

SENATE BILL No. 103

By Committee on Public Health and Welfare

1-23

AN ACT relating to home health agencies; concerning employment of persons by such providers; amending K.S.A. 2000 Supp. 65-5117 and repealing the existing section.

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

Section 1. K.S.A. 2000 Supp. 65-5117 is hereby amended to read as follows: 65-5117. (a) (1) ~~On and after July 1, 1998,~~ No person shall knowingly operate a home health agency if, for the home health agency, 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 herein, pursuant to K.S.A. 21-3301, and amendments thereto, a conspiracy to commit any of the crimes enumerated herein, pursuant to K.S.A. 21-3302, and amendments thereto, or criminal solicitation of any of the crimes enumerated herein 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 a home health

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

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

23 (c) The secretary of health and environment shall have access to any
24 criminal history record information in the possession of the Kansas bureau
25 of investigation concerning persons working for a home health agency.
26 The secretary shall have access to these records for the purpose of de-
27 termining whether or not the home health agency meets the require-
28 ments of this section. The Kansas bureau of investigation may charge to
29 the department of health and environment a reasonable fee for providing
30 criminal history record information under this subsection.

31 (d) For the purpose of complying with this section, the operator of a
32 home health agency shall: ~~(1) Request from that the department of health~~
33 ~~and environment information obtained by the secretary of health and~~
34 ~~environment obtain from the Kansas bureau of investigation criminal his-~~
35 ~~tory record information which relates to a person who works for the home~~
36 ~~health agency or is being considered for employment by the home health~~
37 ~~agency, for the purpose of determining whether such person is subject~~
38 ~~to the provisions of this section. For the purpose of complying with this~~
39 ~~section;~~ (2) *submit such request within two working days of employment;*
40 *and (3) receive within two working days from any employment agency*
41 *which has provided a person to work for the home health agency written*
42 *certification that such person is not prohibited from working for the home*
43 *health agency under this section.*

1 (e) *The secretary of the department of health and environment shall*
2 *identify sources of criminal conviction data from the states contiguous to*
3 *Kansas and the associated costs on or before July 1, 2002. Where admin-*
4 *istrative agreements can be written for the purpose of determining like*
5 *conviction information from a contiguous state, the secretary shall estab-*
6 *lish such administrative agreements if the cost of receiving the conviction*
7 *information is equal to or less than \$15 per request. Such additional fees*
8 *shall be assessed to the requesting operator of a home health agency or*
9 *an employment agency seeking the out-of-state conviction information.*

10 (f) Information relating to convictions and adjudications by the fed-
11 eral government or to convictions and adjudications in states other than
12 Kansas shall not be required until such time as the secretary of health
13 and environment determines the search for such information could rea-
14 sonably be performed and the information obtained within a two-week
15 period. ~~For the purpose of complying with this section, and at a cost~~
16 ~~equal to or less than \$15 per request.~~

17 (g) A person who operates a home health agency may hire an appli-
18 cant for employment on a conditional basis pending the results from the
19 department of health and environment of a request for information under
20 this subsection. No home health agency, the operator or employees of a
21 home health agency or an employment agency, or the operator or em-
22 ployees of an employment agency, which provides employees to work for
23 the home health agency shall be liable for civil damages resulting from
24 any decision to employ, to refuse to employ or to discharge from em-
25 ployment any person based on such home health agency's compliance
26 with the provisions of this section if such home health agency or employ-
27 ment agency acts in good faith to comply with this section.

28 ~~(h)~~ (h) The secretary of health and environment shall charge each
29 ~~person~~ operator of a home health agency or employment agency request-
30 ing information under this section a fee equal to cost, not to exceed ~~\$10~~
31 \$15, for each ~~name~~ person about which an information request has been
32 submitted under this section.

33 ~~(i)~~ (i) No person who works for a home health agency and who is
34 currently licensed or registered by an agency of this state to provide pro-
35 fessional services in this state and who provides such services as part of
36 the work which such person performs for the home health agency shall
37 be subject to the provisions of this section.

38 (j) *The secretary of health and environment shall utilize resources*
39 *necessary to provide each operator of a home health agency or employ-*
40 *ment agency requesting information under this section with notice when*
41 *the criminal history record information provided by the Kansas bureau*
42 *of investigation indicates that no criminal history record information was*
43 *found for that person. Such notice shall be provided to the requester*

1 *within 10 working days of receipt of information determining that no*
2 *criminal history record information was found.*

3 *(k) The secretary of health and environment shall provide each op-*
4 *erator of a home health agency or employment agency requesting infor-*
5 *mation under this section written notice, within 10 working days after*
6 *receipt of such information, whenever the criminal history record infor-*
7 *mation has been determined to document that the subject of the request*
8 *has been identified as having a prohibited criminal conviction, except*
9 *when the subject has a criminal history that requires confirmation of final*
10 *disposition through Kansas courts or the Kansas department of correc-*
11 *tions. In the case of exception, written notice shall be given, within 10*
12 *working days after receipt of criminal history record information, that*
13 *further investigation is required and that the requester will be notified*
14 *within 10 working days subsequent to a final disposition.*

15 *(l) The secretary of health and environment shall record and make*
16 *available the date of the most recent criminal history record information*
17 *request, and in the event that a criminal history record request results in*
18 *a determination that the person has been convicted of a prohibited crime,*
19 *that determination shall be made available to inquirers of the registry*
20 *established pursuant to subsection (c)(5) of K.S.A. 39-936, and amend-*
21 *ments thereto.*

22 *(m) The secretary of health and environment shall establish a registry*
23 *of persons who are not identified on the registry established pursuant to*
24 *subsection (c)(5) of K.S.A. 39-936, and amendments thereto, and for*
25 *whom an operator of a home health agency or employment agency has*
26 *requested a criminal history records information search. In the event that*
27 *a criminal history record request results in a determination that the per-*
28 *son has been convicted of a prohibited crime, that determination shall be*
29 *made available to the operators of home health agencies, employment*
30 *agencies and interested parties.*

31 ~~(g)~~ *(n) A person who volunteers to assist a home health agency shall*
32 *not be subject to the provisions of this section because of such volunteer*
33 *activity.*

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

38 ~~(i)~~ *(p) The operator of a home health agency shall not be required*
39 *under this section to conduct a background check on an applicant for*
40 *employment with the home health agency if the applicant has been the*
41 *subject of a background check under this act within one year prior to the*
42 *application for employment with the home health agency. The operator*
43 *of a home health agency where the applicant was the subject of such*

1 background check may release a copy of such background check to the
2 operator of a home health agency where the applicant is currently
3 applying.

4 ~~(j)~~ (q) This section shall be part of and supplemental to the provisions
5 of article 51 of chapter 65 of the Kansas Statutes Annotated and acts
6 amendatory thereof or supplemental thereto.

7 Sec. 2. K.S.A. 2000 Supp. 65-5117 is hereby repealed.

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

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