

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Chairperson Carlos Mayans, at 1:30 p.m. on March 13, 1997 in Room 423-S-of the State Capitol.

All members were present.

Committee staff present: Emalene Correll, Legislative Research Department
Norman Furse, Revisor of Statutes
Lois Hedrick, Committee Secretary

Conferees appearing before the committee:
Joseph Kroll, KDHE Director, Bureau of Adult and Child Care
Charles Sexson, Assistant Director, Kansas Bureau of Investigation

Others attending: See Guest List (Exhibit 1)

Chairperson Mayans welcomed members and visitors to the meeting to consider action on **HB 2278 - Restrictions on persons operating, working or volunteering in adult care homes.**

Representative Henry distributed a copy of a letter dated March 6, 1997, addressed to Representative Dixie Toelkes, from Assistant Attorney General Kyle Smith, concerning several questions that were raised in this committee's hearing of the bill on February 18, 1997. (See letter, Exhibit 2. Note that the letter, on page 2, refers to an "attached balloon amendment." The attachment was not distributed to the committee.)

The committee discussed the letter, particularly the parameters of and the cost estimate for background checks, and who will bear the cost; and the suggested amendments to the bill. The revised fiscal note on the bill, also distributed to the committee, was discussed as to the basis for estimated costs (see Exhibit 3).

Joseph Kroll explained the logic of their estimates for the fiscal note, stating that the numbers were derived from reports required of care homes. In discussing what the KBI background check encompasses, Mr. Kroll said it includes Kansas employment and criminal history, but does not include information on names with diversionary agreements in other states nor parental terminations. Currently, from experience, KBI notes a 5% initial "hit" of those names researched--meaning there may be negative information about the names, which may or may not prove out. The question of "verbal" record checks was raised, and Mr. Kroll opposed that because of the large possibility that incorrect information or misuse of the information could result.

Representative Henry questioned the present \$10 fee charged for a name certification, asking what the charge would be to an agency when a list of names are submitted at one time. Mr. Sexson said the cost for the first name is \$10; each additional name is \$5. Representative Powell asked about obtaining background history from other states. Mr. Sexson replied such research is handled through the FBI, and that currently the FBI is backed up several months. Representative Haley inquired about reciprocity agreements with other states, and Mr. Kroll answered that reciprocity would be as intensive as researching from "scratch."

Representative Freeborn questioned if negative history (such as a drug violation by someone as a juvenile) could be expunged so as to allow the person as an adult years later to either be employed or act as a volunteer in a care facility. Mr. Kroll replied there is expungement spelled out in the Kansas statutes. Representative Freeborn also questioned if, under the bill as written, a spouse or family member who assists in feeding their family member in a care facility would be required to have a background check. Mr. Kroll said they would under this bill. Emalene Correll stated that on the issue of statewide versus national background checks, most states limit them statewide; one has a state residence requirement of five years.

Representative Henry made a conceptual motion, seconded by Representative Morrison, that the fee for each background search under this act be \$5. There was discussion on the motion, with Representative Haley indicating a concern that the cost would be placed on the job applicant. Representative Powell questioned the employment agencies certifications and their burden to pay the \$5 charge, thus increasing their costs of doing business. On call of the motion, the motion carried.

Emalene Correll asked if the committee would want to delete the sentence on page 3, lines 9-11, and on page 5, line 17, "The operator may rely on verbal information from the department of health and environment to be followed by written confirmation of the verbal report." Representative Morrison moved, seconded by Representative Wells, that the sentence be stricken from the two places. The motion carried.

CONTINUATION PAGE

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, Room 423-S of the State Capitol, at 1:30 p.m. on March 13, 1997.

Representative Freeborn made a conceptual motion, seconded by Representative Henry, that a family member, when acting as a volunteer for their own family member, shall be exempt from the provisions of this act. The motion carried.

Representative Freeborn pursued the question of expunging negative information when the infraction occurred many years earlier. Because of the many questions and the present law on expungement, the Chairperson suggested this committee be given time to study the question.

Representative Powell moved that on page 3, line 17, after the word "home" and on page 5, line 20, after the words "or employees of a home health agency," that the phrase, "all employment agencies who supply personnel" be added. Representative Horst seconded the motion. Motion carried.

Representative Henry moved that **HB 2278**, as amended, be passed favorably. Representative Morrison seconded the motion. The motion carried. Representative Henry will carry the bill on the House floor.

The meeting was adjourned at 2:45 p.m.

The next meeting is scheduled for March 17, 1997.

HOUSE COMMITTEE ON HEALTH AND HUMAN
SERVICES COMMITTEE GUEST LIST
MARCH 13, 1997

NAME	REPRESENTING
CHARLES SEXSON	KBT
LIVIA Lukensky	Ks Home Care Assoc.
Preston Barton	DD Council
Sara Patry	Ottawa Middle School
Holly Shepard	Ottawa Middle School
Rachel Simmons	Ottawa Middle School
Kristi Adamson	Ottawa Middle School
Steve Glazer	
John Kieffhaber	Ks Health Care Assn.
Harrie Ann Brown	KHA
Joseph Keane	KADPC
BRIAN J. POWERS	CREATIVE CARE CORPORATION
Carol Schugart	Tipton High School
Lisa Schmitt	Tipton High School
Jennifer D. Bummer	Tipton High School
Shonda Strand	Ks Advocates for Better Care
Martha Hutzgesmith	Attorney General
Kirk Guthrie	Health Midwest
Joe d. Rothig	Kansas Guardianship Program

HOUSE COMMITTEE ON HEALTH AND HUMAN
SERVICES COMMITTEE GUEST LIST
MARCH 13, 1997

NAME	REPRESENTING
<i>Steven Rosen</i>	<i>K.OHR</i>
<i>Natalie Coe</i>	<i>Tater Herb</i>
<i>Marcia E. Dechand</i>	<i>TARC, Inc.</i>
<i>Julian</i>	<i>KOHR</i>

HOUSE COMMITTEE ON HEALTH AND HUMAN
SERVICES COMMITTEE GUEST LIST
MARCH 13, 1997

NAME	REPRESENTING
Tom Kohmetscher	INTERHAB
Shelma Clark	" "
Luille Bahner	" "
Lucy Shifton	Interhab / The Arc
John Grant	KARSA
Susan Baker	Heim + Wein



Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

March 6, 1997

Representative Dixie Toelkes
Statehouse
300 SW 10th Avenue, Room 281-W
Topeka, Kansas 66612

Dear Representative Toelkes:

Per your request, I am writing regarding the questions raised on HB 2278 during the hearing on the bill.

1. Record Checks

As you have noted, HB 2278 is very similar to K.S.A. 65-516 regarding restrictions on persons working in child care facilities. I think a review of how that system currently works as to compared to other record checks might be helpful for you and the committee. In other situations, there are two types of record checks: (1) name and DOB, check of Kansas records only, which costs \$10; or (2) a full fingerprint check submitted to the FBI which costs \$41 and takes approximately three months to complete.

However, the Kansas Department of Health and Environment (KDHE) and KBI have worked out a different system for child care whereby they have a direct computer hookup to the Kansas criminal history record information database at the KBI. This computer system allows the KDHE to run a record check on an individual and if no record is found, KDHE immediately receives that information. However, if a record is found, the computer notifies KBI record personnel who then do a check to see if the prior record would be disqualifying under K.S.A. 65-516. The KBI then advises KDHE whether the person is disqualified at a later time. Due to a Memorandum of Understanding, there is no charge for these records to KDHE for child care facilities. This existing system would seem ideally suited for adaption just as the child care statute was suited for adaption in the adult care system. Admittedly, in a perfect world we would be able to run instantaneous nationwide checks. However, at least these name/date of birth checks in Kansas are better than what is currently being done to protect residents in adult care homes.

Unlike child care facilities, however, there would need to be a charge as KDHE has estimated there would be 72,000 persons affected by HB 2278 and in an industry with approximately 80%

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turnover. The KBI could not begin to absorb this 35% increase in our workload in the records division. Based on the amortization of the equipment and man hours involved in those situations where more thorough record checks are required due to some criminal history, the cost will be in the area of \$3.75 per check or approximately \$270,000.

The committee, and ultimately the legislature, will have to decide who is going to bear the cost of these record checks. It will have to be either in the form of a fee passed on by KDHE to those businesses which are operating and profiting in this area, or it will have to be absorbed as additional general funds appropriations to either the KDHE or KBI. I would note, most other record check legislation has passed the cost on to the business.

Linda Luwinski testified there were "major problems" with the legislation. I think that is a slight exaggeration. Her first objection was that there was insufficient coverage, that all adult care providers, not just the two listed should be included. I believe her understanding of the definitions involved was faulty. Most of the care providers would be covered under HB 2278 and my response is the same as it is to state versus national record checks, at least it is better than what we are doing now.

Ms. Luwinski also raised questions as to who would pay how much, and how often for the record checks. Those questions have been somewhat addressed above. As to how often, I would suspect it would work much like the child care facilities works. That is, a record check is run when a person is hired and then agencies are free to request additional checks as they deem appropriate. Some yearly, some only when they feel they have reasons to be suspicious. I would suggest that the legislation does not provide for any 'grandfathering' as it makes it illegal to operate an adult care home with such persons employed. A separate statute makes any violation of the act a class B misdemeanor so there is deterrence for violating the act. I don't believe that provisional employment as suggested by Linda Luwinski would be necessary as your bill provides for prompt even telephone inquiries with the KDHE. Assuming no record, immediate inquiry could be made. In short, I don't believe Ms. Luwinski's "major problems" are major or problems.

2. Amendments

I did not receive a copy of the doctor's proposal that within 60 days of admission, there would be a required oral dental examination, and I don't believe it affects the KBI. Personally, it seems like a reasonable suggestion.

As to the KBI's suggestions, I have attached a balloon proposing the three amendments Chuck Sexson suggested to HB 2278. On pages 2 and 4, the phrase "and juvenile offender information" is added to the paragraph dealing with what kind of information the Secretary of KHDE has access to. While this language is in addition to that found in K.S.A. 65-516, I believe, technically, it is required as the law currently states that "criminal history record information" does not include "juvenile offender information". See K.S.A. 22-4701(b). Therefore, technically, even though this act does prohibit persons with certain juvenile offender convictions from working in an adult care home or home health agency, the Secretary is not authorized to receive the necessary records. Perhaps next year we could clean up the child care

statute, K.S.A. 65-516 in the same manner. I suspect in the meantime we will continue to ignore the statutory definition and give such records to the Secretary.

The other change we are proposing is found on page 3, where I am suggesting striking the sentence found on lines 11-15. This is not language found under the current child care facilities and does create a number of difficulties. That sentence would appear to authorize employment agencies to obtain these record checks and certify employees as eligible as meeting the requirements of HB 2278.

First, we do not have the computerized link with each employment agency in this state which would necessitate the more traditional \$10 record check and more work.

Second, the types of information being considered in these requirements such as diversion agreements and juvenile offender records has not ever been available to private individuals or corporations from the central repository. As Chuck Sexson noted in his testimony, this would be a major change in policy and reduction in privacy.

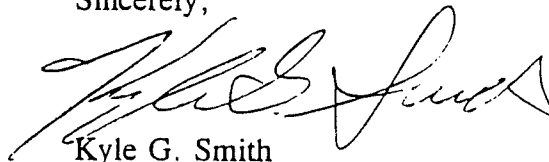
Unless there is a compelling need for these employment agencies to run these record checks, I would suggest that this sentence be struck from the bill as being unwieldy, invasive and more expensive than the certification directly through KDHE.

3. Severability Clause

While not contained in legislation that created K.S.A. 65-516, I did suggest to you that a severability clause might be added to HB 2278 in order to protect it in case of later court challenges. I don't believe anything in this legislation is unconstitutional, but given our litigious society, I think such an addition might be appropriate. I would suggest you check in with the Revisor.

I hope this has been helpful to you. Please advise if you have any further questions or there is assistance we can provide. Good luck.

Sincerely,



Kyle G. Smith
Assistant Attorney General

KGS:ld

March 7, 1997

REVISED

The Honorable Carlos Mayans, Chairperson
House Committee on Health and Human Services
Statehouse, Room 115-S
Topeka, Kansas 66612

Dear Representative Mayans:

SUBJECT: Revised Fiscal Note for HB 2278 by Representatives Toelkes, et al.

In accordance with KSA 75-3715a, the following revised fiscal note concerning HB 2278 is respectfully submitted to your committee.

HB 2278 would prohibit the owner or operator of an adult care home or the owner or operator of a home health agency from employing certain persons as either paid employees or volunteers. The bill prohibits the employment of persons who have:

1. Committed a crime against persons or a felony.
2. Been adjudicated as a juvenile offender because of having committed an offense that, if committed by an adult, would have been a felony or a crime against persons.
3. Committed an act of physical, mental or emotional abuse, neglect, or sexual abuse as validated by the Department of Social and Rehabilitation Services.
4. Had a child declared deprived or in need of care by the courts of Kansas or any other state base on an allegation of mental, physical, or sexual abuse.
5. Had parental rights terminated according to the Kansas Juvenile Code.

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6. Signed a diversion agreement with the court involving a charge of child abuse or neglect.
7. Been found to have committed an act of abuse, neglect or exploitation of a resident nursing home or of an adult.

The act also prohibits a person who is disabled and in need of a guardian or a conservator from operating an adult care home or home health agency. HB 2278 provides that, in order to administer its provisions, the Secretary of Health and Environment is to be given access to any court orders, to criminal records of the Kansas Bureau of Investigation, and to records of the Department of Social and Rehabilitation Services. The bill allows the Kansas Bureau of Investigation to charge the Department of Health and Environment a reasonable fee for the criminal history information it is required to gather to carry out the provisions of the act. The bill requires the operator of an adult care home, or a home health agency, to request from the Department of Health and Environment information it has gathered concerning any person who works, volunteers, or has applied to work for or volunteer at the adult care home or the home health agency. Finally, the bill makes these requirements part of the Adult Care Home Licensure Act.

Estimated State Fiscal Impact				
	FY 1997 SGF	FY 1997 All Funds	FY 1998 SGF	FY 1998 All Funds
Revenue	--	--	--	--
Expenditure	--	--	\$472,313	\$472,313
FTE Pos.	--	--	--	4.0

The Department of Health and Environment indicates that the fiscal effect of this act would be to increase State General Fund expenditures by \$472,313 in FY 1998. The agency states that the act would require it to have the Kansas Bureau of Investigation check the records of 71,750 individuals each year. This estimate is based on the number of individuals employed and acting as volunteers at home health agencies and nursing homes and the annual turnover in those positions. The Department indicates that of the annual record checks, it is estimated that it will have to do an initial screening of 3,588 of the names. To handle this workload, the Department of Health and Environment states that it would need to hire an additional Legal Assistant and an additional Office Assistant III at a cost of \$105,800 in FY 1998. In addition to these positions, it estimates that \$349,603 of contractual service costs and expenditures for office supplies would be necessary to administer the act. The above estimate includes \$269,063 to reimburse the Kansas Bureau of Investigation for the 71,750 record checks based on a cost of \$3.75 per record checked. Finally, the agency estimates that \$16,910 would be necessary to finance the one-time cost of the purchase of capital outlay.

The Kansas Bureau of Investigation indicates that the 71,750 record checks estimated by the Department of Health and Environment would represent a 35 percent increase in the workload of its central records depository. The agency estimates that it currently processes approximately 200,000 criminal record checks. It further indicates that the cost for each record check associated with HB 2278 would initially be \$3.75. This price would include the cost of making the checks through the existing computer interface with the Department of Health and Environment and the cost of the additional employees and other operating costs necessary to deal with the increased workload. Of the record check fee, \$128,541 for FY 1998 would finance 2.0 new Office

Assistant positions and associated costs. The agency states that after this initial cost for expansion is satisfied, the cost of the record checks would be expected to decline. All additional costs at the Kansas Bureau of Investigation would be financed by payments made by the Department of Health and Environment. Therefore, these costs, which are not included in the table, would be non-reportable special revenue fund expenditures.

All of the reportable expenditures made necessary by the passage of HB 2278 would be from the State General Fund and would be in addition to amounts included in *The FY 1998 Governor's Budget Report*.

Sincerely,

Gloria M. Timmer
Director of the Budget

cc: Sandy McAdam, KDHE
Don Pound, SRS
Craig Kammen, Aging