

SENATE BILL No. 104

By Committee on Public Health and Welfare

1-23

AN ACT relating to adult care homes; concerning employment of persons by such providers; amending K.S.A. 39-970 and repealing the existing section.

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 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 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); or an~~
16 ~~attempt to commit any of the crimes enumerated herein, pursuant to~~
17 ~~K.S.A. 21-3301, and amendments thereto; (D) a conspiracy to commit any~~
18 ~~of the crimes enumerated herein, pursuant to K.S.A. 21-3302, and amend-~~
19 ~~ments thereto; or (E) similar statutes of other states or the federal~~
20 government.

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

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

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

1 prohibited from working in the adult care home under this section. ~~For~~
2 ~~the purpose of complying with this section;~~

3 (e) *The secretary of the department of health and environment shall*
4 *identify sources of criminal conviction data from the states contiguous to*
5 *Kansas and the associated costs on or before July 1, 2002. Where admin-*
6 *istrative agreements can be written for the purpose of determining like*
7 *conviction information from a contiguous state, the secretary may estab-*
8 *lish such administrative agreements if the cost of receiving the conviction*
9 *information is equal to or less than fifteen dollars per request. Such fees*
10 *shall be assessed, in addition to criminal history records information re-*
11 *quested from the Kansas bureau of investigation, to the requesting oper-*
12 *ator of an adult care home or employment agency seeking the out of state*
13 *conviction information.*

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

21 (g) A person who operates an adult care home may hire an applicant
22 for employment on a conditional basis pending the results from the de-
23 partment of health and environment of a request for information under
24 this subsection. No adult care home, the operator or employees of an
25 adult care home or an employment agency, or the operator or employees
26 of an employment agency, shall be liable for civil damages resulting from
27 any decision to employ, to refuse to employ or to discharge from em-
28 ployment any person based on such adult care home's compliance with
29 the provisions of this section if such adult care home or employment
30 agency acts in good faith to comply with this section.

31 ~~(e)~~ (h) The secretary of health and environment shall charge each
32 ~~person~~ operator of an adult care home or employment agency requesting
33 information under this section a fee equal to cost, not to exceed ~~\$10~~ \$15,
34 for each ~~name~~ person about which an information request has been sub-
35 mitted to the department under this section.

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

41 (j) *The secretary of health and environment shall utilize resources*
42 *necessary to provide each operator of an adult care home or employment*
43 *agency requesting information under this section with notice when the*

1 *criminal history record information indicates that no criminal history*
2 *record information was found for that person. Such notice shall be pro-*
3 *vided to the requester within 10 working days of receipt of information*
4 *determining that no criminal history record information was found.*

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

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

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

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

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

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

1 release a copy of such background check to the operator of an adult care
2 home where the applicant is currently applying.

3 ~~(j)~~ (q) No person who is in the custody of the secretary of corrections
4 and who provides services, under direct supervision in nonpatient areas,
5 on the grounds or other areas designated by the superintendent of the
6 Kansas soldiers' home or the Kansas veterans' home shall be subject to
7 the provisions of this section while providing such services.

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

10 Sec. 2. K.S.A. 39-970 is hereby repealed.

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

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