

5
6 **SENATE BILL No. 418**

7 By Committee on Public Health and Welfare

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10 1-23

11
12 AN ACT concerning *[providers of care services; relating to]* adult
13 care home administrators; ~~relating to the~~ *[,]* board of adult care home
14 administrators; also relating to licensure; *[employment of persons*
15 *convicted or adjudicated of certain offenses;]* amending K.S.A. 65-
16 3508 and K.S.A. 2001 Supp. *[39-970,]* 65-3503, 65-3504 ~~and~~ *[,]* 65-
17 3506 *[and 65-5117]* and repealing the existing sections.

18
19 *Be it enacted by the Legislature of the State of Kansas:*

20 *[Section 1. K.S.A. 2001 Supp. 39-970 is hereby amended to*
21 *read as follows: 39-970. (a) (1) No person shall knowingly oper-*
22 *ate an adult care home if, in the adult care home, there works any*
23 *person who has been convicted of or has been adjudicated a juvenile*
24 *offender because of having committed an act which if done by an*
25 *adult would constitute the commission of capital murder, pursuant*
26 *to K.S.A. 21-3439 and amendments thereto, first degree murder,*
27 *pursuant to K.S.A. 21-3401 and amendments thereto, second degree*
28 *murder, pursuant to subsection (a) of K.S.A. 21-3402 and amend-*
29 *ments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403*
30 *and amendments thereto, assisting suicide pursuant to K.S.A. 21-*
31 *3406 and amendments thereto, mistreatment of a dependent adult,*
32 *pursuant to K.S.A. 21-3437 and amendments thereto, rape, pursu-*
33 *ant to K.S.A. 21-3502 and amendments thereto, indecent liberties*
34 *with a child, pursuant to K.S.A. 21-3503 and amendments thereto,*
35 *aggravated indecent liberties with a child, pursuant to K.S.A. 21-*
36 *3504 and amendments thereto, aggravated criminal sodomy, pur-*
37 *suant to K.S.A. 21-3506 and amendments thereto, indecent solici-*
38 *tation of a child, pursuant to K.S.A. 21-3510 and amendments*
39 *thereto, aggravated indecent solicitation of a child, pursuant to*
40 *K.S.A. 21-3511 and amendments thereto, sexual exploitation of a*
41 *child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual*
42 *battery, pursuant to K.S.A. 21-3517 and amendments thereto, or*
43 *aggravated sexual battery, pursuant to K.S.A. 21-3518 and amend-*

1 *ments thereto, an attempt to commit any of the crimes listed in this*
2 *subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments*
3 *thereto, a conspiracy to commit any of the crimes listed in this sub-*
4 *section (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto,*
5 *or criminal solicitation of any of the crimes listed in this subsection*
6 *(a)(1), pursuant to K.S.A. 21-3303, and amendments thereto, or sim-*
7 *ilar statutes of other states or the federal government.*

8 *[(2) A person operating an adult care home may employ an ap-*
9 *plicant who has been convicted of any of the following if five or*
10 *more years have elapsed since the applicant satisfied the sentence*
11 *imposed or was discharged from probation, a community correc-*
12 *tional services program, parole, postrelease supervision, condi-*
13 *tional release or a suspended sentence; or if five or more years have*
14 *elapsed since the applicant has been finally discharged from the*
15 *custody of the commissioner of juvenile justice or from probation*
16 *or has been adjudicated a juvenile offender, whichever time is*
17 *longer: A felony conviction for a crime which is described in: (A)*
18 *article 34 of chapter 21 of the Kansas Statutes Annotated and*
19 *amendments thereto, except those crimes listed in subsection (a)(1);*
20 *(B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated*
21 *and amendments thereto, except those crimes listed in subsection*
22 *(a)(1) and K.S.A. 21-3605 and amendments thereto; (C) an attempt*
23 *to commit any of the crimes listed in this subsection (a)(2) pursuant*
24 *to K.S.A. 21-3301, and amendments thereto; (D) a conspiracy to*
25 *commit any of the crimes listed in subsection (a)(2) pursuant to*
26 *K.S.A. 21-3302, and amendments thereto; (E) criminal solicitation*
27 *of any of the crimes listed in subsection (a)(2) pursuant to K.S.A.*
28 *21-3303, and amendments thereto; or (F) similar statutes of other*
29 *states or the federal government.*

30 *[(b) No person shall operate an adult care home if such person*
31 *has been found to be a disabled person in need of a guardian or*
32 *conservator, or both.*

33 *[(c) The secretary of health and environment shall have access*
34 *to any criminal history record information in the possession of the*
35 *Kansas bureau of investigation regarding felony convictions, con-*
36 *victions under K.S.A. 21-3437 ~~and~~, 21-3517 and 21-3701, and amend-*
37 *ments thereto, adjudications of a juvenile offender which if com-*
38 *mitted by an adult would have been a felony conviction, and*
39 *adjudications of a juvenile offender for an offense described in*
40 *K.S.A. 21-3437 ~~and~~, 21-3517 and 21-3701, and amendments thereto,*
41 *concerning persons working in an adult care home. The secretary*
42 *shall have access to these records for the purpose of determining*
43 *whether or not the adult care home meets the requirements of this*

1 *section. The Kansas bureau of investigation may charge to the de-*
2 *partment of health and environment a reasonable fee for providing*
3 *criminal history record information under this subsection.*

4 *[(d) For the purpose of complying with this section, the operator*
5 *of an adult care home shall request from the department of health*
6 *and environment information regarding only felony convictions,*
7 *convictions under K.S.A. 21-3437 ~~and~~, 21-3517 and 21-3701, and*
8 *amendments thereto, adjudications of a juvenile offender which if*
9 *committed by an adult would have been a felony conviction, and*
10 *adjudications of a juvenile offender for an offense described in*
11 *K.S.A. 21-3437 ~~and~~, 21-3517 and 21-3701, and amendments thereto,*
12 *and which relates to a person who works in the adult care home, or*
13 *is being considered for employment by the adult care home, for the*
14 *purpose of determining whether such person is subject to the pro-*
15 *vision of this section. For the purpose of complying with this section,*
16 *the operator of an adult care home shall receive from any employ-*
17 *ment agency which provides employees to work in the adult care*
18 *home written certification that such employees are not prohibited*
19 *from working in the adult care home under this section. For the*
20 *purpose of complying with this section, information relating to con-*
21 *victions and adjudications by the federal government or to convic-*
22 *tions and adjudications in states other than Kansas shall not be*
23 *required until such time as the secretary of health and environment*
24 *determines the search for such information could reasonably be*
25 *performed and the information obtained within a two-week period.*
26 *For the purpose of complying with this section, a person who op-*
27 *erates an adult care home may hire an applicant for employment*
28 *on a conditional basis pending the results from the department of*
29 *health and environment of a request for information under this sub-*
30 *section. No adult care home, the operator or employees of an adult*
31 *care home or an employment agency, or the operator or employees*
32 *of an employment agency, shall be liable for civil damages resulting*
33 *from any decision to employ, to refuse to employ or to discharge*
34 *from employment any person based on such adult care home's com-*
35 *pliance with the provisions of this section if such adult care home*
36 *or employment agency acts in good faith to comply with this section.*

37 *[(e) The secretary of health and environment shall charge each*
38 *person requesting information under this section a fee equal to cost,*
39 *not to exceed \$10, for each name about which an information re-*
40 *quest has been submitted to the department under this section.*

41 *[(f) (1) The secretary of health and environment shall provide*
42 *each operator requesting information under this section with the*
43 *criminal history record information concerning felony convictions*

1 *and convictions under K.S.A. 21-3437 ~~and~~ 21-3517 and 21-3701, and*
2 *amendments thereto, in writing and within three working days of*
3 *receipt of such information from the Kansas bureau of investigation.*
4 *The criminal history record information shall be provided regard-*
5 *less of whether the information discloses that the subject of the re-*
6 *quest has been convicted of an offense enumerated in subsection*
7 *(a).*

8 *[(2) When an offense enumerated in subsection (a) exists in the*
9 *criminal history record information, and when further confirmation*
10 *regarding criminal history record information is required from the*
11 *appropriate court of jurisdiction or Kansas department of correc-*
12 *tions, the secretary shall notify each operator that requests infor-*
13 *mation under this section in writing and within three working days*
14 *of receipt from the Kansas bureau of investigation that further con-*
15 *firmation is required. The secretary shall provide to the operator*
16 *requesting information under this section information in writing*
17 *and within three working days of receipt of such information from*
18 *the appropriate court of jurisdiction or Kansas department of cor-*
19 *rections regarding confirmation regarding the criminal history rec-*
20 *ord information.*

21 *[(3) Whenever the criminal history record information reveals*
22 *that the subject of the request has no criminal history on record,*
23 *the secretary shall provide notice to each operator requesting in-*
24 *formation under this section, in writing and within three working*
25 *days after receipt of such information from the Kansas bureau of*
26 *investigation.*

27 *[(4) The secretary of health and environment shall not provide*
28 *each operator requesting information under this section with the*
29 *juvenile criminal history record information which relates to a per-*
30 *son subject to a background check as is provided by K.S.A. 38-1618*
31 *and amendments thereto. The secretary shall notify the operator*
32 *that requested the information, in writing and within three working*
33 *days of receipt of such information from the Kansas bureau of in-*
34 *vestigation, whether juvenile criminal history record information*
35 *received pursuant to this section reveals that the operator would or*
36 *would not be prohibited by this section from employing the subject*
37 *of the request for information.*

38 *[(5) An operator who receives criminal history record infor-*
39 *mation under this subsection (f) shall keep such information con-*
40 *fidential, except that the operator may disclose such information to*
41 *the person who is the subject of the request for information. A vi-*
42 *olation of this paragraph (5) shall be an unclassified misdemeanor*
43 *punishable by a fine of \$100.*

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

6 ***[(h) A person who volunteers in an adult care home shall not be***
7 ***subject to the provisions of this section because of such volunteer***
8 ***activity.***

9 ***[(i) No person who has been employed by the same adult care***
10 ***home for five consecutive years immediately prior to the effective***
11 ***date of this act shall be subject to the provisions of this section while***
12 ***employed by such adult care home.***

13 ***[(j) The operator of an adult care home shall not be required***
14 ***under this section to conduct a background check on an applicant***
15 ***for employment with the adult care home if the applicant has been***
16 ***the subject of a background check under this act within one year***
17 ***prior to the application for employment with the adult care home.***
18 ***The operator of an adult care home where the applicant was the***
19 ***subject of such background check may release a copy of such back-***
20 ***ground check to the operator of an adult care home where the ap-***
21 ***applicant is currently applying.***

22 ***[(k) No person who is in the custody of the secretary of correc-***
23 ***tions and who provides services, under direct supervision in non-***
24 ***patient areas, on the grounds or other areas designated by the su-***
25 ***perintendent of the Kansas soldiers' home or the Kansas veterans'***
26 ***home shall be subject to the provisions of this section while provid-***
27 ***ing such services.***

28 ***[(l) For purposes of this section, the Kansas bureau of investi-***
29 ***gation shall only report felony convictions, convictions under K.S.A.***
30 ***21-3437 ~~and~~, 21-3517 and 21-3701, and amendments thereto, adju-***
31 ***dications of a juvenile offender which if committed by an adult***
32 ***would have been a felony conviction, and adjudications of a juve-***
33 ***nil offender for an offense described in K.S.A. 21-3437 ~~and~~, 21-3517***
34 ***and 21-3701, and amendments thereto, to the secretary of health and***
35 ***environment when a background check is requested.***

36 ***[(m) This section shall be part of and supplemental to the adult***
37 ***care home licensure act.]***

38 Section ~~±~~ ***[Sec. 2.]*** K.S.A. 2001 Supp. 65-3503 is hereby amended
39 to read as follows: 65-3503. (a) It shall be the duty of the board to:

40 (1) Develop, impose and enforce standards which shall be met by
41 individuals in order to receive a license as an adult care home adminis-
42 trator, which standards shall be designed to ensure that adult care home
43 administrators will be individuals who are of good character and are oth-

1 erwise suitable, and who, by training or experience in the field of insti-
2 tutional administration, are qualified to serve as adult care home
3 administrators;

4 (2) develop examinations and investigations for determining whether
5 an individual meets such standards;

6 (3) issue licenses to individuals who meet such standards, and revoke
7 or suspend licenses issued by the board or reprimand, censure or oth-
8 erwise discipline a person holding any such license as provided under
9 K.S.A. 65-3508, and amendments thereto;

10 (4) establish and carry out procedures designed to ensure that indi-
11 viduals licensed as adult care home administrators comply with the
12 requirements of such standards; and

13 (5) receive, investigate and take appropriate action under K.S.A. 65-
14 3505, and amendments thereto, and rules and regulations adopted by the
15 board with respect to any charge or complaint filed with the board to the
16 effect that any person licensed as an adult care home administrator may
17 be subject to disciplinary action under K.S.A. 65-3505 and 65-3508, and
18 amendments thereto.

19 (b) The board shall also have the power to make rules and regulations,
20 not inconsistent with law, as may be necessary for the proper performance
21 of its duties, and to have subpoenas issued pursuant to K.S.A. 60-245,
22 and amendments thereto, in the board's exercise of its power and to take
23 such other actions as may be necessary to enable the state to meet the
24 requirements set forth in section 1908 of the social security act, the fed-
25 eral rules and regulations promulgated thereunder and other pertinent
26 federal authority.

27 (c) The board shall fix by rules and regulations the licensure fee,
28 temporary license fee, renewal fee, late renewal fee, reinstatement fee,
29 reciprocity fee ~~and~~, sponsorship fee, *wall or wallet card license replace-*
30 *ment fee, duplicate wall license fee for any administrator serving as ad-*
31 *ministrator in more than one facility* and, if necessary, an examination fee
32 under this act. Such fees shall be fixed in an amount to cover the costs
33 of administering the provisions of the act. No fee shall be more than \$200.
34 The secretary of health and environment shall remit all moneys received
35 from fees, charges or penalties under this act to the state treasurer in
36 accordance with the provisions of K.S.A. 75-4215, and amendments
37 thereto. Upon receipt of each such remittance, the state treasurer shall
38 deposit the entire amount in the state treasury to the credit of the state
39 general fund.

40 (d) The board upon request shall receive from the Kansas bureau of
41 investigation, without charge, such criminal history record information
42 relating to criminal convictions as necessary for the purpose of determin-
43 ing initial and continuing qualifications of licensees of and applicants for

1 licensure by the board.

2 Sec. ~~2~~ [3.] K.S.A. 2001 Supp. 65-3504 is hereby amended to read
3 as follows: 65-3504. (a) The board shall admit to examination for licensure
4 as an adult care home administrator any candidate who pays a licensure
5 and examination fee, if required, to the department of health and envi-
6 ronment to be fixed by rules and regulations; submits evidence that such
7 candidate is at least 18 years old; ~~and~~ has completed preliminary educa-
8 tion satisfactory to the board as prescribed in rules and regulations; *and*
9 *has met board established standards of good character, training and*
10 *experience.*

11 (b) Nothing in the provisions of article 35 of chapter 65 of the Kansas
12 Statutes Annotated or acts amendatory of the provisions thereof or sup-
13 plemental thereto or any rules and regulations adopted pursuant thereto
14 shall prohibit a candidate for licensure as an adult care home administra-
15 tor who is a member of a recognized church or religious denomination
16 whose religious teachings prohibit the acquisition of formal education
17 which would qualify such candidate for examination as required by the
18 board under subsection (a) from being admitted to examination under
19 subsection (a) so long as such candidate otherwise meets the qualifications
20 for admission to examination under subsection (a). A candidate for licen-
21 sure as an adult care home administrator who qualifies to take the ex-
22 amination for licensure under this subsection (b), who passes the exam-
23 ination and who is licensed as an adult care home administrator shall
24 engage in the practice of adult care home administration only in an adult
25 care home which is owned and operated by such recognized church or
26 religious denomination.

27 Sec. ~~3~~ [4.] K.S.A. 2001 Supp. 65-3506 is hereby amended to read
28 as follows: 65-3506. (a) There is hereby established the board of adult
29 care home administrators. The board shall be attached to the department
30 of health and environment and shall be within the department as a part
31 thereof. All budgeting, purchasing and related management functions of
32 the board shall be administered under the direction and supervision of
33 the secretary of health and environment. The department shall serve as
34 the administrative agency of the board in all respects and shall perform
35 such services and duties as it may be legally called upon to perform. The
36 attorney for the board shall be an assistant attorney general appointed by
37 the attorney general. The office of the attorney general shall serve as the
38 enforcement agency for the board. All vouchers for expenditures and all
39 payrolls of the board shall be approved by the chairperson of the board
40 and by the secretary of health and environment.

41 (b) The board of adult care home administrators shall be composed
42 of seven members appointed by the governor, three of whom are rep-
43 resentatives of professions and institutions concerned with the care and

1 treatment of chronically ill or infirm elderly patients, two consumer rep-
2 representatives who have no current or previous involvement in the financial
3 affairs or as a member of the governing body of any adult care home or
4 any association directly concerned with the regulation or licensure of
5 adult care homes in the state and two adult care home administrators
6 who, at the time of their appointment, are licensed by the state and are
7 actively engaged in the administration of adult care homes within the
8 state. No more than three members of the board may be licensed ad-
9 ministrators. Members of the board, other than the licensed administra-
10 tors, shall have no direct financial interest in adult care homes. Members
11 of the board shall serve on the board for terms of two years or until
12 otherwise disqualified from serving on the board, except two of the mem-
13 bers first appointed shall serve on the board for terms of one year and
14 thereafter, upon the expiration of such one year terms, successors shall
15 be appointed in the same manner as the original appointments for terms
16 of two years. The provisions of this act shall not affect the office of any
17 member of the board of adult care home administrators appointed prior
18 to the effective date of this act. All members of the board appointed after
19 the effective date of this act shall be appointed by the governor.

20 (c) Members of the board of adult care home administrators shall
21 meet at such times as may be appropriate but in no case less than once
22 each four months. The chairperson of the board shall be elected annually
23 from among the members of the board. All final orders shall be in writing
24 and shall be ~~signed by the chairperson and approved by the board~~ *issued*
25 *in accordance with the Kansas administrative procedure act.*

26 (d) Members of the board who attend meetings of such board, or
27 attend a subcommittee meeting thereof authorized by such board, shall
28 be paid compensation, subsistence allowances, mileage and other ex-
29 penses as provided in K.S.A. 75-3223, and amendments thereto.

30 Sec. ~~4~~ *[5.]* K.S.A. 65-3508 is hereby amended to read as follows:
31 65-3508. The license of an adult care home administrator or the tempo-
32 rary license of an adult care home administrator may be *denied*, revoked
33 or suspended or the adult care home administrator or a person holding
34 a temporary license as an adult care home administrator may be reprim-
35 anded, censured or otherwise disciplined by the board, after notice and
36 *an opportunity for* a hearing conducted by the board in accordance with
37 the provisions of the Kansas administrative procedure act, if the adult
38 care home administrator or person holding a temporary license as an adult
39 care home administrator has:

40 (a) Failed to comply with the provisions of K.S.A. 65-3505 and
41 amendments thereto and continued to act as an adult care home
42 administrator;

43 (b) substantially failed to conform to the requirements of the stan-

1 dards adopted under K.S.A. 65-3503 and amendments thereto;

2 (c) willfully or repeatedly violated any of the provisions of the law or
3 rules and regulations of the licensing agency under the provisions of article 9 of chapter 39 of the Kansas Statutes Annotated;

4 (d) been convicted of a crime found by the board to have a direct
5 bearing on whether such person should be entrusted to serve the public
6 in the capacity of an adult care home administrator;

7 (e) failed to assure that nutrition, medications and treatments of residents, including the use of restraints, are in accordance with acceptable
8 medical practices;

9 (f) been convicted of the violation of any state or federal drug or
10 narcotic law or any provision of the state or federal controlled substances
11 act or habitually overindulged in alcohol or habitually misused controlled
12 substances;

13 (g) been involved in aiding, abetting, sanctioning or condoning any
14 violation of the law or rules and regulations under article 9 of chapter 39
15 of the Kansas Statutes Annotated; ~~or~~

16 (h) engaged in the practice of adult care home administration in violation of subsection (b) of K.S.A. 65-3504 and amendments thereto;

17 (i) *misrepresented or omitted a material fact on an application for licensure or in any other communication with the board;*

18 (j) *had disciplinary action taken against an adult care home administrator's license issued by another state or jurisdiction; or*

19 (k) *had disciplinary action taken against such adult care home administrator on a professional or occupational health care license, mental health care license or social worker license issued by an agency of this state or by an agency of another state or jurisdiction that regulates nursing; physical, occupational or respiratory therapy; dietitians; social work or physician assistants.*

20 **[Sec. 6. K.S.A. 2001 Supp. 65-5117 is hereby amended to read as follows: 65-5117. (a) (1) 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**

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1 *with a child, pursuant to K.S.A. 21-3503 and amendments thereto,*
2 *aggravated indecent liberties with a child, pursuant to K.S.A. 21-*
3 *3504 and amendments thereto, aggravated criminal sodomy, pur-*
4 *suant to K.S.A. 21-3506 and amendments thereto, indecent solici-*
5 *tation of a child, pursuant to K.S.A. 21-3510 and amendments*
6 *thereto, aggravated indecent solicitation of a child, pursuant to*
7 *K.S.A. 21-3511 and amendments thereto, sexual exploitation of a*
8 *child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual*
9 *battery, pursuant to K.S.A. 21-3517 and amendments thereto, or*
10 *aggravated sexual battery, pursuant to K.S.A. 21-3518 and amend-*
11 *ments thereto, an attempt to commit any of the crimes listed in this*
12 *subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments*
13 *thereto, a conspiracy to commit any of the crimes listed in this sub-*
14 *section (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto,*
15 *or criminal solicitation of any of the crimes listed in this subsection*
16 *(a)(1), pursuant to K.S.A. 21-3303, and amendments thereto, or sim-*
17 *ilar statutes of other states or the federal government.*

18 *[(2) A person operating a home health agency may employ an*
19 *applicant who has been convicted of any of the following if five or*
20 *more years have elapsed since the applicant satisfied the sentence*
21 *imposed or was discharged from probation, a community correc-*
22 *tional services program, parole, postrelease supervision, condi-*
23 *tional release or a suspended sentence; or if five or more years have*
24 *elapsed since the applicant has been finally discharged from the*
25 *custody of the commissioner of juvenile justice or from probation*
26 *or has been adjudicated a juvenile offender, whichever time is*
27 *longer: A felony conviction for a crime which is described in: (A)*
28 *article 34 of chapter 21 of the Kansas Statutes Annotated and*
29 *amendments thereto, except those crimes listed in subsection (a)(1);*
30 *(B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated*
31 *and amendments thereto, except those crimes listed in subsection*
32 *(a)(1) and K.S.A. 21-3605 and amendments thereto; (C) an attempt*
33 *to commit any of the crimes listed in this subsection (a)(2) pursuant*
34 *to K.S.A. 21-3301, and amendments thereto; (D) a conspiracy to*
35 *commit any of the crimes listed in subsection (a)(2) pursuant to*
36 *K.S.A. 21-3302, and amendments thereto; (E) criminal solicitation*
37 *of any of the crimes listed in subsection (a)(2) pursuant to K.S.A.*
38 *21-3303, and amendments thereto; or (F) similar statutes of other*
39 *states or the federal government.*

40 *[(b) No person shall operate a home health agency if such per-*
41 *son has been found to be a disabled person in need of a guardian*
42 *or conservator, or both.*

43 *[(c) The secretary of health and environment shall have access*

1 *to any criminal history record information in the possession of the*
2 *Kansas bureau of investigation regarding felony convictions, con-*
3 *victions under K.S.A. 21-3437 ~~and~~, 21-3517 and 21-3701, and amend-*
4 *ments thereto, adjudications of a juvenile offender which if com-*
5 *mitted by an adult would have been a felony conviction, and*
6 *adjudications of a juvenile offender for an offense described in*
7 *K.S.A. 21-3437 ~~and~~, 21-3517 and 21-3701, and amendments thereto,*
8 *concerning persons working for a home health agency. The secre-*
9 *tary shall have access to these records for the purpose of determin-*
10 *ing whether or not the home health agency meets the requirements*
11 *of this section. The Kansas bureau of investigation may charge to*
12 *the department of health and environment a reasonable fee for pro-*
13 *viding criminal history record information under this subsection.*

14 *[(d) For the purpose of complying with this section, the operator*
15 *of a home health agency shall request from the department of health*
16 *and environment information regarding only felony convictions,*
17 *convictions under K.S.A. 21-3437 ~~and~~, 21-3517 and 21-3701, and*
18 *amendments thereto, adjudications of a juvenile offender which if*
19 *committed by an adult would have been a felony conviction, and*
20 *adjudications of a juvenile offender for an offense described in*
21 *K.S.A. 21-3437 ~~and~~, 21-3517 and 21-3701, and amendments thereto,*
22 *and which relates to a person who works for the home health agency,*
23 *or is being considered for employment by the home health agency,*
24 *for the purpose of determining whether such person is subject to*
25 *the provisions of this section. For the purpose of complying with*
26 *this section, information relating to convictions and adjudications*
27 *by the federal government or to convictions and adjudications in*
28 *states other than Kansas shall not be required until such time as the*
29 *secretary of health and environment determines the search for such*
30 *information could reasonably be performed and the information*
31 *obtained within a two-week period. For the purpose of complying*
32 *with this section, the operator of a home health agency shall receive*
33 *from any employment agency which provides employees to work for*
34 *the home health agency written certification that such employees*
35 *are not prohibited from working for the home health agency under*
36 *this section. For the purpose of complying with this section, a person*
37 *who operates a home health agency may hire an applicant for em-*
38 *ployment on a conditional basis pending the results from the de-*
39 *partment of health and environment of a request for information*
40 *under this subsection. No home health agency, the operator or em-*
41 *ployees of a home health agency or an employment agency, or the*
42 *operator or employees of an employment agency, which provides*
43 *employees to work for the home health agency shall be liable for*

1 *civil damages resulting from any decision to employ, to refuse to*
2 *employ or to discharge from employment any person based on such*
3 *home health agency's compliance with the provisions of this section*
4 *if such home health agency or employment agency acts in good faith*
5 *to comply with this section.*

6 *[(e) The secretary of health and environment shall charge each*
7 *person requesting information under this section a fee equal to cost,*
8 *not to exceed \$10, for each name about which an information re-*
9 *quest has been submitted under this section.*

10 *[(f) (1) The secretary of health and environment shall provide*
11 *each operator requesting information under this section with the*
12 *criminal history record information concerning felony convictions*
13 *and convictions under K.S.A. 21-3437 ~~and~~ 21-3517 and 21-3701, and*
14 *amendments thereto, in writing and within three working days of*
15 *receipt of such information from the Kansas bureau of investigation.*
16 *The criminal history record information shall be provided regard-*
17 *less of whether the information discloses that the subject of the re-*
18 *quest has been convicted of an offense enumerated in subsection*
19 *(a).*

20 *[(2) When an offense enumerated in subsection (a) exists in the*
21 *criminal history record information, and when further confirmation*
22 *regarding criminal history record information is required from the*
23 *appropriate court of jurisdiction or Kansas department of correc-*
24 *tions, the secretary shall notify each operator that requests infor-*
25 *mation under this section in writing and within three working days*
26 *of receipt from the Kansas bureau of investigation that further con-*
27 *firmation is required. The secretary shall provide to the operator*
28 *requesting information under this section information in writing*
29 *and within three working days of receipt of such information from*
30 *the appropriate court of jurisdiction or Kansas department of cor-*
31 *rections regarding confirmation regarding the criminal history rec-*
32 *ord information.*

33 *[(3) Whenever the criminal history record information reveals*
34 *that the subject of the request has no criminal history on record,*
35 *the secretary shall provide notice to each operator requesting in-*
36 *formation under this section, in writing and within three working*
37 *days after receipt of such information from the Kansas bureau of*
38 *investigation.*

39 *[(4) The secretary of health and environment shall not provide*
40 *each operator requesting information under this section with the*
41 *juvenile criminal history record information which relates to a per-*
42 *son subject to a background check as is provided by K.S.A. 38-1618*
43 *and amendments thereto. The secretary shall notify the operator*

1 *that requested the information, in writing and within three working*
2 *days of receipt of such information from the Kansas bureau of in-*
3 *vestigation, whether juvenile criminal history record information*
4 *received pursuant to this section reveals that the operator would or*
5 *would not be prohibited by this section from employing the subject*
6 *of the request for information.*

7 *[(5) An operator who receives criminal history record infor-*
8 *mation under this subsection (f) shall keep such information con-*
9 *fidential, except that the operator may disclose such information to*
10 *the person who is the subject of the request for information. A vi-*
11 *olation of this paragraph (5) shall be an unclassified misdemeanor*
12 *punishable by a fine of \$100.*

13 *[(g) No person who works for a home health agency and who is*
14 *currently licensed or registered by an agency of this state to provide*
15 *professional services in this state and who provides such services as*
16 *part of the work which such person performs for the home health*
17 *agency shall be subject to the provisions of this section.*

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

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

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

34 *[(k) For purposes of this section, the Kansas bureau of investi-*
35 *gation shall only report felony convictions, convictions under K.S.A.*
36 *21-3437 ~~and~~, 21-3517 and 21-3701, and amendments thereto, adju-*
37 *dications of a juvenile offender which if committed by an adult*
38 *would have been a felony conviction, and adjudications of a juve-*
39 *nile offender for an offense described in K.S.A. 21-3437 ~~and~~, 21-3517*
40 *and 21-3701, and amendments thereto, to the secretary of health and*
41 *environment when a background check is requested.*

42 *[(l) This section shall be part of and supplemental to the pro-*
43 *visions of article 51 of chapter 65 of the Kansas Statutes Annotated*

1 *and acts amendatory thereof or supplemental thereto.]*

2 Sec. ~~5~~ [7.] K.S.A. 65-3508 and K.S.A. 2001 Supp. [39-970,] 65-
3 3503, 65-3504 ~~and~~ [,] 65-3506 [*and 65-5117*] are hereby repealed.

4 Sec. ~~6~~ [8.] This act shall take effect and be in force from and after
5 its publication in the statute book.

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