

# HOUSE BILL No. 2151

By Committee on Appropriations

1-24

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AN ACT concerning certain providers of care services; employment of persons by such providers; amending K.S.A. 39-970 and K.S.A. 2000 Supp. 65-5117 and repealing the existing sections.

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

Section 1. K.S.A. 39-970 is hereby amended to read as follows: 39-970. (a) (1) ~~On and after July 1, 1998,~~ No person shall knowingly operate an adult care home if, in the adult care home, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of: Capital murder, pursuant to K.S.A. 21-3439 and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401 and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510 and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments thereto, *an attempt to commit any of the crimes enumerated in this section, pursuant to K.S.A. 21-3301 and amendments thereto, a conspiracy to commit any of the crimes enumerated in this section, pursuant to K.S.A. 21-3302 and amendments thereto, or criminal solicitation of any of the crimes enumerated in this section, pursuant to K.S.A. 21-3303 and amendments thereto,* or similar statutes of other states or the federal government.

(2) On and after July 1, 1998, a person operating an adult care home

1 may employ an applicant who has been convicted of any of the following  
2 if five or more years have elapsed since the applicant satisfied the sen-  
3 tence imposed or was discharged from probation, a community correc-  
4 tional services program, parole, postrelease supervision, conditional re-  
5 lease or a suspended sentence; or if five or more years have elapsed since  
6 the applicant has been finally discharged from the custody of the com-  
7 missioner of juvenile justice or from probation or has been adjudicated a  
8 juvenile offender, whichever time is longer: A felony conviction for a  
9 crime which is described in: (A) article 34 of chapter 21 of the Kansas  
10 Statutes Annotated and amendments thereto, except those crimes listed  
11 in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas  
12 Statutes Annotated and amendments thereto, except those crimes listed  
13 in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) a  
14 conviction of ~~an attempt under K.S.A. 21-3301 and amendments thereto~~  
15 ~~to commit any act listed in this subsection or subsection (a)(1) an attempt~~  
16 ~~to commit any of the crimes enumerated in this section under K.S.A. 21-~~  
17 ~~3301 and amendments thereto, a conviction of a conspiracy to commit~~  
18 ~~any of the crimes enumerated in this section under K.S.A. 21-3302 and~~  
19 ~~amendments thereto, or a conviction of criminal solicitation of any of the~~  
20 ~~crimes enumerated in this section under K.S.A. 21-3303 and amendments~~  
21 ~~thereto; or (D) similar statutes of other states or the federal government.~~

22 (b) No person shall operate an adult care home if such person has  
23 been found to be a disabled person in need of a guardian or conservator,  
24 or both.

25 (c) The secretary of health and environment shall have access to any  
26 criminal history record information in the possession of the Kansas bureau  
27 of investigation concerning persons working in an adult care home. The  
28 secretary shall have access to these records for the purpose of determining  
29 whether or not the adult care home meets the requirements of this sec-  
30 tion. The Kansas bureau of investigation may charge to the department  
31 of health and environment a reasonable fee for providing criminal history  
32 record information under this subsection.

33 (d) For the purpose of complying with this section, the operator of  
34 an adult care home shall request from the department of health and  
35 environment information obtained by the secretary of health and envi-  
36 ronment which relates to a person who works in the adult care home, or  
37 is being considered for employment by the adult care home, for the pur-  
38 pose of determining whether such person is subject to the provision of  
39 this section. For the purpose of complying with this section, the operator  
40 of an adult care home shall receive from any employment agency which  
41 provides employees to work in the adult care home written certification  
42 that such employees are not prohibited from working in the adult care  
43 home under this section. For the purpose of complying with this section,

1 information relating to convictions and adjudications by the federal gov-  
2 ernment or to convictions and adjudications in states other than Kansas  
3 shall not be required until such time as the secretary of health and en-  
4 vironment determines the search for such information could reasonably  
5 be performed and the information obtained within a two-week period.  
6 For the purpose of complying with this section, a person who operates  
7 an adult care home may hire an applicant for employment on a conditional  
8 basis pending the results from the department of health and environment  
9 of a request for information under this subsection. No adult care home,  
10 the operator or employees of an adult care home or an employment  
11 agency, or the operator or employees of an employment agency, shall be  
12 liable for civil damages resulting from any decision to employ, to refuse  
13 to employ or to discharge from employment any person based on such  
14 adult care home's compliance with the provisions of this section if such  
15 adult care home or employment agency acts in good faith to comply with  
16 this section.

17 (e) The secretary of health and environment shall charge each person  
18 requesting information under this section a fee equal to cost, not to ex-  
19 ceed \$10, for each name about which an information request has been  
20 submitted to the department under this section.

21 (f) No person who works for an adult care home and who is currently  
22 licensed or registered by an agency of this state to provide professional  
23 services in the state and who provides such services as part of the work  
24 which such person performs for the adult care home shall be subject to  
25 the provisions of this section.

26 (g) A person who volunteers in an adult care home shall not be sub-  
27 ject to the provisions of this section because of such volunteer activity.

28 (h) No person who has been employed by the same adult care home  
29 for five consecutive years immediately prior to the effective date of this  
30 act shall be subject to the provisions of this section while employed by  
31 such adult care home.

32 (i) The operator of an adult care home shall not be required under  
33 this section to conduct a background check on an applicant for employ-  
34 ment with the adult care home if the applicant has been the subject of a  
35 background check under this act within one year prior to the application  
36 for employment with the adult care home. The operator of an adult care  
37 home where the applicant was the subject of such background check may  
38 release a copy of such background check to the operator of an adult care  
39 home where the applicant is currently applying.

40 (j) No person who is in the custody of the secretary of corrections  
41 and who provides services, under direct supervision in nonpatient areas,  
42 on the grounds or other areas designated by the superintendent of the  
43 Kansas soldiers' home or the Kansas veterans' home shall be subject to

1 the provisions of this section while providing such services.

2 (k) This section shall be part of and supplemental to the adult care  
3 home licensure act.

4 Sec. 2. K.S.A. 2000 Supp. 65-5117 is hereby amended to read as  
5 follows: 65-5117. (a) (1) On and after July 1, 1998, no person shall know-  
6 ingly operate a home health agency if, for the home health agency, there  
7 works any person who has been convicted of or has been adjudicated a  
8 juvenile offender because of having committed an act which if done by  
9 an adult would constitute the commission of: Capital murder, pursuant  
10 to K.S.A. 21-3439 and amendments thereto, first degree murder, pur-  
11 suant to K.S.A. 21-3401 and amendments thereto, second degree murder,  
12 pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto,  
13 voluntary manslaughter, pursuant to K.S.A. 21-3403 and amendments  
14 thereto, assisting suicide, pursuant to K.S.A. 21-3406 and amendments  
15 thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437  
16 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amend-  
17 ments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503  
18 and amendments thereto, aggravated indecent liberties with a child, pur-  
19 suant to K.S.A. 21-3504 and amendments thereto, aggravated criminal  
20 sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent  
21 solicitation of a child, pursuant to K.S.A. 21-3510 and amendments  
22 thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-  
23 3511 and amendments thereto, sexual exploitation of a child, pursuant to  
24 K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to  
25 K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery,  
26 pursuant to K.S.A. 21-3518 and amendments thereto, *an attempt to com-  
27 mit any of the crimes enumerated in this section, pursuant to K.S.A. 21-  
28 3301 and amendments thereto, a conspiracy to commit any of the crimes  
29 enumerated in this section, pursuant to K.S.A. 21-3302 and amendments  
30 thereto, or criminal solicitation of any of the crimes enumerated in this  
31 section, pursuant to K.S.A. 21-3303 and amendments thereto, or similar  
32 statutes of other states or the federal government.*

33 (2) On and after July 1, 1998, a person operating a home health  
34 agency may employ an applicant who has been convicted of any of the  
35 following if five or more years have elapsed since the applicant satisfied  
36 the sentence imposed or was discharged from probation, a community  
37 correctional services program, parole, postrelease supervision, conditional  
38 release or a suspended sentence; or if five or more years have elapsed  
39 since the applicant has been finally discharged from the custody of the  
40 commissioner of juvenile justice or from probation or has been adjudi-  
41 cated a juvenile offender, whichever time is longer: A felony conviction  
42 for a crime which is described in: (A) article 34 of the Kansas Statutes  
43 Annotated and amendments thereto, except those crimes listed in sub-

1 section (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes  
2 Annotated and amendments thereto, except those crimes listed in sub-  
3 section (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) ~~a con-~~  
4 ~~vicition of an attempt under K.S.A. 21-3301 and amendments thereto to~~  
5 ~~commit any act listed in this subsection or subsection (a)(1) an attempt~~  
6 ~~to commit any of the crimes enumerated in this section under K.S.A. 21-~~  
7 ~~3301 and amendments thereto, a conviction of a conspiracy to commit~~  
8 ~~any of the crimes enumerated in this section under K.S.A. 21-3302 and~~  
9 ~~amendments thereto, or a conviction of criminal solicitation of any of the~~  
10 ~~crimes enumerated in this section under K.S.A. 21-3303 and amendments~~  
11 ~~thereto; or (D) similar statutes of other states or the federal government.~~

12 (b) No person shall operate a home health agency if such person has  
13 been found to be a disabled person in need of a guardian or conservator,  
14 or both.

15 (c) The secretary of health and environment shall have access to any  
16 criminal history record information in the possession of the Kansas bureau  
17 of investigation concerning persons working for a home health agency.  
18 The secretary shall have access to these records for the purpose of de-  
19 termining whether or not the home health agency meets the require-  
20 ments of this section. The Kansas bureau of investigation may charge to  
21 the department of health and environment a reasonable fee for providing  
22 criminal history record information under this subsection.

23 (d) For the purpose of complying with this section, the operator of a  
24 home health agency shall request from the department of health and  
25 environment information obtained by the secretary of health and envi-  
26 ronment which relates to a person who works for the home health agency  
27 or is being considered for employment by the home health agency, for  
28 the purpose of determining whether such person is subject to the pro-  
29 visions of this section. For the purpose of complying with this section,  
30 information relating to convictions and adjudications by the federal gov-  
31 ernment or to convictions and adjudications in states other than Kansas  
32 shall not be required until such time as the secretary of health and en-  
33 vironment determines the search for such information could reasonably  
34 be performed and the information obtained within a two-week period.  
35 For the purpose of complying with this section, a person who operates a  
36 home health agency may hire an applicant for employment on a condi-  
37 tional basis pending the results from the department of health and en-  
38 vironment of a request for information under this subsection. No home  
39 health agency, the operator or employees of a home health agency or an  
40 employment agency, or the operator or employees of an employment  
41 agency, which provides employees to work for the home health agency  
42 shall be liable for civil damages resulting from any decision to employ, to  
43 refuse to employ or to discharge from employment any person based on

1 such home health agency's compliance with the provisions of this section  
2 if such home health agency or employment agency acts in good faith to  
3 comply with this section.

4 (e) The secretary of health and environment shall charge each person  
5 requesting information under this section a fee equal to cost, not to ex-  
6 ceed \$10, for each name about which an information request has been  
7 submitted under this section.

8 (f) No person who works for a home health agency and who is cur-  
9 rently licensed or registered by an agency of this state to provide profes-  
10 sional services in this state and who provides such services as part of the  
11 work which such person performs for the home health agency shall be  
12 subject to the provisions of this section.

13 (g) A person who volunteers to assist a home health agency shall not  
14 be subject to the provisions of this section because of such volunteer  
15 activity.

16 (h) No person who has been employed by the same home health  
17 agency for five consecutive years immediately prior to the effective date  
18 of this act shall be subject to the requirements of this section while em-  
19 ployed by such home health agency.

20 (i) The operator of a home health agency shall not be required under  
21 this section to conduct a background check on an applicant for employ-  
22 ment with the home health agency if the applicant has been the subject  
23 of a background check under this act within one year prior to the appli-  
24 cation for employment with the home health agency. The operator of a  
25 home health agency where the applicant was the subject of such back-  
26 ground check may release a copy of such background check to the op-  
27 erator of a home health agency where the applicant is currently applying.

28 (j) This section shall be part of and supplemental to the provisions of  
29 article 51 of chapter 65 of the Kansas Statutes Annotated and acts amen-  
30 datory thereof or supplemental thereto.

31 Sec. 3. K.S.A. 39-970 and K.S.A. 2000 Supp. 65-5117 are hereby  
32 repealed.

33 Sec. 4. This act shall take effect and be in force from and after its  
34 publication in the statute book.

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