

SENATE BILL No. 261

AN ACT concerning state officers and employees; concerning the transfer of certain powers, duties and functions between certain state agencies; transferring certain powers, duties and functions from the department of health and environment to the department on aging; concerning contracts involving state officers and employees; amending K.S.A. 39-924, 39-925, 39-926, 39-930, 39-938, 39-940, 39-944, 39-945, 39-946, 39-947, 39-948, 39-950, 39-951, 39-952, 39-953a, 39-954, 39-958, 39-961, 39-963, 39-965, 39-969, 39-1404, as amended by section 5 of 2003 House Bill No. 2254, 39-1405, as amended by section 6 of 2003 House Bill No. 2254, 39-1406, as amended by section 7 of 2003 House Bill No. 2254, 39-1409, as amended by section 10 of 2003 House Bill No. 2254, 39-1411 and 46-233 and K.S.A. 2002 Supp. 32-906, 39-923, 39-936 and 39-1402, as amended by section 3 of 2003 House Bill No. 2254, and repealing the existing sections.

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

Sec. 1. K.S.A. 2002 Supp. 32-906 is hereby amended to read as follows: 32-906. (a) Except as otherwise provided by law or rules and regulations of the secretary, a valid Kansas fishing license is required to fish or to take any bullfrog in this state.

(b) The provisions of subsection (a) do not apply to fishing by:

(1) A person, or a member of a person's immediate family domiciled with such person, on land owned by such person or on land leased or rented by such person for agricultural purposes;

(2) a resident of this state who is less than 16 years of age or who is 65 or more years of age;

(3) a nonresident who is less than 16 years of age;

(4) a person fishing in a private water fishing impoundment unless waived pursuant to K.S.A. 32-975 and amendments thereto;

(5) a resident of an adult care home, as defined by K.S.A. 39-923 and amendments thereto, licensed by the secretary of ~~health and environment~~ *aging*;

(6) an inmate in an honor camp operated by the secretary of corrections, pursuant to an agreement between the secretary of corrections and the secretary of wildlife and parks;

(7) a person on dates designated pursuant to subsection (f);

(8) a person fishing under a valid institutional group fishing license issued pursuant to subsection (g); or

(9) a participant in a fishing clinic sponsored or cosponsored by the department, during the period of time that the fishing clinic is being conducted.

(c) The fee for a fishing license shall be the amount prescribed pursuant to K.S.A. 32-988 and amendments thereto.

(d) Unless otherwise provided by law or rules and regulations of the secretary, a fishing license is valid throughout the state.

(e) Unless otherwise provided by law or rules and regulations of the secretary, a fishing license is valid from the date of issuance and expires on December 31 following its issuance, except that the secretary may issue a:

(1) Permanent license pursuant to K.S.A. 32-929 and amendments thereto;

(2) lifetime license pursuant to K.S.A. 32-930 and amendments thereto;

(3) nonresident fishing license valid for a period of five days; and

(4) resident or nonresident fishing license valid for a period of 24 hours.

(f) The secretary may designate by resolution two days each calendar year during which persons may fish by legal means without having a valid fishing license.

(g) The secretary shall issue an annual institutional group fishing license to each facility operating under the jurisdiction of or licensed by the secretary of social and rehabilitation services and to any veterans administration medical center in the state of Kansas upon application by such facility or center to the secretary of wildlife and parks for such license.

All applications for facilities under the jurisdiction of the secretary of social and rehabilitation services shall be made with the approval of the secretary of social and rehabilitation services and shall provide such information as the secretary of wildlife and parks requires. All applications for any veterans administration medical center shall be made with the approval of the director of such facility and shall provide such information as the secretary of wildlife and parks requires. Persons who have been admitted to and are currently residing at the facility or center, not to

exceed 20 at any one time, may fish under an institutional group fishing license within the state while on a group trip, group outing or other group activity which is supervised by the facility or center. Persons fishing under an institutional group fishing license shall not be required to obtain a fishing license but shall be subject to all other laws and to all rules and regulations relating to fishing.

The staff personnel of the facility or center supervising the group trip, group outing or other group activity shall have in their possession the institutional license when engaged in supervising any activity requiring the license. Such staff personnel may assist group members in all aspects of their fishing activity.

(h) The secretary may issue a special nonprofit group fishing license to any community, civic or charitable organization which is organized as a not-for-profit corporation, for use by such community, civic or charitable organization for the sole purpose of conducting group fishing activities for handicapped or developmentally disabled individuals. All applications for a special nonprofit group fishing license shall be made to the secretary or the secretary's designee and shall provide such information as required by the secretary.

Handicapped or developmentally disabled individuals, not to exceed 20 at any one time, may fish under a special nonprofit group fishing license while on a group trip, outing or activity which is supervised by the community, civic or charitable organization. Individuals fishing under a special nonprofit group fishing license shall not be required to obtain a fishing license but shall be subject to all other laws and rules and regulations relating to fishing.

The staff personnel of the community, civic or charitable organization supervising the group trip, outing or activity shall have in their possession the special nonprofit group fishing license when engaged in supervising any activity requiring the special nonprofit group fishing license. Such staff personnel may assist group members in all aspects of their fishing activity.

Sec. 2. K.S.A. 2002 Supp. 39-923 is hereby amended to read as follows: 39-923. (a) As used in this act:

(1) "Adult care home" means any nursing facility, nursing facility for mental health, intermediate care facility for the mentally retarded, assisted living facility, residential health care facility, home plus, boarding care home and adult day care facility, all of which classifications of adult care homes are required to be licensed by the secretary of ~~health and environment~~ *aging*.

(2) "Nursing facility" means any place or facility operating 24 hours a day, seven days a week, caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care to compensate for activities of daily living limitations.

(3) "Nursing facility for mental health" means any place or facility operating 24 hours a day, seven days a week caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care and special mental health services to compensate for activities of daily living limitations.

(4) "Intermediate care facility for the mentally retarded" means any place or facility operating 24 hours a day, seven days a week caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments caused by mental retardation or related conditions need services to compensate for activities of daily living limitations.

(5) "Assisted living facility" means any place or facility caring for six or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes apartments for residents and provides or coordinates a range of services including personal care or supervised nursing care available 24 hours a day, seven days a week for the support of resident independence. The provision of skilled nursing procedures to a resident in an assisted living facility is not

prohibited by this act. Generally, the skilled services provided in an assisted living facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(6) “Residential health care facility” means any place or facility, or a contiguous portion of a place or facility, caring for six or more individuals not related within the third degree or relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes individual living units and provides or coordinates personal care or supervised nursing care available on a 24-hour, seven-day-a-week basis for the support of resident independence. The provision of skilled nursing procedures to a resident in a residential health care facility is not prohibited by this act. Generally, the skilled services provided in a residential health care facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(7) “Home plus” means any residence or facility caring for not more than eight individuals not related within the third degree of relationship to the operator or owner by blood or marriage unless the resident in need of care is approved for placement by the secretary of the department of social and rehabilitation services, and who, due to functional impairment, needs personal care and may need supervised nursing care to compensate for activities of daily living limitations. The level of care provided residents shall be determined by preparation of the staff and rules and regulations developed by the department of health and environment *on aging*. An adult care home may convert a portion of one wing of the facility to a not less than five-bed and not more than eight-bed home plus facility provided that the home plus facility remains separate from the adult care home, and each facility must remain contiguous.

(8) “Boarding care home” means any place or facility operating 24 hours a day, seven days a week, caring for not more than 10 individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment, need supervision of activities of daily living but who are ambulatory and essentially capable of managing their own care and affairs.

(9) “Adult day care” means any place or facility operating less than 24 hours a day caring for individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment need supervision of or assistance with activities of daily living.

(10) “Place or facility” means a building or any one or more complete floors of a building, or any one or more complete wings of a building, or any one or more complete wings and one or more complete floors of a building, and the term “place or facility” may include multiple buildings.

(11) “Skilled nursing care” means services performed by or under the immediate supervision of a registered professional nurse and additional licensed nursing personnel. Skilled nursing includes administration of medications and treatments as prescribed by a licensed physician or dentist; and other nursing functions which require substantial nursing judgment and skill based on the knowledge and application of scientific principles.

(12) “Supervised nursing care” means services provided by or under the guidance of a licensed nurse with initial direction for nursing procedures and periodic inspection of the actual act of accomplishing the procedures; administration of medications and treatments as prescribed by a licensed physician or dentist and assistance of residents with the performance of activities of daily living.

(13) “Resident” means all individuals kept, cared for, treated, boarded or otherwise accommodated in any adult care home.

(14) “Person” means any individual, firm, partnership, corporation, company, association or joint-stock association, and the legal successor thereof.

(15) “Operate an adult care home” means to own, lease, establish, maintain, conduct the affairs of or manage an adult care home, except that for the purposes of this definition the word “own” and the word “lease” shall not include hospital districts, cities and counties which hold

title to an adult care home purchased or constructed through the sale of bonds.

(16) “Licensing agency” means the secretary of ~~health and environment~~ *aging*.

(17) “Skilled nursing home” means a nursing facility.

(18) “Intermediate nursing care home” means a nursing facility.

(19) “Apartment” means a private unit which includes, but is not limited to, a toilet room with bathing facilities, a kitchen, sleeping, living and storage area and a lockable door.

(20) “Individual living unit” means a private unit which includes, but is not limited to, a toilet room with bathing facilities, sleeping, living and storage area and a lockable door.

(21) “Operator” means an individual who operates an assisted living facility or residential health care facility with fewer than 61 residents, a home plus or adult day care facility and has completed a course approved by the secretary of health and environment on principles of assisted living and has successfully passed an examination approved by the ~~licensing agency~~ *secretary of health and environment* on principles of assisted living and such other requirements as may be established by the ~~licensing agency~~ *secretary of health and environment* by rules and regulations.

(22) “Activities of daily living” means those personal, functional activities required by an individual for continued well-being, including but not limited to eating, nutrition, dressing, personal hygiene, mobility, toileting.

(23) “Personal care” means care provided by staff to assist an individual with, or to perform activities of daily living.

(24) “Functional impairment” means an individual has experienced a decline in physical, mental and psychosocial well-being and as a result, is unable to compensate for the effects of the decline.

(25) “Kitchen” means a food preparation area that includes a sink, refrigerator and a microwave oven or stove.

(26) The term “intermediate personal care home” for purposes of those individuals applying for or receiving veterans’ benefits means residential health care facility.

(b) The term “adult care home” shall not include institutions operated by federal or state governments, except institutions operated by the Kansas commission on veterans affairs, hospitals or institutions for the treatment and care of psychiatric patients, child care facilities, maternity centers, hotels, offices of physicians or hospices which are certified to participate in the medicare program under 42 code of federal regulations, chapter IV, section 418.1 *et seq.* and amendments thereto and which provide services only to hospice patients.

~~(c) Facilities licensed under K.S.A. 39-1501 *et seq.* and amendments thereto or K.S.A. 75-3307b and amendments thereto or under this section as an intermediate personal care home or with license applications on file with the licensing agency as intermediate personal care homes on or before January 1, 1995, shall have the option of becoming licensed as either an assisted living facility or a residential health care facility without being required to add kitchens or private baths.~~

~~(c)~~ (c) Nursing facilities in existence on the effective date of this act changing licensure categories to become residential health care facilities shall be required to provide private bathing facilities in a minimum of 20% of the individual living units.

~~(d)~~ (d) Facilities licensed under the adult care home licensure act on the day immediately preceding the effective date of this act shall continue to be licensed facilities until the annual renewal date of such license and may renew such license in the appropriate licensure category under the adult care home licensure act subject to the payment of fees and other conditions and limitations of such act.

~~(e)~~ (e) Nursing facilities with less than 60 beds converting a portion of the facility to residential health care shall have the option of licensing for residential health care for less than six individuals but not less than 10% of the total bed count within a contiguous portion of the facility.

~~(f)~~ (f) The licensing agency may by rule and regulation change the name of the different classes of homes when necessary to avoid confusion in terminology and the agency may further amend, substitute, change and in a manner consistent with the definitions established in this section, further define and identify the specific acts and services which shall fall

within the respective categories of facilities so long as the above categories for adult care homes are used as guidelines to define and identify the specific acts.

Sec. 3. K.S.A. 39-924 is hereby amended to read as follows: 39-924. The purpose of this act is the development, establishment, and enforcement of standards (1) for the care, treatment, health, safety, welfare and comfort of individuals in adult care homes licensed by the secretary of ~~health and environment~~ aging and (2) for the construction, general hygiene, maintenance and operation of said adult care homes, which, in the light of advancing knowledge, will promote safe and adequate accommodation, care and treatment of such individuals in adult care homes.

Sec. 4. K.S.A. 39-925 is hereby amended to read as follows: 39-925. (a) The administration of ~~this the adult care home licensure act shall be under the secretary of health and environment~~ is hereby transferred from the secretary of health and environment to the secretary of aging, except as otherwise provided by this act. On the effective date of this act, the administration of the adult care home licensure act shall be under authority of the secretary of aging as the licensing agency in conjunction with the state fire marshal, and shall have the assistance of the county, city-county or multicounty health departments, local fire and safety authorities and other agencies of government in this state. The secretary of aging shall appoint an officer to administer the adult care home licensure act and such officer shall be in the unclassified service under the Kansas civil service act.

(b) The secretary of aging shall be a continuation of the secretary of health and environment as to the programs transferred and shall be the successor in every way to the powers, duties and functions of the secretary of health and environment for such programs, except as otherwise provided by this act. On and after the effective date of this act, for each of the programs transferred, every act performed in the exercise of such powers, duties and functions by or under the authority of the secretary of aging shall be deemed to have the same force and effect as if performed by the secretary of health and environment in whom such powers were vested prior to the effective date of this act.

(c) (1) No suit, action or other proceeding, judicial or administrative, which pertains to any of the transferred adult care home survey, certification and licensing programs, and reporting of abuse, neglect or exploitation of adult care home residents, which is lawfully commenced, or could have been commenced, by or against the secretary of health and environment in such secretary's official capacity or in relation to the discharge of such secretary's official duties, shall abate by reason of the transfer of such programs. The secretary of aging shall be named or substituted as the defendant in place of the secretary of health and environment in any suit, action or other proceeding involving claims arising from facts or events first occurring either on or before the effective date of this act or thereafter.

(2) No suit, action or other proceeding, judicial or administrative, pertaining to the adult care home survey, certification and licensing programs or to the reporting of abuse, neglect or exploitation of adult care home residents which otherwise would have been dismissed or concluded shall continue to exist by reason of any transfer under this act.

(3) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this act.

(4) Any final appeal decision of the department of health and environment entered pursuant to K.S.A. 39-923 et seq., and amendments thereto, K.S.A. 39-1401 et seq., and amendments thereto, or the act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 et seq., and amendments thereto, currently pertaining to adult care home certification, survey and licensing or reporting of abuse, neglect or exploitation of adult care home residents, transferred pursuant to this act shall be binding upon and applicable to the secretary of aging and the department on aging.

(5) All orders and directives under the adult care home licensure act by the secretary of health and environment in existence immediately prior to the effective date of the transfer of powers, duties and functions by this act, shall continue in force and effect and shall be deemed to be duly issued

orders, and directives of the secretary of aging, until reissued, amended or nullified pursuant to law.

(d) (1) All rules and regulations of the department of health and environment adopted pursuant to K.S.A. 39-923 et seq., and amendments thereto, and in effect on the effective date of this act, which promote the safe, proper and adequate treatment and care of individuals in adult care homes, except those specified in subsection (d)(2) of this section, shall continue to be effective and shall be deemed to be rules and regulations of the secretary of aging, until revised, amended, revoked or nullified by the secretary of aging, or otherwise, pursuant to law.

(2) The following rules and regulations of the department of health and environment adopted pursuant to K.S.A. 39-923 et seq., and amendments thereto, and in effect on the effective date of this act, shall remain the rules and regulations of the secretary of health and environment: K.A.R. 28-39-164 through 28-39-174.

(e) All contracts shall be made in the name of “secretary of aging” and in that name the secretary of aging may sue and be sued on such contracts. The grant of authority under this subsection shall not be construed to be a waiver of any rights retained by the state under the 11th amendment to the United States constitution and shall be subject to and shall not supersede the provisions of any appropriation act of this state.

Sec. 5. K.S.A. 39-926 is hereby amended to read as follows: 39-926. It shall be unlawful for any person or persons acting jointly or severally to operate an adult care home within this state except upon license first had and obtained for that purpose from the secretary of ~~health and environment~~ *aging* as the licensing agency upon application made therefor as provided in this act, and compliance with the requirements, standards, rules and regulations, promulgated under its provisions.

Sec. 6. K.S.A. 39-930 is hereby amended to read as follows: 39-930. The fee for license to operate an adult care home shall be a base amount plus an additional amount for each bed of such home which shall be paid to the secretary of ~~health and environment~~ *aging* before the license is issued. The fee shall be fixed by rules and regulations of the secretary of ~~health and environment~~ *aging*. The fee shall be deposited in the state treasury and credited to the state general fund unless the evaluation and inspection was made by a county, city-county or multicounty health department at the direction of the secretary of health and environment and the papers required are completed and filed with the secretary, then 40% of the fee collected shall be forwarded to such county, city-county or multicounty health department. If a facility has a change of administrator after the commencement of the licensing period, the fee shall be \$15 and shall be deposited in the state treasury and credited to the state general fund.

Sec. 7. K.S.A. 2002 Supp. 39-936 is hereby amended to read as follows: 39-936. (a) The presence of each resident in an adult care home shall be covered by a statement provided at the time of admission, or prior thereto, setting forth the general responsibilities and services and daily or monthly charges for such responsibilities and services. Each resident shall be provided with a copy of such statement, with a copy going to any individual responsible for payment of such services and the adult care home shall keep a copy of such statement in the resident’s file. No such statement shall be construed to relieve any adult care home of any requirement or obligation imposed upon it by law or by any requirement, standard or rule and regulation adopted pursuant thereto.

(b) A qualified person or persons shall be in attendance at all times upon residents receiving accommodation, board, care, training or treatment in adult care homes. The licensing agency may establish necessary standards and rules and regulations prescribing the number, qualifications, training, standards of conduct and integrity for such qualified person or persons attendant upon the residents.

(c) (1) The licensing agency shall require unlicensed employees of an adult care home, except an adult care home licensed for the provision of services to the mentally retarded which has been granted an exception by the ~~licensing agency~~ *secretary of health and environment* upon a finding by the licensing agency that an appropriate training program for unlicensed employees is in place for such adult care home, employed on and after the effective date of this act who provide direct, individual care

to residents and who do not administer medications to residents and who have not completed a course of education and training relating to resident care and treatment approved by the ~~licensing agency~~ *secretary of health and environment* or are not participating in such a course on the effective date of this act to complete successfully 40 hours of training in basic resident care skills. Any unlicensed person who has not completed 40 hours of training relating to resident care and treatment approved by the ~~licensing agency~~ *secretary of health and environment* shall not provide direct, individual care to residents. The 40 hours of training shall be supervised by a registered professional nurse and the content and administration thereof shall comply with rules and regulations adopted by the ~~licensing agency~~ *secretary of health and environment*. The 40 hours of training may be prepared and administered by an adult care home or by any other qualified person and may be conducted on the premises of the adult care home. The 40 hours of training required in this section shall be a part of any course of education and training required by the ~~licensing agency~~ *secretary of health and environment* under subsection (c)(2).

(2) The licensing agency may require unlicensed employees of an adult care home, except an adult care home licensed for the provision of services to the mentally retarded which has been granted an exception by the ~~licensing agency~~ *secretary of health and environment* upon a finding by the licensing agency that an appropriate training program for unlicensed employees is in place for such adult care home, who provide direct, individual care to residents and who do not administer medications to residents after 90 days of employment to successfully complete an approved course of instruction and an examination relating to resident care and treatment as a condition to continued employment by an adult care home. A course of instruction may be prepared and administered by any adult care home or by any other qualified person. A course of instruction prepared and administered by an adult care home may be conducted on the premises of the adult care home which prepared and which will administer the course of instruction. The licensing agency shall not require unlicensed employees of an adult care home who provide direct, individual care to residents and who do not administer medications to residents to enroll in any particular approved course of instruction as a condition to the taking of an examination, but the ~~licensing agency~~ *secretary of health and environment* shall prepare guidelines for the preparation and administration of courses of instruction and shall approve or disapprove courses of instruction. Unlicensed employees of adult care homes who provide direct, individual care to residents and who do not administer medications to residents may enroll in any approved course of instruction and upon completion of the approved course of instruction shall be eligible to take an examination. The examination shall be prescribed by the ~~licensing agency~~ *secretary of health and environment*, shall be reasonably related to the duties performed by unlicensed employees of adult care homes who provide direct, individual care to residents and who do not administer medications to residents and shall be the same examination given by the ~~licensing agency~~ *secretary of health and environment* to all unlicensed employees of adult care homes who provide direct, individual care to residents and who do not administer medications.

(3) The ~~licensing agency~~ *secretary of health and environment* shall fix, charge and collect a fee to cover all or any part of the costs of the licensing agency under this subsection (c). The fee shall be fixed by rules and regulations of the ~~licensing agency~~ *secretary of health and environment*. The fee shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(4) The ~~licensing agency~~ *secretary of health and environment* shall establish a state registry containing information about unlicensed employees of adult care homes who provide direct, individual care to residents and who do not administer medications in compliance with the requirements pursuant to PL 100-203, Subtitle C, as amended November 5, 1990.

(5) No adult care home shall use an individual as an unlicensed employee of the adult care home who provides direct, individual care to residents and who does not administer medications unless the facility has

inquired of the state registry as to information contained in the registry concerning the individual.

(6) Beginning July 1, 1993, the adult care home must require any unlicensed employee of the adult care home who provides direct, individual care to residents and who does not administer medications and who since passing the examination required under paragraph (2) of this subsection has had a continuous period of 24 consecutive months during none of which the unlicensed employee provided direct, individual care to residents to complete an approved refresher course. The ~~licensing agency~~ *secretary of health and environment* shall prepare guidelines for the preparation and administration of refresher courses and shall approve or disapprove courses.

(d) Any person who has been employed as an unlicensed employee of an adult care home in another state may be so employed in this state without an examination if the secretary of health and environment determines that such other state requires training or examination, or both, for such employees at least equal to that required by this state.

(e) All medical care and treatment shall be given under the direction of a physician authorized to practice under the laws of this state and shall be provided promptly as needed.

(f) No adult care home shall require as a condition of admission to or as a condition to continued residence in the adult care home that a person change from a supplier of medication needs of their choice to a supplier of medication selected by the adult care home. Nothing in this subsection (f) shall be construed to abrogate or affect any agreements entered into prior to the effective date of this act between the adult care home and any person seeking admission to or resident of the adult care home.

(g) Except in emergencies as defined by rules and regulations of the licensing agency and except as otherwise authorized under federal law, no resident may be transferred from or discharged from an adult care home involuntarily unless the resident or legal guardian of the resident has been notified in writing at least 30 days in advance of a transfer or discharge of the resident.

(h) No resident who relies in good faith upon spiritual means or prayer for healing shall, if such resident objects thereto, be required to undergo medical care or treatment.

Sec. 8. K.S.A. 39-938 is hereby amended to read as follows: 39-938. Adult care homes shall comply with all the lawfully established requirements and rules and regulations of the secretary of ~~health and environment~~ *aging* and the state fire marshal, and any other agency of government so far as pertinent and applicable to adult care homes, their buildings, operators, staffs, facilities, maintenance, operation, conduct, and the care and treatment of residents. The administrative rules and regulations of the state board of cosmetology and of the Kansas board of barbering shall not apply to adult care homes.

Sec. 9. K.S.A. 39-940 is hereby amended to read as follows: 39-940. (a) The secretary of ~~health and environment~~ *aging* may prescribe and supply necessary forms for applications, reports, records and inspections for adult care homes. All prescribed records shall be open to inspection by the designated agents of the agencies administering this act.

(b) It shall be unlawful to:

- (1) Make false entries in such records;
- (2) omit any information required or make any false report concerning any adult care home; or
- (3) file or cause to be filed such false or incomplete records or reports with the department of ~~health and environment~~ *on aging* or with any agency administering this act, knowing that such records or reports are false or incomplete.

Sec. 10. K.S.A. 39-944 is hereby amended to read as follows: 39-944. Notwithstanding the existence or pursuit of any other remedy, the secretary of ~~health and environment~~ *aging*, as the licensing agency, in the manner provided by the act for judicial review and civil enforcement of agency actions, may maintain an action in the name of the state of Kansas for injunction or other process against any person or agency to restrain or prevent the operation of an adult care home without a license under this act.

Sec. 11. K.S.A. 39-945 is hereby amended to read as follows: 39-945. A correction order may be issued by the secretary of ~~health and environment~~ *aging* or the secretary's designee to a person licensed to operate an adult care home whenever the state fire marshal or the marshal's representative or a duly authorized representative of the secretary of ~~health and environment~~ *aging* inspects or investigates an adult care home and determines that the adult care home is not in compliance with the provisions of article 9 of chapter 39 of the Kansas Statutes Annotated or rules and regulations promulgated thereunder which individually or jointly affects significantly and adversely the health, safety, nutrition or sanitation of the adult care home residents. The correction order shall be served upon the licensee either personally or by certified mail, return receipt requested. The correction order shall be in writing, shall state the specific deficiency, cite the specific statutory provision or rule and regulation alleged to have been violated, and shall specify the time allowed for correction.

Sec. 12. K.S.A. 39-946 is hereby amended to read as follows: 39-946. (a) If upon reinspection by the state fire marshal or the marshal's representative or a duly authorized representative of the secretary of ~~health and environment~~ *aging*, which reinspection shall be conducted within 14 days from the day the correction order is served upon the licensee, it is found that the licensee of the adult care home which was issued a correction order has not corrected the deficiency or deficiencies specified in the order, the secretary of ~~health and environment~~ *aging* may assess a civil penalty in an amount not to exceed \$500 per day per deficiency against the licensee of an adult care home for each day subsequent to the day following the time allowed for correction of the deficiency as specified in the correction order that the adult care home has not corrected the deficiency or deficiencies listed in the correction order, but the maximum assessment shall not exceed \$2,500. ~~Prior to the assessment of a civil penalty, the case shall be reviewed by a person licensed to practice medicine and surgery.~~ A written notice of assessment shall be served upon the licensee of an adult care home either personally or by certified mail, return receipt requested.

(b) Before the assessment of a civil penalty, the secretary of *aging* shall consider the following factors in determining the amount of the civil penalty to be assessed: (1) The severity of the violation; (2) the good faith effort exercised by the adult care home to correct the violation; and (3) the history of compliance of the ownership of the adult care home with the rules and regulations. If the secretary of ~~health and environment~~ *aging* finds that some or all deficiencies cited in the correction order have also been cited against the adult care home as a result of any inspection or investigation which occurred within 18 months prior to the inspection or investigation which resulted in such correction order, the secretary of ~~health and environment~~ *aging* may double the civil penalty assessed against the licensee of the adult care home, the maximum not to exceed \$5,000.

(c) All civil penalties assessed shall be due and payable within 10 days after written notice of assessment is served on the licensee, unless a longer period of time is granted by the secretary. If a civil penalty is not paid within the applicable time period, the secretary of ~~health and environment~~ *aging* may file a certified copy of the notice of assessment with the clerk of the district court in the county where the adult care home is located. The notice of assessment shall be enforced in the same manner as a judgment of the district court.

Sec. 13. K.S.A. 39-947 is hereby amended to read as follows: 39-947. Any licensee against whom a civil penalty has been assessed under K.S.A. 39-946, and amendments thereto, may appeal such assessment within 10 days after receiving a written notice of assessment by filing with the secretary of ~~health and environment~~ *aging* written notice of appeal specifying why such civil penalty should not be assessed. Such appeal shall not operate to stay the payment of the civil penalty. Upon receipt of the notice of appeal, the secretary of ~~health and environment~~ *aging* shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. If the secretary of *aging* sustains the appeal, any civil penalties collected shall be refunded forthwith to the appellant licensee with interest at the rate established by K.S.A. 16-204, and amendments

thereto, from the date of payment of the civil penalties to the secretary *of aging*. If the secretary *of aging* denies the appeal and no appeal from the secretary is taken to the district court in accordance with the provisions of the act for judicial review and civil enforcement of agency actions, the secretary *of aging* shall dispose of any civil penalties collected as provided in K.S.A. 39-949, and amendments thereto.

Sec. 14. K.S.A. 39-948 is hereby amended to read as follows: 39-948. (a) A licensee may appeal to the district court from a decision of the secretary *of aging* under K.S.A. 39-947, and amendments thereto. The appeal shall be tried in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.

(b) An appeal to the district court or to an appellate court shall not stay the payment of the civil penalty. If the court sustains the appeal, the secretary of ~~health and environment~~ *aging* shall refund forthwith the payment of any civil penalties to the licensee with interest at the rate established by K.S.A. 16-204, and amendments thereto, from the date of payment of the civil penalties to the secretary. If the court denies the appeal, the secretary of ~~health and environment~~ *aging* shall dispose of any civil penalties collected as provided in K.S.A. 39-949, and amendments thereto.

Sec. 15. K.S.A. 39-950 is hereby amended to read as follows: 39-950. The secretary of ~~health and environment~~ *aging* may adopt rules and regulations necessary to carry out the provisions of this act.

Sec. 16. K.S.A. 39-951 is hereby amended to read as follows: 39-951. The authority granted to the secretary of ~~health and environment~~ *aging* under this act is in addition to other statutory authority the secretary *of aging* has to require the licensing and operation of adult care homes and is not to be construed to limit any of the powers and duties of the secretary *of aging* under article 9 of chapter 39 of the Kansas Statutes Annotated.

Sec. 17. K.S.A. 39-952 is hereby amended to read as follows: 39-952. The secretary of ~~health and environment~~ *aging* or the secretary's designee shall not issue a correction order to a person licensed to operate an adult care home because of a violation of a provision of article 9 of chapter 39 of the Kansas Statutes Annotated or a rule and regulation adopted thereunder which was caused by any person licensed by the state board of healing arts to practice a branch of the healing arts if such person licensed by the state board of healing arts is not an owner, operator or employee of the adult care home and if the person licensed to operate the adult care home shows that such person has exercised reasonable diligence in notifying the person licensed by the state board of healing arts to practice a branch of the healing arts of such person's duty to the residents of the adult care home.

Sec. 18. K.S.A. 39-953a is hereby amended to read as follows: 39-953a. (a) At any time the secretary of ~~health and environment~~ *aging* initiates any action concerning an adult care home in which it is alleged that there has been a substantial failure to comply with the requirements, standards or rules and regulations established under the adult care home licensure act, that conditions exist in the adult care home which are life threatening or endangering to the residents of the adult care home, that the adult care home is insolvent, or that the adult care home has deficiencies which significantly and adversely affect the health, safety, nutrition or sanitation of the adult care home residents, the secretary *of aging* may issue an order, pursuant to the emergency proceedings provided for under the Kansas administrative procedure act, prohibiting any new admissions into the adult care home until further determination by the secretary *of aging*. This remedy granted to the secretary *of aging* is in addition to any other statutory authority the secretary *of aging* has relating to the licensure and operation of adult care homes and is not be construed to limit any of the powers and duties of the secretary *of aging* under the adult care home licensure act.

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

Sec. 19. K.S.A. 39-954 is hereby amended to read as follows: 39-954. (a) The secretary of ~~health and environment~~ *aging*, the owner of an adult care home, or the person licensed to operate an adult care home may file an application with the district court for an order appointing the secretary

of ~~health and environment~~ *aging* or the designee of the secretary as receiver to operate an adult care home whenever: (1) Conditions exist in the adult care home that are life threatening or endangering to the residents of the adult care home; (2) the adult care home is insolvent; or (3) the secretary of ~~health and environment~~ *aging* has issued an order revoking the license of the adult care home.

(b) The secretary of ~~health and environment~~ *aging* may adopt rules and regulations setting forth the necessary qualifications of persons to be designated receivers and a method for selecting designees.

Sec. 20. K.S.A. 39-958 is hereby amended to read as follows: 39-958.

(a) The application for receivership shall be given priority by the district court and shall be heard no later than the seventh ~~(7th)~~ day following the filing of the application. A continuance of no more than ~~ten (10)~~ 10 days may be granted by the district court for good cause. The district court shall give all parties who have filed an answer the opportunity to present evidence pertaining to the application. If the district court finds that the facts warrant the granting of the application, the court shall appoint the secretary of ~~health and environment~~ *aging* or the designee of the secretary as receiver to operate the home.

(b) Upon the appointment of a receiver under this section, the receiver shall be granted a license by the licensing agency to operate an adult care home as provided under the provisions of article 9 of chapter 39 of the Kansas Statutes Annotated, and acts amending the provisions thereof or acts supplemental thereto. The provisions of article 9 of chapter 39 of the Kansas Statutes Annotated, and acts amending the provisions thereof and acts supplemental thereto, relating to inspection prior to granting a license to operate an adult care home and relating to payment of license fees shall not apply to a license granted to a receiver under this section, and such license shall remain in effect during the existence of the receivership and shall expire on the termination of the receivership. The receiver shall make application for the license on forms provided for this purpose by the licensing agency.

Sec. 21. K.S.A. 39-961 is hereby amended to read as follows: 39-961.

(a) The personnel and facilities of the department of ~~health and environment~~ *on aging* shall be available to the receiver for the purposes of carrying out the receiver's duties as receiver as authorized by the secretary of ~~health and environment~~ *aging*.

(b) The department of ~~health and environment~~ *on aging* shall itemize and keep a ledger showing costs of personnel and other expenses establishing the receivership and assisting the receiver and such amount shall be owed by the owner or licensee to the department of ~~health and environment~~ *on aging*. Such department shall submit a bill for such expenses to the receiver for inclusion in the receiver's final accounting. Any amount so billed and until repaid shall constitute a lien against all non-exempt personal and real property of the owner or licensee.

Sec. 22. K.S.A. 39-963 is hereby amended to read as follows: 39-963.

(a) The court shall terminate the receivership only under any of the following circumstances:

(1) Twenty-four months after the date on which the receivership was ordered;

(2) a new license, other than the license granted to the receiver under K.S.A. 39-958 and amendments thereto, has been granted to operate the adult care home; or

(3) at such time as all of the residents in the adult care home have been provided alternative modes of health care, either in another adult care home or otherwise.

(b) (1) At the time of termination of the receivership, the receiver shall render a full and complete accounting to the district court and shall make disposition of surplus money at the direction of the district court.

(2) The court may make such additional orders as are appropriate to recover the expenses and costs to the department of ~~health and environment~~ *on aging* and the secretary of social and rehabilitation services incurred pursuant to K.S.A. 39-960 or 39-961 and amendments thereto.

Sec. 23. K.S.A. 39-965 is hereby amended to read as follows: 39-965.

(a) If the secretary of ~~health and environment~~ *aging* determines that an adult care home is in violation of or has violated any requirements, standards or rules and regulations established under the adult care home

licensure act which violation can reasonably be determined to have resulted in, caused or posed serious physical harm to a resident, the secretary *of aging* in accordance with proceedings under the Kansas administrative procedure act, may assess a civil penalty against the licensee of such adult care home in an amount of not to exceed \$1,000 per day per violation for each day the secretary finds that the adult care home was not in compliance with such requirements, standards or rules and regulations but the maximum assessment shall not exceed \$10,000.

(b) All civil penalties assessed shall be due and payable in accordance with subsection (c) of K.S.A. 39-946 and K.S.A. 39-947 and amendments thereto.

(c) The secretary of ~~health and environment~~ *aging* may adopt rules and regulations which shall include due process procedures for the issuance of civil penalties relating to nursing facilities.

(d) The authority to assess civil penalties granted to the secretary of ~~health and environment~~ *aging* under this section is in addition to any other statutory authority of the secretary relating to the licensure and operation of adult care homes and is not to be construed to limit any of the powers and duties of the secretary *of aging* under the adult care home licensure act.

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

Sec. 24. K.S.A. 39-969 is hereby amended to read as follows: 39-969.

(a) The ~~licensing agency~~ *secretary of health and environment* shall upon request receive from the Kansas bureau of investigation, without charge, such criminal history record information relating to criminal convictions as necessary for the purpose of determining initial and continuing qualifications of an operator.

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

New Sec. 25. (a) On July 1, 2003, certain powers, duties and functions of the secretary of health and environment under K.S.A.39-1401 through 39-1411, and amendments thereto, are hereby transferred from the secretary of health and environment to the secretary of aging, as provided by this act.

(b) No suit, action or other proceeding, judicial or administrative, which pertains to any of the transferred reporting of abuse, neglect or exploitation of adult care home residents, which is lawfully commenced, or could have been commenced, by or against the secretary of health and environment in such secretary's official capacity or in relation to the discharge of such secretary's official duties, shall abate by reason of the transfer of such program. The secretary of aging shall be named or substituted as the defendant in place of the secretary of health and environment in any suit, action or other proceeding involving claims arising from facts or events first occurring either on or before the date the pertinent program is transferred or on any date thereafter.

(c) No suit, action or other proceeding, judicial or administrative, pertaining to the reporting of abuse, neglect or exploitation of adult care home residents which otherwise would have been dismissed or concluded shall continue to exist by reason of any transfer under this act.

(d) Any final appeal decision of the department of health and environment entered pursuant to K.S.A. 39-1401 *et seq.*, and amendments thereto, or the act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 *et seq.*, and amendments thereto, currently pertaining to reporting of abuse, neglect or exploitation of adult care home residents, transferred pursuant to this act shall be binding upon and applicable to the secretary of aging and the department on aging.

Sec. 26. K.S.A. 2002 Supp. 39-1402, as amended by section 3 of 2003 House Bill No. 2254, is hereby amended to read as follows: 39-1402. (a) Any person who is licensed to practice any branch of the healing arts, a licensed psychologist, a licensed master level psychologist, a licensed clinical psychotherapist, a chief administrative officer of a medical care facility, an adult care home administrator or operator, a licensed social worker, a licensed professional nurse, a licensed practical nurse, a licensed marriage and family therapist, a licensed clinical marriage and family therapist, licensed professional counselor, licensed clinical professional counselor, registered alcohol and drug abuse counselor, a teacher, a bank trust

officer and any other officers of financial institutions, a legal representative or a governmental assistance provider who has reasonable cause to believe that a resident is being or has been abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services, shall report immediately such information or cause a report of such information to be made in any reasonable manner to the department of health and environment on aging with respect to residents defined under ~~subsections~~ subsection (a)(1) and ~~(a)(2)~~ of K.S.A. 39-1401 and amendments thereto, to the department of health and environment with respect to residents defined under subsection (a)(2) of K.S.A. 39-1401, and amendments thereto, and to the department of social and rehabilitation services and appropriate law enforcement agencies with respect to all other residents. Reports made to one department which are required by this subsection to be made to the other department shall be referred by the department to which the report is made to the appropriate department for that report, and any such report shall constitute compliance with this subsection. Reports shall be made during the normal working week days and hours of operation of such departments. Reports shall be made to law enforcement agencies during the time the departments are not open for business. Law enforcement agencies shall submit the report and appropriate information to the appropriate department on the first working day that such department is open for business. A report made pursuant to K.S.A. 65-4923 or 65-4924 and amendments thereto shall be deemed a report under this section.

(b) The report made pursuant to subsection (a) shall contain the name and address of the person making the report and of the caretaker caring for the resident, the name and address of the involved resident, information regarding the nature and extent of the abuse, neglect or exploitation, the name of the next of kin of the resident, if known, and any other information which the person making the report believes might be helpful in an investigation of the case and the protection of the resident.

(c) Any other person, not listed in subsection (a), having reasonable cause to suspect or believe that a resident is being or has been abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services may report such information to the department of health and environment on aging with respect to residents defined under ~~subsections~~ subsection (a)(1) and ~~(a)(2)~~ of K.S.A. 39-1401 and amendments thereto, to the department of health and environment with respect to residents defined under subsection (a)(2) of K.S.A. 39-1401, and amendments thereto, and to the department of social and rehabilitation services with respect to all other residents. Reports made to one department which are to be made to the other department under this section shall be referred by the department to which the report is made to the appropriate department for that report.

(d) Notice of the requirements of this act and the department to which a report is to be made under this act shall be posted in a conspicuous public place in every adult care home and medical care facility in this state.

(e) Any person required to report information or cause a report of information to be made under subsection (a) who knowingly fails to make such report or cause such report to be made shall be guilty of a class B misdemeanor.

Sec. 27. K.S.A. 39-1404, as amended by section 5 of 2003 House Bill No. 2254, is hereby amended to read as follows: 39-1404. (a) The department of health and environment or the department of social and rehabilitation services upon receiving a report that a resident is being, or has been, abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services shall:

(1) When a criminal act has occurred or has appeared to have occurred, immediately notify, in writing, the appropriate law enforcement agency;

(2) make a personal visit with the involved resident:

(A) Within 24 hours when the information from the reporter indicates imminent danger to the health or welfare of the involved resident;

(B) within three working days for all reports of suspected abuse, when the information from the reporter indicates no imminent danger; or

(C) within five working days for all reports of neglect or exploitation when the information from the reporter indicates no imminent danger.

(3) Complete, within 30 working days of receiving a report, a thorough investigation and evaluation to determine the situation relative to the condition of the involved resident and what action and services, if any, are required. The investigation shall include, but not be limited to, consultation with those individuals having knowledge of the facts of the particular case; and

(4) prepare, upon a completion of the evaluation of each case, a written assessment which shall include an analysis of whether there is or has been abuse, neglect or exploitation; recommended action; a determination of whether protective services are needed; and any follow up.

(b) The department which investigates the report shall inform the complainant, upon request of the complainant, that an investigation has been made and, if the allegations of abuse, neglect or exploitation have been substantiated, that corrective measures will be taken if required upon completion of the investigation or sooner if such measures do not jeopardize the investigation.

(c) The department of ~~health and environment~~ *on aging* may inform the chief administrative officer of a facility as defined by K.S.A. 39-923 and amendments thereto *within 30 days* of confirmed findings of resident abuse, neglect or exploitation.

Sec. 28. K.S.A. 39-1405, as amended by section 6 of 2003 House Bill No. 2254, is hereby amended to read as follows: 39-1405. (a) The secretary of ~~health and environment~~ *aging* shall forward to the secretary of social and rehabilitation services any finding ~~that a resident with respect to residents defined under (a)(1) of K.S.A. 39-1401, and amendments thereto, who may be in need of protective services. The secretary of health and environment shall forward to the secretary of social and rehabilitation services any finding with respect to residents defined under (a)(2) of K.S.A. 39-1401, and amendments thereto, who may be in need of protective services.~~ If the secretary of social and rehabilitation services determines that a resident is in need of protective services, the secretary of social and rehabilitation services shall provide the necessary protective services, if a resident consents, or if the resident lacks capacity to consent, the secretary may obtain consent from such resident's legal representative. If a resident or such resident's legal representative, or both, fails to consent and the secretary of social and rehabilitation services has reason to believe that such a resident lacks capacity to consent, the secretary of social and rehabilitation services shall determine pursuant to K.S.A. 39-1408 and amendments thereto whether a petition for appointment of a guardian or conservator, or both, should be filed.

(b) If the caretaker or legal representative, or both, of a resident who has consented to the receipt of reasonable and necessary protective services refuses to allow the provision of such services to such resident, the secretary of social and rehabilitation services may seek to obtain an injunction enjoining the caretaker or legal representative, or both, from interfering with the provision of protective services to the resident. The petition in such action shall allege specific facts sufficient to show that the resident is in need of protective services and consents to their provision and that the caretaker or legal representative, or both, refuses to allow the provision of such services. If the judge, by clear and convincing evidence, finds that the resident is in need of protective services and has been prevented by the caretaker or legal representative, or both, from receiving such services, the judge shall issue an order enjoining the caretaker or legal representative, or both, from interfering with the provision of protective services to the resident. The court may appoint a new legal representative if the court deems that it is in the best interest of the resident.

Sec. 29. K.S.A. 39-1406, as amended by section 7 of 2003 House Bill No. 2254, is hereby amended to read as follows: 39-1406. Any person, department or agency authorized to carry out the duties enumerated in this act, including investigating law enforcement agencies and the long-term care ombudsman shall have access to all relevant records. The authority of the secretary of social and rehabilitation services ~~and~~, the sec-

retary of health and environment, *and the secretary of aging* under this act shall include, but not be limited to, the right to initiate or otherwise take those actions necessary to assure the health, safety and welfare of any resident, subject to any specific requirement for individual consent of the resident.

Sec. 30. K.S.A. 39-1409, as amended by section 10 of 2003 House Bill No. 2254, is hereby amended to read as follows: 39-1409. In performing the duties set forth in this act, the secretary of social and rehabilitation services, the secretary of health and environment, *the secretary of aging* or an appropriate law enforcement agency may request the assistance of the staffs and resources of all appropriate state departments, agencies and commissions and local health departments and may utilize any other public or private agency, group or individual who is appropriate and who may be available to assist such department or agency in the investigation and determination of whether a resident is being, or has been, abused, neglected or exploited or is in a condition which is a result of such abuse, neglect or exploitation, except that any internal investigation conducted by any caretaker under investigation shall be limited to the least serious category of report as specified by the secretary of health and environment, *the secretary of aging* or the secretary of social and rehabilitation services, as applicable.

Sec. 31. K.S.A. 39-1411 is hereby amended to read as follows: 39-1411. (a) The secretary of ~~health and environment~~ *aging* shall maintain a register of the reports received and investigated by the department ~~of health and environment~~ *on aging* under K.S.A. 39-1402 and 39-1403, and amendments to such sections, and the findings, evaluations and actions recommended by the department *on aging* with respect to such reports. *The secretary of health and environment shall maintain a register of the reports received and investigated by the department of health and environment under K.S.A. 39-1402 and 39-1403, and amendments thereto, and the findings, evaluations and actions recommended by the department of health and environment with respect to such reports.* The findings, evaluations and actions shall be subject to the Kansas administrative procedure act and any requirements of state or federal law relating thereto except that the secretary shall not be required to conduct a hearing in cases forwarded to the appropriate state authority under subsection (b). The register shall be available for inspection by personnel of the department of health and environment *or the department on aging* as specified by the secretary of health and environment *or the secretary of aging* and to such other persons as may be required by federal law and designated by the secretary of health and environment *or the secretary of aging* by rules and regulations. Information from the register shall be provided as specified in K.S.A. ~~2002-Supp.~~ 65-6205 and amendments thereto. ~~The secretary of health and environment shall forward a copy of any report of abuse, neglect or exploitation of a resident of an adult care home to the secretary of aging.~~

(b) The secretary of ~~health and environment~~ *aging* shall forward any finding of abuse, neglect or exploitation alleged to be committed by a provider of services licensed, registered or otherwise authorized to provide services in this state to the appropriate state authority which regulates such provider. *The secretary of health and environment shall forward any finding of abuse, neglect or exploitation alleged to be committed by a provider of services licensed, registered or otherwise authorized to provide services in this state to the appropriate state authority which regulates such provider.* The appropriate state regulatory authority, after notice to the alleged perpetrator and a hearing on such matter if requested by the alleged perpetrator, may consider the finding in any disciplinary action taken with respect to the provider of services under the jurisdiction of such authority. The secretary of ~~health and environment~~ *aging* may consider the finding of abuse, neglect or exploitation in any licensing action taken with respect to any adult care home or medical care facility under the jurisdiction of the secretary of *aging*. *The secretary of health and environment may consider the finding of abuse, neglect or exploitation in any licensing action taken with respect to any medical care facility under the jurisdiction of the secretary of health and environment.*

(c) If the investigation of the department of health and environment *or the department on aging* indicates reason to believe that the resident

is in need of protective services, that finding and all information relating to that finding shall be forwarded by the secretary of health and environment *or the secretary of aging* to the secretary of social and rehabilitation services.

(d) Except as otherwise provided in this section, the report received by the department of health and environment *or the department on aging* and the written findings, evaluations and actions recommended shall be confidential and shall not be subject to the open records act. Except as otherwise provided in this section, the name of the person making the original report to the department of health and environment *or the department on aging* or any person mentioned in such report shall not be disclosed unless such person specifically requests or agrees in writing to such disclosure or unless a judicial or administrative proceeding results therefrom. In the event that an administrative or judicial action arises, no use of the information shall be made until the judge or presiding officer makes a specific finding, in writing, after a hearing, that under all the circumstances the need for the information outweighs the need for confidentiality. Except as otherwise provided in this section, no information contained in the register shall be made available to the public in such a manner as to identify individuals.

Sec. 32. K.S.A. 46-233 is hereby amended to read as follows: 46-233.

(a) (1) No state officer or employee shall in the capacity as such officer or employee be substantially involved in the preparation of or participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee or any member of such officer's or employee's immediate family has a substantial interest and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to, has been substantially involved in the preparation of or is a participant in the making of such contract and is employed by such person or business or such officer or employee or any member of such officer's or employee's immediate family has a substantial interest in such person or business.

(2) Except as otherwise provided in this subsection, whenever any individual has participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business as an employee, independent contractor or subcontractor until two years after performance of the contract is completed or until two years after the individual terminates employment as a state officer or employee, whichever is sooner. This prohibition on accepting employment shall not apply in any case ~~in which:~~ (A) A state officer or employee who participated in making a contract while employed by an institution that is subsequently closed or abolished or otherwise ceases operations or that has budget reductions imposed that are associated with such closure and who is laid off from employment with such institution for the reason of such closure, abolition or cessation of operations or such imposition of budget reductions; (B) a state officer or employee who participated in making a contract while employed by an institution that is scheduled to be closed or abolished or to cease operations, who is scheduled to be laid off from employment with such institution for the reason of the scheduled closure, abolition or cessation of operations; and who voluntarily terminates such employment after receiving such state officer or employee's notice of the scheduled layoff; (C) a state officer or employee who participated in making a contract while employed by the department of corrections at the Topeka correctional facility and who is laid off from such employment due to the transfer of the reception and diagnostic center from the Topeka correctional facility to the El Dorado correctional facility; (D) a state officer or employee who participated in making a contract while employed by the department of corrections at the Topeka correctional facility and who voluntarily terminates from such employment after receiving such state officer or employee's notice of scheduled layoff due to the transfer of the reception and diagnostic center from the Topeka correctional facility to the El Dorado correctional facility; (E) a state officer or employee who participated in making a contract while employed by the department of social and rehabilitation services within the division of services for the blind or at Kansas industries for the blind at facilities located on the

~~Topeka state hospital property, as defined by K.S.A. 2000 Supp. 75-37,123 and amendments thereto, and who is laid off from such employment due to the closure, abolition or other cessation of operations of the Kansas industries for the blind as a state program at such location; or (F) a state officer or employee who participated in making a contract while employed by the department of social and rehabilitation services within the division of services for the blind or at Kansas industries for the blind at facilities located on the Topeka state hospital property, as defined by K.S.A. 2000 Supp. 75-37,123 and amendments thereto, and who voluntarily terminates from such employment after receiving such state officer's or employee's notice of scheduled layoff due to the closure, abolition or other cessation of operations of the Kansas industries for the blind as a state program at such location where a state officer or employee who participated in making a contract while employed by the state of Kansas is laid off or scheduled to be laid off from any state position on or after July 1, 2002. As used in this subsection (a)(2), "laid off" and "layoff" mean; in the case of a state officer or employee in the classified service under the Kansas civil service act, being laid off under K.S.A. 75-2948, and amendments thereto, and, in the case of a state officer or employee in the unclassified service under the Kansas civil service act, being terminated from employment with the state agency by the appointing authority, except that "laid off" and "layoff" shall not include any separation from employment pursuant to a budget reduction or expenditure authority reduction and a reduction of F.T.E. positions under K.S.A. 75-6801, and amendments thereto; "institution" means Topeka state hospital or Winfield state hospital and training center.~~

(b) No individual shall, while a legislator or within one year after the expiration of a term as legislator, be interested pecuniarily, either directly or indirectly, in any contract with the state, which contract is funded in whole or in part by any appropriation or is authorized by any law passed during such term, except that the prohibition of this subsection (b) shall not apply to any contract interest in relation to which a disclosure statement is filed as provided by K.S.A. 46-239, and amendments thereto.

(c) No individual, while a legislator or within one year after the expiration of a term as a legislator, shall represent any person in a court proceeding attacking any legislative action taken or enactment made during any term such individual served as a legislator as being unconstitutional because of error in the legislative process with respect to such action or enactment unless such legislator voted no upon the enactment of the measure and declared on the record, during such term, that such legislation was unconstitutional. The prohibition of this subsection (c) shall not apply to a current or former legislator charged with a violation of such legislative action or enactment.

(d) Subsections (a) and (b) shall not apply to the following:

- (1) Contracts let after competitive bidding has been advertised for by published notice; and
- (2) contracts for property or services for which the price or rate is fixed by law.

(e) When used in this section:

(1) "Substantial interest" shall have the same meaning ascribed thereto by K.S.A. 46-229, and amendments thereto, and any such interest held within the preceding 12 months of the act or event of participating in the preparation of making a contract.

(2) "Substantially involved in the preparation or participate in the making of a contract" means having approved or disapproved a contract or having provided significant factual or specific information or advice or recommendations in relation to the negotiated terms of the contract.

Sec. 33. K.S.A. 39-924, 39-925, 39-926, 39-930, 39-938, 39-940, 39-944, 39-945, 39-946, 39-947, 39-948, 39-950, 39-951, 39-952, 39-953a, 39-954, 39-958, 39-961, 39-963, 39-965, 39-969, 39-1404, as amended by section 5 of 2003 House Bill No. 2254, 39-1405, as amended by section 6 of 2003 House Bill No. 2254, 39-1406, as amended by section 7 of 2003 House Bill No. 2254, 39-1409, as amended by section 10 of 2003 House Bill No. 2254, 39-1411 and 46-233 and K.S.A. 2002 Supp. 32-906, 39-923, 39-936 and 39-1402, as amended by section 3 of 2003 House Bill No. 2254, are hereby repealed.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.