

1 **As Amended by House Committee**

2 *Session of 2001*

3
4 **HOUSE BILL No. 2154**

5
6 By Committee on Appropriations

7
8 1-24

9
10 AN ACT concerning providers of care services; employment of persons
11 by such providers; amending K.S.A. 39-970 and K.S.A. 2000 Supp. 65-
12 5117 and repealing the existing sections.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 39-970 is hereby amended to read as follows: 39-
16 970. (a) (1) ~~On and after July 1, 1998,~~ No person shall knowingly operate
17 an adult care home if, in the adult care home, there works any person
18 who has been convicted of or has been adjudicated a juvenile offender
19 because of having committed an act which if done by an adult would
20 constitute the commission of capital murder, pursuant to K.S.A. 21-3439
21 and amendments thereto, first degree murder, pursuant to K.S.A. 21-
22 3401 and amendments thereto, second degree murder, pursuant to sub-
23 section (a) of K.S.A. 21-3402 and amendments thereto, voluntary man-
24 slaughter, pursuant to K.S.A. 21-3403 and amendments thereto, assisting
25 suicide pursuant to K.S.A. 21-3406 and amendments thereto, mistreat-
26 ment of a dependent adult, pursuant to K.S.A. 21-3437 and amendments
27 thereto, rape, pursuant to K.S.A. 21-3502 and amendments thereto, in-
28 decent liberties with a child, pursuant to K.S.A. 21-3503 and amendments
29 thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-
30 3504 and amendments thereto, aggravated criminal sodomy, pursuant to
31 K.S.A. 21-3506 and amendments thereto, indecent solicitation of a child,
32 pursuant to K.S.A. 21-3510 and amendments thereto, aggravated inde-
33 cent solicitation of a child, pursuant to K.S.A. 21-3511 and amendments
34 thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516 and
35 amendments thereto, sexual battery, pursuant to K.S.A. 21-3517 and
36 amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-
37 3518 and amendments thereto, *an attempt to commit any of the crimes*
38 ~~enumerated herein~~ **listed in this subsection (a)(1)**, pursuant to K.S.A.
39 *21-3301 and amendments thereto, a conspiracy to commit any of the*
40 ~~crimes enumerated herein~~ **listed in this subsection (a)(1)**, pursuant to
41 *K.S.A. 21-3302 and amendments thereto, or criminal solicitation of any*
42 ~~of the crimes enumerated herein~~ **listed in this subsection (a)(1)**, pur-
43 ~~suant to K.S.A. 21-3303 and amendments thereto,~~ or similar statutes of

1 other states or the federal government.

2 (2) ~~On and after July 1, 1998,~~ A person operating an adult care home
3 may employ an applicant who has been convicted of any of the following
4 if five or more years have elapsed since the applicant satisfied the sen-
5 tence imposed or was discharged from probation, a community correc-
6 tional services program, parole, postrelease supervision, conditional re-
7 lease or a suspended sentence; or if five or more years have elapsed since
8 the applicant has been finally discharged from the custody of the com-
9 missioner of juvenile justice or from probation or has been adjudicated a
10 juvenile offender, whichever time is longer: A felony conviction for a
11 crime which is described in: (A) article 34 of chapter 21 of the Kansas
12 Statutes Annotated and amendments thereto, except those crimes listed
13 in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas
14 Statutes Annotated and amendments thereto, except those crimes listed
15 in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) a
16 conviction of an attempt under K.S.A. 21-3301 and amendments thereto
17 to commit any act listed in this subsection or subsection (a)(1); or ~~(D) an~~
18 ~~attempt to commit any of the crimes enumerated herein~~ **listed in this**
19 **subsection or subsection (a)(1), pursuant to K.S.A. 21-3301 and**
20 **amendments thereto; (D) a conspiracy to commit any of the crimes enu-**
21 **merated herein listed in this subsection or subsection (a)(1), pursuant**
22 **to K.S.A. 21-3302 and amendments thereto; (E) criminal solicitation of**
23 **any of the crimes listed in this subsection or subsection (a)(1), pur-**
24 **suant to K.S.A. 21-3303 and amendments thereto; or ~~(E)~~ (F)** similar
25 statutes of other states or the federal government.

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

29 (c) ~~(#)~~ The secretary of health and environment shall have access to
30 any criminal history record information in the possession of the Kansas
31 bureau of investigation ~~regarding felony convictions or adjudications of a~~
32 ~~juvenile offender which if committed by an adult would be a felony, con-~~
33 ~~victions under K.S.A. 21-3437 and 21-3517, and amendments~~
34 ~~thereto, and adjudications of a juvenile offender which if commit-~~
35 ~~ted by an adult would have been a felony conviction~~ concerning
36 persons working in an adult care home. The secretary shall have access
37 to these records for the purpose of determining whether or not the adult
38 care home meets the requirements of this section. The Kansas bureau of
39 investigation may charge to the department of health and environment a
40 reasonable fee for providing criminal history record information under
41 this subsection.

42 ~~(2) The operator of an adult care home shall be deemed in compliance~~
43 ~~with this section provided that the operator obtains the same or better~~

~~1 criminal history record information from a private contractor approved
2 by the Kansas bureau of investigation. If a private contractor determines
3 that a person is prohibited from working in an adult care home under
4 this section, the private contractor shall notify the department of health
5 and environment of such person's name and the reasons for such
6 determination.~~

7 (d) For the purpose of complying with this section, the operator of
8 an adult care home shall request ~~information regarding only felony con-
9 victions and adjudications of a juvenile offender which if committed by
10 an adult would have been a felony conviction~~ from the department of
11 health and environment ~~information obtained by the secretary of health
12 and environment, or from an approved private contractor,~~ **information
13 regarding only felony convictions, convictions under K.S.A. 21-
14 3437 and 21-3517, and amendments thereto, and adjudications of
15 a juvenile offender which if committed by an adult would have
16 been a felony conviction and** which relates to a person who works in
17 the adult care home, or is being considered for employment by the adult
18 care home, for the purpose of determining whether such person is subject
19 to the provision of this section. For the purpose of complying with this
20 section, the operator of an adult care home shall receive from any em-
21 ployment agency which provides employees to work in the adult care
22 home written certification that such employees are not prohibited from
23 working in the adult care home under this section. For the purpose of
24 complying with this section, information relating to convictions and ad-
25 judications by the federal government or to convictions and adjudications
26 in states other than Kansas shall not be required until such time as the
27 secretary of health and environment determines the search for such in-
28 formation could reasonably be performed and the information obtained
29 within a two-week period. For the purpose of complying with this section,
30 a person who operates an adult care home may hire an applicant for
31 employment on a conditional basis pending the results from the depart-
32 ment of health and environment of a request for information under this
33 subsection. No adult care home, the operator or employees of an adult
34 care home or an employment agency, or the operator or employees of an
35 employment agency, shall be liable for civil damages resulting from any
36 decision to employ, to refuse to employ or to discharge from employment
37 any person based on such adult care home's compliance with the provi-
38 sions of this section if such adult care home or employment agency acts
39 in good faith to comply with this section.

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

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

6 (g) (1) *The secretary of health and environment shall provide to each*
7 *person requesting information under this section the criminal history rec-*
8 *ord information concerning felony convictions and adjudications as pro-*
9 *vided, **convictions under K.S.A. 21-3437 and 21-3517, and amend-***
10 ***ments thereto, and adjudications of a juvenile offender which if***
11 ***committed by an adult would have been a felony conviction, in-***
12 ***cluding any felony convictions of offenses other than those enumerated in***
13 *subsection (a), regardless of whether the information discloses that the*
14 *subject of the request has been convicted of an offense enumerated in*
15 *subsection (a) of this section.*

16 (2) *The secretary of health and environment shall provide each person*
17 *requesting information under this section with the criminal history record*
18 *information regarding any felony convictions within three business days*
19 *of receipt of such information from the Kansas bureau of investigation.*

20 (3) *The secretary of health and environment shall provide each person*
21 *requesting information under this section, in writing and within three*
22 *business days after receipt of such information from the Kansas bureau*
23 *of information, whenever the criminal history record information reveals*
24 *that the subject of the request has not been convicted of an offense enu-*
25 *merated in subsection (a) of this section.*

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

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

32 ~~(i)~~ (j) 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)~~ (k) 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 (l) *For the purpose of this section, the Kansas bureau of investigation*
3 *shall only report felony convictions, **convictions under K.S.A. 21-3437***
4 ***and 21-3517, and amendments thereto, and adjudications of a ju-***
5 ***venile offender which if committed by an adult would have been***
6 ***a felony conviction to the secretary of health and environment when a***
7 *background check is requested.*

8 ~~(m)~~ (m) This section shall be part of and supplemental to the adult
9 care home licensure act.

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

40 (2) ~~On and after July 1, 1998,~~ A person operating a home health
41 agency may employ an applicant who has been convicted of any of the
42 following if five or more years have elapsed since the applicant satisfied
43 the sentence imposed or was discharged from probation, a community

1 correctional services program, parole, postrelease supervision, conditional
 2 release or a suspended sentence; or if five or more years have elapsed
 3 since the applicant has been finally discharged from the custody of the
 4 commissioner of juvenile justice or from probation or has been adjudicated
 5 a juvenile offender, whichever time is longer: A felony conviction
 6 for a crime which is described in: (A) article 34 of the Kansas Statutes
 7 Annotated and amendments thereto, except those crimes listed in sub-
 8 section (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes
 9 Annotated and amendments thereto, except those crimes listed in sub-
 10 section (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) a con-
 11 viction of an attempt under K.S.A. 21-3301 and amendments thereto to
 12 commit any act listed in this subsection or subsection (a)(1); or (D) an
 13 attempt to commit any of the crimes ~~enumerated herein~~ **listed in this**
 14 **subsection or subsection (a)(1), pursuant to K.S.A. 21-3301 and**
 15 **amendments thereto; (D) a conspiracy to commit any of the crimes enu-**
 16 **merated herein listed in this subsection or subsection (a)(1), pursuant**
 17 **to K.S.A. 21-3302 and amendments thereto; (E) criminal solicitation of**
 18 **any of the crimes listed in this subsection or subsection (a)(1), pur-**
 19 **suant to K.S.A. 21-3303 and amendments thereto; or (E) (F) similar**
 20 statutes of other states or the federal government.

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

24 (c) ~~(f)~~ The secretary of health and environment shall have access to
 25 any criminal history record information in the possession of the Kansas
 26 bureau of investigation ~~regarding any felony convictions or adjudications~~
 27 ~~of a juvenile offender which if committed by an adult would be a felony,~~
 28 **convictions under K.S.A. 21-3437 and 21-3517, and amendments**
 29 **thereto, and adjudications of a juvenile offender which if commit-**
 30 **ted by an adult would have been a felony conviction** concerning
 31 persons working for a home health agency. The secretary shall have access
 32 to these records for the purpose of determining whether or not the home
 33 health agency meets the requirements of this section. The Kansas bureau
 34 of investigation may charge to the department of health and environment
 35 a reasonable fee for providing criminal history record information under
 36 this subsection.

37 ~~(2) The operator of a home health agency shall be deemed in compli-~~
 38 ~~ance with this section provided that the operator obtains the same or~~
 39 ~~better criminal history record information from a private contractor ap-~~
 40 ~~proved by the Kansas bureau of investigation. If a private contractor~~
 41 ~~determines that a person is prohibited from working in an adult care home~~
 42 ~~under this section, the private contractor shall notify the department of~~
 43 ~~health and environment of such person's name and the reasons for such~~

1 ~~determination.~~

2 (d) For the purpose of complying with this section, the operator of a
3 home health agency shall request ~~information regarding only felony con-~~
4 ~~victions and adjudications of a juvenile offender which if committed by~~
5 ~~an adult would have been a felony~~ from the department of health and
6 environment ~~information obtained by the secretary of health and envi-~~
7 ~~ronment, or from an approved private contractor, information regard-~~
8 **ing only felony convictions, convictions under K.S.A. 21-3437 and**
9 **21-3517, and amendments thereto, and adjudications of a juvenile**
10 **offender which if committed by an adult would have been a felony**
11 **conviction and** which relates to a person who works for the home health
12 agency or is being considered for employment by the home health agency,
13 for the purpose of determining whether such person is subject to the
14 provisions of this section. For the purpose of complying with this section,
15 information relating to convictions and adjudications by the federal gov-
16 ernment or to convictions and adjudications in states other than Kansas
17 shall not be required until such time as the secretary of health and envi-
18 ronment determines the search for such information could reasonably
19 be performed and the information obtained within a two-week period.
20 For the purpose of complying with this section, a person who operates a
21 home health agency may hire an applicant for employment on a condi-
22 tional basis pending the results from the department of health and envi-
23 ronment of a request for information under this subsection. No home
24 health agency, the operator or employees of a home health agency or an
25 employment agency, or the operator or employees of an employment
26 agency, which provides employees to work for the home health agency
27 shall be liable for civil damages resulting from any decision to employ, to
28 refuse to employ or to discharge from employment any person based on
29 such home health agency's compliance with the provisions of this section
30 if such home health agency or employment agency acts in good faith to
31 comply with this section.

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

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

41 (g) (1) *The secretary of health and environment shall provide each*
42 *person requesting information under this section with the criminal history*
43 *record information ~~provided by the Kansas bureau of investigation con-~~*

1 **cerning felony convictions, convictions under K.S.A. 21-3437 and**
2 **21-3517, and amendments thereto, and adjudications of a juvenile**
3 **offender which if committed by an adult would have been a felony**
4 **conviction, including any felony convictions of offenses other than those**
5 *enumerated in subsection (a), regardless of whether the information dis-*
6 *discloses that the subject of the request has been convicted of an offense*
7 *enumerated in subsection (a) of this section.*

8 (2) *The secretary of health and environment shall provide each person*
9 *requesting information under this section with the criminal history record*
10 *information within three business days of receipt of such information from*
11 *the Kansas bureau of investigation.*

12 (3) *The secretary of health and environment shall provide each person*
13 *requesting information under this section, in writing and within three*
14 *business days after receipt of such information from the Kansas bureau*
15 *of information, a report of no conviction whenever the criminal history*
16 *record information reveals that the subject of the request has not been*
17 *convicted of an offense enumerated in subsection (a) of this section or any*
18 *other felony.*

19 ~~(g)~~ (h) *A person who volunteers to assist a home health agency shall*
20 *not be subject to the provisions of this section because of such volunteer*
21 *activity.*

22 ~~(h)~~ (i) *No person who has been employed by the same home health*
23 *agency for five consecutive years immediately prior to the effective date*
24 *of this act shall be subject to the requirements of this section while em-*
25 *ployed by such home health agency.*

26 ~~(i)~~ (j) *The operator of a home health agency shall not be required*
27 *under this section to conduct a background check on an applicant for*
28 *employment with the home health agency if the applicant has been the*
29 *subject of a background check under this act within one year prior to the*
30 *application for employment with the home health agency. The operator*
31 *of a home health agency where the applicant was the subject of such*
32 *background check may release a copy of such background check to the*
33 *operator of a home health agency where the applicant is currently*
34 *applying.*

35 (k) *For the purpose of this section, the Kansas bureau of investigation*
36 *shall only report felony convictions as enumerated in subsection (a) of this*
37 *section and other felony convictions, convictions under K.S.A. 21-3437*
38 **and 21-3517, and amendments thereto, and adjudications of a ju-**
39 **venile offender which if committed by an adult would have been**
40 **a felony conviction to the secretary of health and environment when a**
41 **background check is requested.**

42 ~~(j)~~ (l) *This section shall be part of and supplemental to the provisions*
43 *of article 51 of chapter 65 of the Kansas Statutes Annotated and acts*

1 amendatory thereof or supplemental thereto.

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

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

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