclose it to the subject of the request for information (*Kan. Stat. § 65-117(f)(5)*).

If the operator of a home health agency uses an employment agency to supply any employees, the operator must receive written certification from the employment agency that the employees are not prohibited from working for the home health agency under this section (*Kan. Stat. § 65-117(d)*).

The operator of a home health agency is not liable for civil damages resulting from its decision to employ, refusal to employ, or discharge from employment any person based on the home health agency's compliance with this provision, as long as the agency (or employment agency) acts in good faith to comply with this provision (*Kan. Stat. § 65-117(d)*).

Covered Employers

These laws apply to all operators of a home health agency in Kansas (*Kan. Stat. § 65-5102*).

Covered Employees

These laws apply to all employees and applicants for employment in a home health agency in Kansas (*Kan. Stat. § 65-517*).

Private Right of Action

The law does not create a private right of action.

State Agency

The Kansas Secretary of Health Environment must provide each home health operator that requests a criminal background check under this section this information in writing within three working days of receipt of the information from the Kansas Bureau of Investigation. This is not true if an offense enumerated in *Kan. Stat. § 65-5117(a)* exists in the criminal history record information. (*Kan. Stat. § 65-117(f)(2)*).

Background Checks for Nurses: Kan. Stat. § 74-1112

Description

The Kansas Board of Nursing may require an applicant for licensure for the following positions to be fingerprinted and submit to a state and national criminal history record check:

- Professional nurse.
- Practical nurse.
- Mental health technician.

(*Kan. Stat. § 74-1112(a)*).

The fingerprints are used to identify the applicant and to determine whether the applicant has a record of criminal history in Kansas or other jurisdictions. The board of nursing is authorized to submit the fingerprints to the Kansas Bureau of Investigation and the Federal Bureau of Investigation for a state and national criminal history record check. The Board of Nursing may use the information obtained from fingerprinting and the applicant's criminal history for purposes of verifying the identification of any applicant and in the official determination of character and fitness of the applicant for any of the above Kansas licensures.

(*Kan. Stat. § 74-1112(a)*).

Covered Employers

The statute applies to individual applicants for nursing license in Kansas and not to any employers (*Kan. Stat. § 74-1112 (a)*).

Covered Employees

Any employee who wishes to be licensed by the Kansas Board of Nursing is subject to this statute.

Private Right of Action

The statute does not provide a private right of action.

State Agency

Local and state law enforcement agencies are responsible for assisting the Kansas Board of Nursing in taking and processing applicants' fingerprints. These agencies are directed to release all records of adult convictions and nonconvictions in any state or country to the Kansas Board of Nursing. (*Kan. Stat. § 74-1112(b)*).

NON-CRIMINAL BACKGROUND CHECK LAW

2. For each law identified in Question 1 addressing non-criminal background checks, list the key terms of art used and their definitions.

Fair Credit Reporting: Kan. Stat. § 50-701

Person. Any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

Consumer. An individual.

Consumer report. Assuming the following is used or expected to be used or collected to be used as a factor in establishing the consumer's eligibility for any purpose authorized under *Kan. Stat. § 50-703*, including employment, any written, oral, or other communication of any information by a consumer reporting agency on a consumer's:

- Credit worthiness.
- Credit standing.
- Credit capacity.
- Character.
- General reputation.

- Personal characteristics.
- Mode of living.

The term does not include:

- Any report containing information solely as to transactions or experiences between the consumer and the person making the report.
- Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device.
- Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys that decision with respect to such request. This assumes the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under *Kan. Stat. § 50-714*.

Investigative Consumer Report

A consumer report or portion in which information on a consumer's character, general reputation, personal characteristics or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer, or with others with whom the consumer is acquainted or who may have knowledge concerning any such items of information. However, this information must not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

Consumer Reporting Agency

Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers to furnish consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

File

When used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

Employment Purposes

When used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

Medical Information

Information or records obtained, with the consent of the individual to whom it relates, from any of the following:

- licensed physicians or medical practitioners;
- hospitals;

- clinics; or
- other medical or medically related facilities.

Clear and Proper Identification

Information generally deemed sufficient to identify a person.

Security Freeze

A notice placed on a consumer report, at the request of the consumer and subject to certain exceptions, that prohibits a consumer reporting agency from releasing the consumer's consumer report or credit score relating to the extension of credit.

(*Kan. Stat. § 50-702*.)

3. For each law identified in Question 1 addressing non-criminal background checks, please describe potential penalties for violations of the law.

An employer that willfully fails to comply with *Kan. Stat. § 50-701 to 50-722*, with respect to any consumer is liable to that consumer for:

- Any actual damages sustained by the consumer as a result of the failure.
- The amount of punitive damages the court may allow.

In the case of any successful action to enforce any liability under this section, the costs of the action and reasonable attorney's fees as determined by the court.

An employer that negligently fails to comply with *Kan. Stat. §§ 50-701 to 50-722*, with respect to any consumer is liable to that consumer for:

Any actual damages sustained by the consumer as a result of the failure.

In the case of any successful action to enforce any liability under this section, the costs of the action and reasonable attorney's fees determined by the court.

4. For each law identified in Question 1 addressing non-criminal background checks, please describe the employers' legal obligations, including obligations to provide notice to applicants or employees.

An employer may not seek to or have an investigative consumer report prepared unless it is clearly and accurately disclosed to the consumer.

Kan. Stat. § 50-701 does not specifically address employers conducting their own background checks using internal resources, though it is likely that a court would view internal interviews as an investigative consumer report under the statute.



If an employer denies employment based on a consumer report, the employer must advise the consumer of its consideration of the consumer report and of the consumer reporting agency (name and address) making the report. (*Kan. Stat. § 50-714.*)

5. For any law identified in Question 1 that functions as the state equivalent of the federal Fair Credit Reporting Act, please describe any significant differences between the state and federal law.

Unlike the *Fair Credit Reporting Act* (www.practicallaw.com/4-502-8855), Kansas law provides that a consumer report or investigative consumer report may not include information on bankruptcies older than 14 years. Further, a consumer report or investigative consumer report may not include information on suits, judgments, tax liens, accounts in collection or criminal records older than 7 years, unless the applicant or employee is expected to receive a salary that would reasonably exceed \$20,000. (*Kan. Stat. § 50-704.*)

CRIMINAL BACKGROUND CHECK LAW

6. For each law identified in Question 1 addressing criminal background checks, please identify the law and describe:

- The key terms of art.
- The potential penalties for violations.

Criminal Records Background Check, Generally: *Kan. Stat. § 22-4701 et seq.; Kan. Admin. Reg. § 10-12-1*

Terms of Art

Key terms of art include:

Criminal history record information. All data initiated or collected by a criminal justice agency on a person pertaining to a reportable event, and any supporting documentation. Criminal history record information does not include:

- Data contained in intelligence or investigatory files or police work product records used solely for police investigation purposes.
- Wanted posters, police blotter entries, court records of public judicial proceedings or published court opinions.
- Data pertaining to violations of the traffic laws of the state or any other traffic law or ordinance, other than vehicular homicide.
- Pre-sentence investigation and other reports prepared for use by a court in the exercise of criminal jurisdiction or by the governor in the exercise of the power of pardon, reprieve or commutation.

Penalties. Any person violating the provisions of this section is guilty of a class A misdemeanor.

Background Checks pursuant to the Kansas Adult Care Home Act: *Kan. Stat. § 39-970 et seq.; Kan. Admin. Reg. § 26-41-102*

Terms of Art

Key terms of art include:

Adult Care Home. Any classifications of adult care homes required to be licensed by the Secretary of Aging, including:

- Nursing facility.
- Nursing facility for mental health.
- Intermediate care facility for the mentally retarded.
- Assisted living facility.
- Residential health care facility.
- Home plus.
- Boarding care home.
- Adult day care facility.

(*Kan. Stat. § 39-923(1).*)

The above terms are also defined under *Kan. Stat. § 39-923.*

Penalties

An employer that violates this law may be subject to civil damages if the violation was not made in good faith. Releasing criminal records unlawfully is an unclassified misdemeanor punishable by a fine of \$100.

Background Checks Pursuant to the Kansas Home Health Licensure Law: *Kan. Stat. § 65-5117*

Terms of Art

Key terms of art include:

Home Health Agency. A public or private agency or organization, or a subdivision or subunit of that agency or organization that, for a fee, provides one or more home health services at the residence of a patient. This term of art does not include:

- Local health departments that are not federally certified home health agencies.
- Durable medical equipment companies that provide home health services by use of specialized equipment.
- Independent living agencies.
- The department of social and rehabilitation services.
- The department of health and environment.

(*Kan. Stat. § 65-5101.*)

Home Health Services. Any of the following services provided at the residence of the patient on a full-time, part-time or intermittent basis:

- Nursing.
- Physical therapy.

- Speech therapy.
- Nutritional or dietetic consulting.
- Occupational therapy.
- Respiratory therapy.
- Home health aid.
- Attendant care services.
- Medical social service.

(*Kan. Stat. § 65-5101.*)

Penalties

An employer that violates this law may be subject to civil damages if the violation was not made in good faith. Releasing criminal records unlawfully is an unclassified misdemeanor punishable by a fine of \$100. (*Kan. Stat. § 65-5117(f)(5).*)

Background Checks for Nurses: Kan. Stat. § 74-1106, Kan. Stat. § 74-1112

Terms of Art

There are no definitions or terms of art defined. For full discussion of the statute, see the answer to Question 1.

Penalties

There are no penalties defined.

7. For any law identified in Question 1 addressing criminal background checks, please describe:

- The kind of criminal background information into which an employer may inquire, including obligations to provide notice to applicants or employees.
- The kind of criminal background information into which an employer may not inquire (for example, expunged or juvenile records).
- Any other circumstances under which a criminal background inquiry may be limited (for example, where there is no business necessity).
- Any additional requirements under the laws identified in Question 1.

Criminal Records Background Check, Generally: Kan. Stat. § 22-4701, 22-4710; Kan. Admin. Reg. § 10-12-1

Authorized Inquiry

The general public may obtain the following types of adult conviction criminal history information:

- Court convictions for violations of Kansas law that are felonies or class A or class B misdemeanors. Class C misdemeanor assaults are also part of the database.
- Court convictions for violations of municipal ordinances or county resolutions that are equivalent to class A or class B misdemeanors or class C misdemeanor assaults under state statute.

- Confinements in Kansas Department of Corrections facilities.
- Records of arrest within the past 12 months when the records of disposition have not yet been received.
- Active diversions that have not yet been successfully completed.

Unauthorized Inquiry

The Kansas Bureau of Investigation will not release the following types of information:

- Arrests that have been disposed and that did not result in a court conviction.
- Successfully completed diversions.
- Expunged arrests, prosecutions, convictions and confinements.
- Records of arrest that occurred 12 months ago or longer, when the records of disposition have not yet been received.
- Juvenile offender records.

Other Limitations

There are no other limitations for criminal background inquiries.

8. Please describe how an employer can collect criminal background information and what an employer can do with criminal background information, including:

- Whether and under what circumstances an application for employment in your state can include a question about convictions or arrests.
- Whether and under what circumstances criminal convictions or arrests can be used as a bar to employment generally.
- Whether and under what circumstances criminal convictions or arrests can be used as a bar to employment in specific jobs (such as child care), including under any or all laws identified in Question 1.

Questions in Application

Criminal Records Background Check, Generally: Kan. Stat. § 22-4701 et seq.; Kan. Admin. Reg. § 10-12-1.

Employers may collect criminal background information relating to whether the applicant has been convicted of or plead guilty to a felony or misdemeanor in any jurisdiction (*Kan. Stat. § 22-4701*).

Bar to Employment

Criminal Records Background Check, Generally: Kan. Stat. § 22-4701; Kan. Admin. Reg. § 10-12-1

The existence of a criminal record cannot be used as an automatic bar for employment. (Kansas Human Rights Commission Guidance).

Employers are not liable for any employment decision based on

criminal history records information, if the information reasonably bears on either of the:

- Employee's or applicant's trustworthiness.
- Safety or well-being of the employer's employees or customers. (*Kan. Stat. § 22-4710(f)*.)

Bar to Employment in Specific Jobs

Background Checks Pursuant to the Kansas Adult Care Home Act: *Kan. Stat. § 39-970*; *Kan. Admin. Reg. § 26-41-102*

Criminal convictions for the following crimes are a bar to employment in an adult care home:

- Capital murder (*Kan. Stat. § 21-3439* prior to its repeal or *Kan. Stat. § 21-5401*).
- First degree murder (*Kan. Stat. § 21-3401* prior to its repeal or *Kan. Stat. § 21-5402*).
- Second degree murder (*Kan. Stat. § 21-3402(a)* prior to its repeal or *Kan. Stat. § 21-5403(a)*).
- Voluntary manslaughter (*Kan. Stat. § 21-3403* prior to its repeal or *Kan. Stat. § 21-5404*).
- Assisting suicide (*Kan. Stat. § 21-3406* prior to its repeal or *Kan. Stat. § 21-5407*).
- Mistreatment of a dependent adult (*Kan. Stat. § 21-3437* prior to its repeal or *Kan. Stat. § 21-5417*).
- Rape (*Kan. Stat. § 21-3502* prior to its repeal or *Kan. Stat. § 21-5503*).
- Indecent liberties with a child (*Kan. Stat. § 21-3503* prior to its repeal or *Kan. Stat. § 21-5506(a)*).
- Aggravated indecent liberties with a child (*Kan. Stat. § 21-3504* prior to its repeal or *Kan. Stat. § 21-5506(b)*).
- Aggravated criminal sodomy (*Kan. Stat. § 21-3506* prior to its repeal or *Kan. Stat. § 21-5504(b)*).
- Indecent solicitation of a child (*Kan. Stat. § 21-3510* prior to its repeal or *Kan. Stat. § 21-5508(a)*).
- Aggravated indecent solicitation of a child (*Kan. Stat. § 21-3511* prior to its repeal or *Kan. Stat. § 21-5508(b)*).
- Sexual exploitation of a child (*Kan. Stat. § 21-3516* prior to its repeal or *Kan. Stat. § 21-5510*).
- Sexual battery (*Kan. Stat. § 21-3517* prior to its repeal or *Kan. Stat. § 21-5505(a)*).
- Aggravated sexual battery (*Kan. Stat. § 21-3518* prior to its repeal or *§ 21-5505(b)*).
- An attempt to commit, conspiracy to commit, or criminal solicitation of any of the crimes listed in this subsection (a)(1) or similar statutes of other states or the federal government (*Kan. Stat. § 39-970(a)(1)*).

Background Checks under the Kansas Home Health Licensure Law

Criminal convictions for the following are a bar to employment in

an adult care home:

- Capital murder (*Kan. Stat. § 21-3439* prior to its repeal or *Kan. Stat. § 21-5401*).
- First degree murder (*Kan. Stat. § 21-3401* prior to its repeal or *Kan. Stat. § 21-5402*).
- Second degree murder (*Kan. Stat. § 21-3402(a)* prior to its repeal or *Kan. Stat. § 21-5403(a)*).
- Voluntary manslaughter (*Kan. Stat. § 21-3403* prior to its repeal or *Kan. Stat. § 21-5404*).
- Assisting suicide (*Kan. Stat. § 21-3406* prior to its repeal or *Kan. Stat. § 21-5407*).
- Mistreatment of a dependent adult (*Kan. Stat. § 21-3437* prior to its repeal or *Kan. Stat. § 21-5417*).
- Rape (*Kan. Stat. § 21-3502* prior to its repeal or *Kan. Stat. § 21-5503*).
- Indecent liberties with a child (*Kan. Stat. § 21-3503* prior to its repeal or *Kan. Stat. § 21-5506(a)*).
- Aggravated indecent liberties with a child (*Kan. Stat. § 21-3504* prior to its repeal or *Kan. Stat. § 21-5506(b)*).
- Aggravated criminal sodomy (*Kan. Stat. § 21-3506* prior to its repeal or *Kan. Stat. § 21-5504(b)*).
- Indecent solicitation of a child (*Kan. Stat. § 21-3510* prior to its repeal or *Kan. Stat. § 21-5508(a)*).
- Aggravated indecent solicitation of a child (*Kan. Stat. § 21-3511* prior to its repeal or *Kan. Stat. § 21-5508(b)*).
- Sexual exploitation of a child (*Kan. Stat. § 21-3516* prior to its repeal or *Kan. Stat. § 21-5510*).
- Sexual battery (*Kan. Stat. § 21-3517* prior to its repeal or *Kan. Stat. § 21-5505(a)*).
- Aggravated sexual battery (*Kan. Stat. § 21-3518* prior to its repeal or *21-5505(b)*).
- An attempt to commit, conspiracy to commit, or criminal solicitation of any of the crimes listed in this subsection (a)(1) or similar statutes of other states or the federal government. (*Kan. Stat. § 65-5771(a)(1)*.)

9. If your state has a statute or regulation protecting the employment rights of persons with criminal records, please identify the statute or regulation and briefly describe the rights it confers.

It is unlawful for an employer or prospective employer to require an employee or applicant to obtain his criminal record history information and provide it to the employer or prospective employer to qualify for employment (*Kan. Stat. § 22-4701(a)*).

EMPLOYER LIABILITY

10. Have courts in your jurisdiction recognized privacy claims brought by applicants or employees as a result of an employer's conducting a background check? If so, please name any relevant cases and briefly describe their holdings.

No Kansas case law recognizes an actionable privacy right in these circumstances.

11. Have courts in your jurisdiction recognized negligent hiring, negligent supervising or negligent retention claims brought by employees, customers or others associated with the employer as a result of allegedly flawed background checks? If so, please name any relevant cases and briefly describe their holdings.

No Kansas court has recognized a cause of action for conducting allegedly flawed background checks.

STATE LAW REGARDING REFERENCES

12. If your state has any law governing employment references, please identify that law and:

- Describe any requirements for obtaining references for employees or applicants.
- Describe any requirements for giving references for employees or former employees (including any provision insulating employers from or exposing employers to liability because of references given).

Obtaining References

No Kansas statute exists regarding requirements for obtaining references for employees or applicants, other than those identified in *Kan. Stat. § 50-701* generally.

Giving References

Unless otherwise provided by law, an employer has absolute immunity from civil liability for disclosing information about a current or former employee to a prospective employer for the following information:

- Date of employment.
- Pay level.
- Job description and duties.
- Wage history.

(*Kan. Stat. § 44-119(a)(b).*)

Employers also enjoy absolute immunity when they respond in writing to a written request concerning a current or former employee from a prospective employer for disclosure of the following information:

- Written employee evaluations conducted prior to the employee's separation from the employer (and when the employer provides the employee a copy on request).
- Whether the employee was voluntarily or involuntarily terminated and the reasons for the separation.

(*Kan. Stat. § 44-119(a)(c).*)

Employers have qualified immunity with regard to all other disclosures to prospective employers of the current or former employee. Qualified immunity is defined by Kansas case law as statements made in good faith. To overcome the presumption that a statement was made in good faith, the employee must show that false statements were made with actual malice, or with "actual evil-mindedness or specific intent to injure." *Turner v. Halliburton Co.*, 240 Kan. 1, 8, 722 P.2d 1106 (1986).

SOCIAL NETWORKING FOR BACKGROUND CHECKS

13. Are there statutes, regulations, cases or any other guidance in your state on an employer's use of social networking or other online searches of applicants or employees for employment background check purposes? If so, please briefly characterize them.

There are no applicable laws governing social networking.

ADDITIONAL RESOURCES

14. If the state agency charged with oversight of background check or references laws in your state has useful on-line guidance or forms, please provide the link for those resources and a brief description of them.

The Kansas Bureau of Investigation has useful online guidance.

15. Please describe any other significant background check or reference laws, cases or requirements specific to your state not otherwise addressed in this survey.

Certain individuals employed to work in a lottery gaming facility or racetrack gaming facility are subject to background checks (see the Kansas Expanded Lottery Act, *Kan. Stat. § 74-8751*, *Kan. Stat. § 74-8763*).