

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on February 14, 2001 in Room 210 Memorial Hall

All members were present except: Representative Geraldine Flaharty, Excused  
Representative Brenda Landwehr, Excused  
Representative Peggy Palmer, Excused  
Representative Jonathan Wells, Excused

Committee staff present: Dr. Bill Wolff, Kansas Legislative Research Department  
Norman Furse, Revisor of Statute's Office  
June Evans, Secretary

Conferees appearing before the committee: Ron Hein, Mental Health Credentialing Coalition  
Kerri Ruhlman, Executive Director, Kansas Adult Care Executives  
Dr. Ernest Pogge, AARP State Legislative Committee  
Lesa Roberts, Director, Health Occupations Credentialing, KDHE

Others Attending: See Attached Sheet

The Chairperson opened the hearing on **HB 2227 - Behavioral Sciences Regulatory Board; statutes adjustment** and stated due to the bad weather some conferees were unable to attend but provided written testimony.

Norman Furse, Revisor of Statute's Office, gave a briefing on **HB 2227**, stating this amends several statutes and policy.

Phyllis Gilmore, Executive Director, Behavioral Sciences Regulatory Board, a proponent to **HB 2227** distributed testimony stating this was technical in nature (Attachment 1).

Ron Hein, Mental Health Credentialing Coalition, testified in support of **HB 2227** stating updating of the statutes to make all clinical level mental health professionals licensed by the BSRB subject to the responsibilities and entitled to the grants of powers for other clinical level mental health professionals so licensed that are already in existence in the statutes (Attachment 2).

Representative Storm asked for clarification, why is a temporary license needed – how often is the examination given?

Camille Nohe, Counsel, Secretary of State's Office, stated the examinations were given every 6 months; however, a person could be ill, in an accident or other reasons and were unable to take the examination before the two-year period.

The Chairperson closed the hearing on **HB 2227**.

The Chairperson opened the hearing on **HB 2154 - Criteria for employment in adult care homes and health agencies**.

Norman Furse, Revisor of Statute's Office, gave a briefing.

Representative Bob Bethell, stated that **HB 2700** was a similar bill last year but because of the word "unredacted" which means "everything" – all arrests which was intended only for felonies, had to ask the Governor to veto after having worked on it. The KBI is the only one that has juvenile records, private

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, Room 210, Memorial Hall at 1:30 p.m. on February 14.

Kerri Ruhlman, Executive Director, Kansas Adult Care Executives (KACE), testified in support of **HB 2154** as it addresses many concerns the adult care home administrators have with present procedures in determining whether an individual is legally prohibited from being employed by an adult care home (Attachment 3).

Dr. Ernest Poggee, AARP Kansas Business Center, testified in support of **HB 2154**, stating the AARP promotes and supports regulations that improve the quality of care in long-term nursing and care facilities (Attachment 4).

Lesa Roberts, Director, Health Occupations Credentialing, KDHE, testified as an opponent to **HB 2154**. The primary items of concern are: (a) This bill appears to restrict the records KBI sends to the department to only felony convictions for adults, (b) It is unclear how private contractors can ever be approved by the KBI as providing "the same or better" criminal history record information when access to juvenile records is a procedural requirement in determining an individual's criminal history. A method of the KBI notifying the department of the status of private contractors would be required, (c) There is a requirement that the department provide copies of the information received from KBI, (d) There is no duration for which a criminal record is checked, therefore felony records which are provided to operators/employers may be in excess of 20 years. The requirements of the federal Fair Credit Reporting Act or other more restrictive access requirements under which the KBI must operate must be reconciled with **HB 2154** (Attachment 5).

Representative Kirk said the turnaround time was usually nearer to 10 days rather than 3 days.

Representative Showalter requested that Lesa Roberts, KDHE come back with suggestions to make this a better product.

After discussion, Representative Boston asked Representative Bethell, Dr. Wolff, and Mr. Furse to work with KDHE and resolve the concerns. There are time restraints so need to get this done by February 20.

The following written testimony was distributed: Debra Zehr, Kansas Association of Homes and Services for the Aging (Attachment 6), Linda Lubensky, Kansas Home Care Association (Attachment 7).

The meeting adjourned at 3:00 p.m. The next meeting will be February 15.



State of Kansas  
Behavioral Sciences Regulatory Board

BILL GRAVES  
Governor

PHYLLIS GILMORE  
Executive Director



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HOUSE TESTIMONY  
HEALTH AND HUMAN SERVICES  
FEBRUARY 14, 2001

Chairman Boston and Committee Members:

Thank you for the opportunity to testify today in support of HB 2227. I am Phyllis Gilmore the Executive Director of the Behavioral Sciences Regulatory Board.

The BSRB is the licensing board for most of the state's mental health professionals, the doctoral level psychologists, the master level psychologists, the clinical psychotherapists, the bachelor, master and clinical level social workers, the master and clinical level professional counselors, and the master and clinical level marriage and family therapists. Additionally, some of the drug and alcohol counselors are registered with the board, although most of them are registered with SRS at the present time.

HB 2227 is a trailer bill to the legislation passed by the 1999 Legislature, which was then HB 2213.

- Certain groups of our licensees are added to the mandated reporter acts.
- The new clinical levels of licensure are added to the list of "qualified mental health professionals."
- There are several technical items related to marriage and family therapy and professional counseling.
- Masters level psychologists are allowed to continue getting a 1500-post graduate supervised work experience in lieu of a clinical practicum until July 1, 2003. This omission was an unintended error in the bill. It was the intention of the task force for this option to be phased out, so that schools would have time to change their graduate programs and those individuals already enrolled in programs would be held harmless. There are currently a handful of people we are not able to license because of the current language.

While these changes are non-controversial, they are nonetheless important and we respectfully request a favorable recommendation for passage of HB 2227.

Thank you and I will be happy to stand for questions.

H&HS  
2-14-01  
Atch # 1



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## **Testimony re: HB 2227**

### **House Health and Human Services Committee**

**Presented by Ronald R. Hein**

**on behalf of**

**Mental Health Credentialing Coalition**

**February 14, 2001**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Mental Health Credentialing Coalition. The Coalition is comprised of the members of the Kansas Association for Marriage and Family Therapy, the Kansas Association of Masters in Psychology, and the Kansas Counseling Association/Kansas Mental Health Counselors Association.

The MHCC supports HB 2227. Although there are substantive changes in this act, there are also numerous technical amendments which clean up some provisions of the statutes because of the passage of HB 2213 during a previous session.

Specifically, the MHCC supports updating of the statutes to make all clinical level mental health professionals licensed by the BSRB subject to the responsibilities and entitled to the grants of powers for other clinical level mental health professionals so licensed that are already in existence in the statutes. Sections 1-4 of the bill partially accomplish that goal. The MHCC also supports the temporary license changes for the professional counselors in Section 5, for marriage and family therapists in Section 7-8, and for clinical psychotherapists in Section 9.

We urge the committee to support HB 2227 as introduced.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

H&HS  
2-14-01  
Atch #2



formerly

**Kansas Professional Nursing Home Administrators Association**

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Testimony before House Health and Human Services Committee on HB 2154

Mr. Chairman, Members of the Committee:

I am Kerrie Ruhlman, Executive Director of the Kansas Adult Care Executives (KACE). Our Association represents over 300 adult care home administrators operating nursing homes throughout Kansas. I am very pleased to appear before you today in support of HB 2154.

This bill addresses many concerns we adult care home administrators have with present procedures in determining whether an individual is legally prohibited from being employed by an adult care home.

1. Other Crimes. We believe strongly that certain individuals should not be allowed to work in adult care homes. We definitely believe that anyone guilty of attempting to commit, conspiring to commit, or criminal solicitation of any of the presently enumerated crimes should be prohibited from employment.
2. Uncertainty. Under the current statute, the Kansas Department of Health and Environment is not required to notify providers if the prospective employee is eligible for hire. This creates uncertainty for providers, because they do not know if the delay is due to prohibited findings or a clear criminal history record. Obviously, having providers receive information indicating eligibility or ineligibility would eliminate this uncertainty.
3. Time. Currently, providers may wait up to ten days or longer before being notified that a prospective employee is prohibited. Furthermore, as was discussed previously, providers are given no notification if the prospective employee is eligible. We certainly believe that the current delay places an unnecessary burden on our facilities, as they face the challenges of a tight job market. A three-business day reporting time, whether the prospective employee is eligible or ineligible for hire will ease the problems of uncertainty and needless wait for providers.

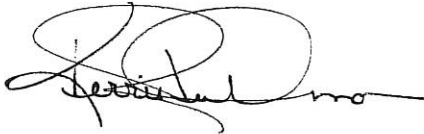
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4. Flexibility. Allowing providers the flexibility to use private contractors, approved by the Kansas Bureau of Investigation, fosters a relationship between the provider and the private contractor. Providers then have the opportunity to customize the criminal history information they wish to receive from the private contractor, to meet their facilities' unique needs.

It is our opinion that this bill solves the weaknesses inherent in K.S.A. 1999 Supp. 39-970. We urge your support of this legislation.

I would be happy to answer any questions. Thank you.

Kerrie Ruhlman MS, LNHA

A handwritten signature in black ink, appearing to read "Kerrie Ruhlman", written over a horizontal line.

Executive Director, KACE



# *in Kansas*

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February 14, 2001

Good afternoon Representative Wilk and Members of the House Appropriations Committee. My name is Dr. Ernest Pogge and I am a volunteer member of the AARP State Legislative Committee. The AARP State Legislative Committee represents the views of our more than 350,000 members in the state of Kansas. I am also the coordinator of our Capital City Task Force, which is the lobbying arm of the AARP State Legislative Committee. Thank you for this opportunity to express our views in *support* of House Bill 2154.

The likelihood of living in a nursing home increases dramatically with age. In 1995, persons over the age of 85 made up more than 40.2 percent of the total nursing facility population and that percentage continues to increase as persons reaching age 85 steadily increases. Thus nursing homes provide long-term care to the most vulnerable people who need protection from abuse, poor-quality care, discrimination and violation of their rights.

AARP promotes and supports regulations that will improve the quality of care in long-term nursing and care facilities.

- We believe that personnel problems, from shortages of specific types of staffing to inadequate training, affect the quality of care provided in care homes or even in home and community-based service settings.
- We believe that there should be incentives to encourage providers to hire as many permanent workers as possible ensuring that all settings providing long-term care services have staff levels and staff training sufficient to insure quality outcomes.
- We believe that states should require facilities to notify the appropriate state licensing of regulation board of all employees convicted of a felony, resident abuse or having knowledge of or failing to report abuse.
- We believe background investigations should be completed in an expeditious and cost efficient manner to ensure adequate staffing and a continuum of quality services to consumers.

Therefore AARP supports House Bill 2154.

Thank you again for this opportunity. I stand ready to answer questions.



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**KANSAS**  
**DEPARTMENT OF HEALTH & ENVIRONMENT**  
BILL GRAVES, GOVERNOR  
Clyde D. Graeber, Secretary

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**Testimony on House Bill No. 2154**

**to the  
House Committee of Health and Human Services**

**by  
Lesa Roberts, Director, Health Occupations Credentialing**

**Wednesday, February 14, 2001**

Chairperson Boston, I am pleased to appear before this committee to discuss House Bill 2154. This bill would modify the functions of the adult care home operator and home health agency operator criminal background check laws. The first section is specific to operators of adult care homes; section 2 addresses operators of home health agencies.

The department supports the concepts of adding "attempt," "conspiracy to commit," and "criminal solicitation to commit" to those offenses which prohibit employment. We also support providing additional results of criminal history record information to operators and standards for processing results once received from the Kansas Bureau of Investigation. We differ somewhat on the specific language to achieve those concepts, as evidenced by the department's request for consideration of Senate Bills 103 and 104.

However, we have concern with specific language in House Bill 2154, much of which was identified during last year's hearings on House Bill 2700. The primary items of concern for House Bill 2154 are as follows:

- This bill appears to restrict the records KBI sends to the department to only felony convictions for adults.
- It is unclear how private contractors can ever be approved by the KBI as providing "the same or better" criminal history record information when access to juvenile records is a procedural requirement in determining an individual's criminal history. A method of the KBI notifying the department of the status of private contractors would be required.
- There is a requirement that the department provide copies of the information

received from KBI. Again, if the record is a juvenile adjudication, can the department provide that information to the operator?

- There is no duration for which a criminal record is checked, therefore felony records which are provided to operators/employers may be in excess of 20 years. The requirements of the federal Fair Credit Reporting Act or other more restrictive access requirements under which the KBI must operate must be reconciled with House Bill 2154.

It appears that an intent of the amendments is to restrict data which flows between KBI and the department to felony conviction data in order for the industry to be provided with a copy of the record that KBI provides to the department. Currently the department manually reviews and identifies the information that pertains to the prohibited convictions listed in the law. Because the law would provide access to additional non-prohibited conviction data, the amendment attempts to simplify the process by restricting the type of criminal history record information the department receives to felony convictions, apparently in an attempt to reduce the manual processing by the department. This process would have to occur at KBI. The department previously requested the KBI to separate the data and provide only that data which would be pertinent under the law. At the time the KBI declined to provide information in that manner, primarily because of the additional hardship it would cause, either in hand-processing or extensive modifications to the information management process. It would be critical to know if this is now feasible.

The amendments also provide for the use of private contractors. This language continues to be problematic since juvenile records are not accessible to a private contractor. If the intent of this language is to allow sharing of juvenile adjudications, it still would not be allowed. This is a similar problem that resulted in the Governor's veto of HB 2700 in 2000.

From a program management perspective, there are inherent problems in establishing a three-day performance standard for the department. Revenue to the state will be depleted if private contractors perform criminal background checks. However, because of the requirement for readiness to respond within three days with records received from the KBI, the department cannot reasonably calculate any offset savings. This provision would have the effect of a reduction in revenues while requiring a maintenance of capacity and effort.

Provisions in this bill would require a response on every criminal background check request received. Staff would be required to issue either a letter stating that no criminal history was found on the individual; issue copies of the felony criminal history on the individual; or issue a notice prohibiting employment of the individual.

This new provision would also place in jeopardy the current practice of sending letters to the courts requesting confirmation of a conviction for a prohibited offense when information received from the KBI reveals incomplete criminal history information. The information from the courts cannot be obtained in the three-day limit. There have been a number of occasions (36) when an

individual has had a conviction of a prohibited offense, but the conviction information had not yet been reflected in the criminal history record information.

Although the department is not subject to the provisions of the Fair Credit Reporting Act, private contractors and operators affected by these amendments may be. This federal law restricts the use of criminal history record information and its use. Additional research into this issue would be helpful to prevent running afoul of federal law.

Because of these highly complex and problematic issues, we respectfully request that House Bill 2154 not be passed. Senate Bills 103 and 104 were introduced at the request of KDHE to address improvements in our criminal background check laws, and don't contain the objectionable items in this bill. Thank you again for the opportunity to comment on House Bill 2154. I would gladly respond to any questions you may have.



KANSAS ASSOCIATION OF HOMES AND SERVICES FOR THE AGING

Testimony in Support of House Bill 2154

To: Representative Boston, Chair, and Members, House Health and Human Services Committee
From: Debra Zehr
Date: February 14, 2001

Thank you Chairman Boston, and Members of the Committee. The Kansas Association of Homes and Services for the Aging represents 150 not-for-profit long-term care providers across the state. Our goal is to assist our members to provide high quality, cost effective services for the elderly Kansans in their care.

We ask for your support of House Bill 2154. House Bill 2154 enhances the original intent of the Legislature to protect vulnerable persons who reside in adult care homes or receive home health care, by providing employers with more complete and timely criminal history information. It is in keeping with a bill passed overwhelmingly by the 2000 Legislature, but which was vetoed by the Governor due to a technical flaw (i.e. House Bill 2700.)

House Bill 2154 would require notification of employers when a background check comes up clear, just as if they had gone through a private entity or directly through KBI. According to the Kansas Department of Health and Environment (KDHE), less than one percent of the background checks completed since July 1, 1998 revealed a prohibited crime. Under the existing system, employers only receive notification on the remaining 99% "clear" checks on a quarterly basis. Employers experience uncertainty and frustration with this lack of closure.

House Bill 2154 would assist employers in making prudent hiring decisions by providing information about felony convictions beyond those that statutorily prohibit employment. KDHE tells us that 15-20% of background checks reveal non-prohibited convictions of a non-violent nature, such as theft or forgery. Employers are not notified of these convictions under the existing system, even though they would be so informed if they requested a background check directly from the KBI or a private contractor. In some instances this is important information that has a direct bearing on the safety of vulnerable elderly and their possessions.

House Bill 2154 would permit employers to get background checks through private KBI-approved entities. There are a number of very reliable private companies that have done this type of work for many years. In addition, some private contractors have access to out-of-state information, which is lacking in the KDHE system, and others are moving toward quicker on-line request systems.

House Bill 2154 would expand the original prohibitive crimes to include attempt, conspiracy or criminal solicitation to commit any of the prohibitive crimes. This closes a small but critical loophole in the statute.

It is unclear from the reading of the bill whether all of the existing prohibitions which are not felonies would remain prohibitions nor that they would be reported to employers. These are important prohibitions to retain. Language to clarify this point may need to be added.

A helpful addition to this bill would be the creation of a registry to inform employers of any prohibitions that have already been identified on a prospective employee through a previous check.

Thank you. I would be pleased to answer any questions.





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To: House Health and Human Services Committee  
From: Linda Lubensky, Kansas Home Care Association  
Date: February 14, 2001  
Re: H.B. 2154, background check legislation

The Kansas Home Care Association generally supports the provisions included in H.B. 2154. Much of the language is taken from H.B. 2700, which gained approval during the 2000 session but was vetoed by the Governor. He made it very clear, at that time, that both state and federal laws prohibited the release of juvenile criminal history to the public. Consequently, I am unsure how to interpret section (d), page 6, lines 21-26.

Our original priorities remain the same as they were last year: timely notification, notification when no felony convictions are found, and more complete information on all felony convictions, whether "prohibited" crimes or not. Since the 2000 legislative session, we have discussed the issues in length with KDHE and participated in a special background check task force. The operational issues dealing with notification are, I believe, being resolved. The larger issue of having access to complete felony conviction history remains important to our providers, as the current list of prohibitions is insufficient from our perspective. Retrieving that information is complicated for several reasons. Right now, two bureaus are involved...the KBI and KDHE. The information that KDHE receives from the KBI is extensive and often requires further effort to determine final adjudication. The staff time involved in preparing complete felony conviction information for providers could be significant. The bigger question, to me, is how to streamline the process without overburdening the state agencies or the providers. Our ultimate goal is the protection of the public, not creating an unwieldy system.

I have heard many other suggestions that involve federal background checks. There are a number of states that do require this. I am, however, very concerned about the financial burden these more costly checks would place on our home health agencies. Many of our providers are still dealing with major financial hardship due to Medicare mandates over the last three years. In addition, I understand that the federal checks can take a considerable amount of time to complete.

There are other states that "prohibit" anyone with a felony conviction. This would eliminate the need for constantly expanding the prohibition list, or for agency operators to have access to additional information. Moreover, many states limit the requirement for background checks to those individuals who will actually be providing direct care. The Kansas law, unfortunately, now includes office staff, clerks, etc. We feel that this is unnecessary and expensive.

The Kansas background check law does need to be improved. At the same time, any changes that are made should be practical and cost-effective. It would seem that input, and cooperation, between the KBI, KDHE, and the provider groups is crucial to resolving these problems to everyone's satisfaction.