

HOUSE BILL No. 2220

By Representatives Whipple, Alcalá, Ballard, Bridges, Burroughs, Carmichael, Clayton, Curtis, Dierks, Henderson, Highberger, Houston, Kuether, Lane, Lusk, Ousley, Rooker, Tietze, Trimmer, Victors, Ward and Wolfe Moore

2-3

1 AN ACT concerning teachers; relating to contracts; amending K.S.A. 2014
2 Supp. 72-5436, 72-5437, 72-5438, 72-5439 and 72-5445 and repealing
3 the existing sections.
4

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

6 Section 1. K.S.A. 2014 Supp. 72-5436 is hereby amended to read as
7 follows: 72-5436. As used in ~~this act~~ K.S.A. 72-5436 through 72-5446, and
8 amendments thereto: (a) "Teacher" means *any professional employee who*
9 *is required to hold a certificate to teach in any school district and any*
10 *teacher or instructor in any technical college, the institute of technology at*
11 *Washburn university or community college. The term "teacher" does not*
12 *include within its meaning any supervisors, principals, superintendents or*
13 *any person employed under the authority of K.S.A. 72-8202b, and*
14 *amendments thereto, or any persons employed in an administrative*
15 *capacity by any technical college, the institute of technology at Washburn*
16 *university or community college.*

17 (b) "Board" means *the board of education of any school district, the*
18 *governing body of any technical college or the institute of technology at*
19 *Washburn university, and the board of trustees of any community college.*

20 Sec. 2. K.S.A. 2014 Supp. 72-5437 is hereby amended to read as
21 follows: 72-5437. (a) All contracts of employment of teachers, except
22 contracts entered into under the provisions of K.S.A. 72-5412a, and
23 amendments thereto, shall be deemed to continue for the next succeeding
24 school year unless written notice of termination or nonrenewal is served as
25 provided in this subsection. Written notice to terminate a contract may be
26 served by a board upon any teacher prior to the time the contract has been
27 completed, and written notice of intention to nonrenew a contract shall be
28 served by a board upon any teacher on or before the third Friday in May. A
29 teacher shall give written notice to a board that the teacher does not desire
30 continuation of a contract on or before the 14th calendar day following the
31 third Friday in May or, if applicable, not later than 15 days after the
32 issuance of a unilateral contract as authorized by K.S.A. 72-5428a, and
33 amendments thereto, whichever is the later date.

34 (b) Terms of a contract may be changed at any time by mutual

1 consent of both a teacher and a board.

2 (c) As used in this section:

3 ~~(1) "Board of education" or "board" means the board of education of~~
4 ~~any school district, the governing body of any technical college or the~~
5 ~~institute of technology at Washburn university, and the board of trustees of~~
6 ~~any community college.~~

7 ~~(2) "Professional employee" means any person employed by a board~~
8 ~~of education in a position which requires a certificate issued by the state~~
9 ~~board of education or employed by a board of education in a professional,~~
10 ~~educational or instructional capacity.~~

11 ~~(3)-(A) "Teacher" means~~

12 ~~any professional employee who is required to hold a certificate to teach~~
13 ~~in any school district, and~~

14 ~~any teacher or instructor in any technical college, the institute of~~
15 ~~technology at Washburn university or any community college, including~~
16 ~~includes any professional employee who is a retirant from school~~
17 ~~employment of the Kansas public employees retirement system.~~

18 ~~(B) The term "teacher" does not include any supervisors, principals or~~
19 ~~superintendents or any persons employed under the authority of K.S.A. 72-~~
20 ~~8202b, and amendments thereto, or any persons employed in any~~
21 ~~administrative capacity by any technical college, the institute of~~
22 ~~technology at Washburn university or any community college.~~

23 Sec. 3. K.S.A. 2014 Supp. 72-5438 is hereby amended to read as
24 follows: 72-5438. (a) Whenever a teacher is given written notice of
25 intention by a board to not renew or to terminate the contract of the teacher
26 as provided in K.S.A. 72-5437, and amendments thereto, the written notice
27 of the proposed nonrenewal or termination shall include: (1) A statement
28 of the reasons for the proposed nonrenewal or termination; and (2) a
29 statement that the teacher may have the matter heard by a hearing officer
30 upon written request filed with *the clerk of the board of education* or the
31 board of control or the secretary of the board of trustees within 15 calendar
32 days from the date of such notice of nonrenewal or termination.

33 (b) Within 10 calendar days after the filing of any written request of a
34 teacher to be heard as provided in subsection (a), the board shall notify the
35 commissioner of education that a list of qualified hearing officers is
36 required. Such notice shall contain the mailing address of the teacher.
37 Within 10 days after receipt of notification from the board, the
38 commissioner shall provide to the board and to the teacher, a list of five
39 randomly selected, qualified hearing officers.

40 (c) Within five days after receiving the list from the commissioner,
41 each party shall eliminate two names from the list, and the remaining
42 individual on the list shall serve as hearing officer. In the process of
43 elimination, each party shall eliminate no more than one name at a time,

1 the parties alternating after each name has been eliminated. The first name
2 to be eliminated shall be chosen by the teacher within five days after the
3 teacher receives the list. The process of elimination shall be completed
4 within five days thereafter.

5 (d) Either party may request that one new list be provided within five
6 days after receiving the list. If such a request is made, the party making the
7 request shall notify the commissioner and the other party, and the
8 commissioner shall generate a new list and distribute it to the parties in the
9 same manner as the original list.

10 (e) In lieu of using the process provided in subsections (b) and (c), if
11 the parties agree, they may make a request to the American arbitration
12 association for an arbitrator to serve as the hearing officer. Any party
13 desiring to use this alternative procedure shall so notify the other party in
14 the notice required under subsection (a). If the parties agree to use this
15 procedure, the parties shall make a joint request to the American
16 arbitration association for a hearing officer within 10 days after the teacher
17 files a request for a hearing. If the parties choose to use this procedure, the
18 parties shall each pay one-half of the cost of the arbitrator and of the
19 arbitrator's expenses.

20 (f) The commissioner of education shall compile and maintain a list
21 of hearing officers comprised of residents of this state who are attorneys at
22 law. Such list shall include a statement of the qualifications of each
23 hearing officer.

24 (g) Attorneys interested in serving as hearing officers under the
25 provisions of this act shall submit an application to the commissioner of
26 education. The commissioner shall determine if the applicant is eligible to
27 serve as a hearing officer pursuant to the provisions of subsection (h).

28 (h) An attorney shall be eligible for appointment to the list if the
29 attorney has: (1) Completed a minimum of 10 hours of continuing legal
30 education credit in the area of education law, due process, administrative
31 law or employment law within the past five years; or (2) previously served
32 as the chairperson of a due process hearing committee prior to the effective
33 date of this act. An attorney shall not be eligible for appointment to the list
34 if the attorney has been employed to represent a board or a teacher in a due
35 process hearing within the past five years.

36 Sec. 4. K.S.A. 2014 Supp. 72-5439 is hereby amended to read as
37 follows: 72-5439. The hearing provided for under K.S.A. 72-5438, and
38 amendments thereto, shall commence within 45 calendar days after the
39 hearing officer is selected unless the hearing officer grants an extension of
40 time. The hearing shall afford procedural due process, including the
41 following:

42 (a) The right of each party to have counsel of such party's own choice
43 present and to receive the advice of such counsel or other person whom

1 such party may select;

2 (b) the right of each party or such party's counsel to cross-examine
3 any person who provides information for the consideration of the hearing
4 officer, except those persons whose testimony is presented by affidavit;

5 (c) the right of each party to present such party's own witnesses in
6 person, or their testimony by affidavit or deposition, except that testimony
7 of a witness by affidavit may be presented only if such witness lives more
8 than 100 miles from the location of *the unified school district office*, the
9 technical college, institute of technology at Washburn university or
10 community college, or is absent from the state, or is unable to appear
11 because of age, illness, infirmity or imprisonment. When testimony is
12 presented by affidavit the same shall be served upon *the clerk of the board*
13 *of education* or the board of control, the secretary of the board of trustees
14 or the agent of the board and upon the teacher in person or by first-class
15 mail to the address of the teacher which is on file with the board not less
16 than 10 calendar days prior to presentation to the hearing officer;

17 (d) the right of the teacher to testify in the teacher's own behalf and
18 give reasons for the teacher's conduct, and the right of the board to present
19 its testimony through such persons as the board may call to testify in its
20 behalf and to give reasons for its actions, rulings or policies;

21 (e) the right of the parties to have an orderly hearing; and

22 (f) the right of the teacher to a fair and impartial decision based on
23 substantial evidence.

24 Sec. 5. K.S.A. 2014 Supp. 72-5445 is hereby amended to read as
25 follows: 72-5445. (a) *Subject to the provisions of (d) and (e)*, the
26 provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto,
27 apply only to: (1) Teachers who have completed not less than three
28 consecutive years of employment, and been offered a fourth contract, in
29 *the school district*, the technical college, institute of technology at
30 Washburn university or community college by which any such teacher is
31 currently employed; and (2) teachers who have completed not less than
32 two consecutive years of employment, and been offered a third contract, in
33 *the school district*, technical college, institute of technology at Washburn
34 university or community college by which any such teacher is currently
35 employed if at any time prior to the current employment the teacher has
36 completed the years of employment requirement of paragraph (1) of this
37 subsection in any *school district*, technical college, the institute of
38 technology at Washburn university or community college in this state.

39 (b) Any board may waive, at any time, the years of employment
40 requirements of subsection (a)(1) for any teacher employed by it.

41 (c) The provisions of this subsection are subject to the provisions of
42 K.S.A. 72-5446, and amendments thereto.

43 (d) *The provisions of K.S.A. 72-5438 through 72-5443, and*

1 amendments thereto, do not apply to any teacher whose license has been
2 non-renewed or revoked by the state board of education because the
3 teacher has:

4 (1) Been convicted of a felony under K.S.A. 2010 Supp. 21-36a01
5 through 21-36a17, prior to their transfer, or article 57 of chapter 21 of the
6 Kansas Statutes Annotated, and amendments thereto, or any felony
7 violation of any provision of the uniform controlled substances act prior to
8 July 1, 2009;

9 (2) been convicted of a felony described in any section of article 34 of
10 chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or
11 article 54 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014
12 Supp. 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto, or
13 an act described in K.S.A. 21-3412, prior to its repeal, or K.S.A. 2014
14 Supp. 21-5413(a), or K.S.A. 21-3412a, prior to its repeal, or K.S.A. 2014
15 Supp. 21-5414, and amendments thereto, if the victim is a minor or
16 student;

17 (3) been convicted of a felony described in any section of article 35 of
18 chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or
19 article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014
20 Supp. 21-6419 through 21-6421, and amendments thereto, or has been
21 convicted of an act described in K.S.A. 21-3517, prior to its repeal, or
22 K.S.A. 2014 Supp. 21-5505(a), and amendments thereto, if the victim is a
23 minor or student;

24 (4) been convicted of any act described in any section of article 36 of
25 chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or
26 article 56 of chapter 21 of the Kansas Statutes Annotated, and
27 amendments thereto;

28 (5) been convicted of a felony described in article 37 of chapter 21 of
29 the Kansas Statutes Annotated, prior to their repeal, or article 58 of
30 chapter 21 of the Kansas Statutes Annotated or K.S.A. 2014 Supp. 21-
31 6412(a)(6), and amendments thereto;

32 (6) been convicted of an attempt under K.S.A. 21-3301, prior to its
33 repeal, or K.S.A. 2014 Supp. 21-5301, and amendments thereto, to commit
34 any act specified in this subsection;

35 (7) been convicted of any act which is described in K.S.A. 21-4301,
36 21-4301a or 21-4301c, prior to their repeal, or K.S.A. 2014 Supp. 21-6401
37 or 21-6402, and amendments thereto;

38 (8) been convicted in another state or by the federal government of
39 an act similar to any act described in this subsection; or

40 (9) has entered into a criminal diversion agreement after having been
41 charged with any offense described in this subsection.

42 (e)(1) The provisions of this subsection shall apply to a teacher
43 described in subsection (a)(1). After a teacher has completed at least three

1 consecutive years of employment and if the requirements of subsection (b)
2 have been satisfied, the board of education of the school district and the
3 teacher may enter into an agreement under which the school district may
4 offer the teacher a contract of employment for a fourth year or a fourth
5 and fifth year and the teacher agrees that the provisions of K.S.A. 72-5438
6 through 72-5443, and amendments thereto, shall not apply to such teacher
7 unless a sixth contract is offered to the teacher.

8 (2) A school district offering a contract pursuant to this subsection
9 shall prepare a written plan of assistance for the teacher being offered
10 such contract and shall submit such plan of assistance to the teacher at
11 the time such contract is offered. Prior to signing or rejecting a contract
12 the teacher shall have at least 48 hours from the time the contract is
13 offered to review and consider the contract and the plan of assistance. The
14 plan of assistance shall be written to address those areas of teacher
15 performance where the school district believes the teacher's performance
16 is less than satisfactory.

17 (3) If an agreement under this subsection is reached by the teacher
18 and the school district, then the school district shall file annually a report
19 with the state board of education which shall contain the following
20 information:

21 (A) The number of teachers that were offered a contract by the school
22 district under subsection (a)(1);

23 (B) the number of teachers that were offered an agreement by the
24 school district under this subsection;

25 (C) the number of teachers that accepted the agreement under this
26 subsection; and

27 (D) the number of teachers that were not offered a contract under
28 subsection (a)(1) or an agreement under this subsection by the school
29 district.

30 (4) In addition to the reports required under paragraph (3), each
31 school district shall report annually the number of contracts issued under
32 subsection (a), which result in the application of K.S.A. 72-5438 through
33 72-5443, and amendments thereto, and the year of employment for which
34 such contracts are issued to the state board of education, the senate
35 committee on education and the house of representatives committee on
36 education.

37 (5) The provisions of this subsection shall expire on July 1, 2016.

38 Sec. 6. K.S.A. 2014 Supp. 72-5436, 72-5437, 72-5438, 72-5439 and
39 72-5445 are hereby repealed.

40 Sec. 7. This act shall take effect and be in force from and after its
41 publication in the statute book.