

## HOUSE BILL No. 2172

By Representative Whipple

1-29

1 AN ACT concerning nurse aide trainees; criminal background checks.

2

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

4 Section 1. (a) A sponsor of a nurse aide training program for nurse  
5 aide trainee I and nurse aide trainee II shall obtain from the secretary for  
6 aging and disability services any criminal history record information on an  
7 applicant who may be approved to attend such nurse aide training  
8 program. The criminal history record information check shall be  
9 completed before the applicant attends such nurse aide training program. If  
10 the applicant does not pass the criminal history information check, the  
11 sponsor shall deny such applicant entry into such nurse aide training  
12 program and shall return any fees paid to the nurse aide training program  
13 to the applicant.

14 (b) As used in sections 1 and 2, and amendments thereto:

15 (1) "Department" means the Kansas department for aging and  
16 disability services.

17 (2) "Nurse aide trainee I" means an individual in the process of  
18 completing part I of a 90-hour nurse aide course.

19 (3) "Nurse aide trainee II" means an individual who has successfully  
20 completed part I of a 90-hour nurse aide course.

21 (4) "Secretary" means the secretary for aging and disability services.

22 (5) "Sponsor" means an individual approved by the secretary to run a  
23 nurse aide training program to train nurse aides.

24 Sec. 2. (a) (1) No person shall attend any nurse aide training program  
25 if such person has been convicted of, or has been adjudicated a juvenile  
26 offender because of having committed an act which if done by an adult  
27 would constitute the commission of, capital murder, pursuant to K.S.A.  
28 21-3439, prior to its repeal, or K.S.A. 2014 Supp. 21-5401, and  
29 amendments thereto, first degree murder, pursuant to K.S.A. 21-3401,  
30 prior to its repeal, or K.S.A. 2014 Supp. 21-5402, and amendments  
31 thereto, second degree murder, pursuant to K.S.A. 21-3402(a), prior to its  
32 repeal, or K.S.A. 2014 Supp. 21-5403(a), and amendments thereto,  
33 voluntary manslaughter, pursuant to K.S.A. 21-3403, prior to its repeal, or  
34 K.S.A. 2014 Supp. 21-5404, and amendments thereto, assisting suicide,  
35 pursuant to K.S.A. 21-3406, prior to its repeal, or K.S.A. 2014 Supp. 21-  
36 5407, and amendments thereto, mistreatment of a dependent adult,

1 pursuant to K.S.A. 21-3437, prior to its repeal, or K.S.A. 2014 Supp. 21-  
2 5417, and amendments thereto, rape, pursuant to K.S.A. 21-3502, prior to  
3 its repeal, or K.S.A. 2014 Supp. 21-5503, and amendments thereto,  
4 indecent liberties with a child, pursuant to K.S.A. 21-3503, prior to its  
5 repeal, or K.S.A. 2014 Supp. 21-5506(a), and amendments thereto,  
6 aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504,  
7 prior to its repeal, or K.S.A. 2014 Supp. 21-5506(b), and amendments  
8 thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506, prior to  
9 its repeal, or K.S.A. 2014 Supp. 21-5504(b), and amendments thereto,  
10 indecent solicitation of a child, pursuant to K.S.A. 21-3510, prior to its  
11 repeal, or K.S.A. 2014 Supp. 21-5508(a), and amendments thereto,  
12 aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511,  
13 prior to its repeal, or K.S.A. 2014 Supp. 21-5508(b), and amendments  
14 thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516, prior to  
15 its repeal, or K.S.A. 2014 Supp. 21-5510, and amendments thereto, sexual  
16 battery, pursuant to K.S.A. 21-3517, prior to its repeal, or K.S.A. 2014  
17 Supp. 21-5505(a), and amendments thereto, or aggravated sexual battery,  
18 pursuant to K.S.A. 21-3518, prior to its repeal, or K.S.A. 2014 Supp. 21-  
19 5505(b), and amendments thereto, an attempt to commit any of the crimes  
20 listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, prior to its  
21 repeal, or K.S.A. 2014 Supp. 21-5301, and amendments thereto, a  
22 conspiracy to commit any of the crimes listed in this subsection (a)(1),  
23 pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2014 Supp. 21-  
24 5302, and amendments thereto, or criminal solicitation of any of the  
25 crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, prior to  
26 its repeal, or K.S.A. 2014 Supp. 21-5303, and amendments thereto, or  
27 similar statutes of other states or the federal government.

28 (2) A sponsor may allow an applicant to attend a nurse aide trainee  
29 program if the applicant was convicted of any of the following and five or  
30 more years have elapsed since the applicant satisfied the sentence imposed  
31 or was discharged from probation, a community correctional services  
32 program, parole, postrelease supervision, conditional release or a  
33 suspended sentence; or if five or more years have elapsed since the  
34 applicant has been finally discharged from the custody of the  
35 commissioner of juvenile justice or from probation or has been adjudicated  
36 a juvenile offender, whichever time is longer: A felony conviction for a  
37 crime which is described in: (A) Article 34 of chapter 21 of the Kansas  
38 Statutes Annotated, prior to its repeal, or article 54 of chapter 21 of the  
39 Kansas Statutes Annotated, and amendments thereto, or K.S.A. 2014 Supp.  
40 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto, except  
41 those crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21  
42 of the Kansas Statutes Annotated, prior to their repeal, or article 55 or 56  
43 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto,

1 or K.S.A. 2014 Supp. 21-6419 through 21-6421, and amendments thereto,  
2 except those crimes listed in subsection (a)(1) and K.S.A. 21-3605, prior to  
3 its repeal, or K.S.A. 2014 Supp. 21-5606, and amendments thereto; (C)  
4 K.S.A. 21-3701, prior to its repeal, or K.S.A. 2014 Supp. 21-5801, and  
5 amendments thereto; (D) an attempt to commit any of the crimes listed in  
6 this subsection (a)(2), pursuant to K.S.A. 21-3301, prior to its repeal, or  
7 K.S.A. 2014 Supp. 21-5301, and amendments thereto; (E) a conspiracy to  
8 commit any of the crimes listed in subsection (a)(2), pursuant to K.S.A.  
9 21-3302, prior to its repeal, or K.S.A. 2014 Supp. 21-5302, and  
10 amendments thereto; (F) criminal solicitation of any of the crimes listed in  
11 subsection (a)(2), pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A.  
12 2014 Supp. 21-5303, and amendments thereto; or (G) similar statutes of  
13 other states or the federal government.

14 (b) The secretary shall have access to any criminal history record  
15 information in the possession of the Kansas bureau of investigation  
16 regarding any criminal history information, convictions under K.S.A. 21-  
17 3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2014 Supp. 21-  
18 5417, 21-5505(a) and 21-5801, and amendments thereto, adjudications of  
19 a juvenile offender which if committed by an adult would have been a  
20 felony conviction, and adjudications of a juvenile offender for an offense  
21 described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal,  
22 or K.S.A. 2014 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments  
23 thereto, concerning persons working in an adult care home. The secretary  
24 shall have access to these records for the purpose of determining whether  
25 or not the applicant meets the requirements of this section. The Kansas  
26 bureau of investigation may charge to the department a reasonable fee for  
27 providing criminal history record information under this subsection.

28 (c) The secretary shall have access to any criminal history  
29 information in the possession of the federal bureau of investigation  
30 regarding any criminal history information concerning crimes similar to  
31 those enumerated in subsection (b) for the purpose of determining whether  
32 or not the applicant meets the requirements of this section. The federal  
33 bureau of investigation may charge to the department a reasonable fee for  
34 providing criminal history record information under this subsection.

35 (d) For the purpose of complying with this section, the sponsor of a  
36 nurse aide training program shall request from the department information  
37 regarding any criminal history, convictions under K.S.A. 21-3437, 21-  
38 3517 and 21-3701, prior to their repeal, or K.S.A. 2014 Supp. 21-5417, 21-  
39 5505(a) and 21-5801, and amendments thereto, adjudications of a juvenile  
40 offender which if committed by an adult would have been a felony  
41 conviction, and adjudications of a juvenile offender for an offense  
42 described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal,  
43 or K.S.A. 2014 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments

1 thereto, and which relates to a person who would work in the adult care  
2 home, and is being considered for entrance into a nurse aide training  
3 program, for the purpose of determining whether such person is subject to  
4 the provisions of this section. No sponsor or employee of a nurse aide  
5 training program which trains nurse aides shall be liable for civil damages  
6 resulting from any decision to accept or refuse to accept a person based on  
7 such nurse aide training program's compliance with the provisions of this  
8 section if such nurse aide training program acts in good faith to comply  
9 with this section.

10 (e) The secretary shall charge each sponsor requesting information  
11 under this section a fee equal to cost, not to exceed \$10, for each name  
12 about which an information request has been submitted to the department  
13 under this section.

14 (f) (1) The secretary shall provide each sponsor requesting  
15 information under this section with the criminal history record information  
16 concerning any criminal history information and convictions under K.S.A.  
17 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2014 Supp.  
18 21-5417, 21-5505(a) and 21-5801, and amendments thereto, in writing and  
19 within three working days of receipt of such information from the Kansas  
20 bureau of investigation or federal bureau of investigation. The criminal  
21 history record information shall be provided regardless of whether the  
22 information discloses that the subject of the request has been convicted of  
23 an offense enumerated in subsection (a).

24 (2) When an offense enumerated in subsection (a) exists in the  
25 criminal history record information, and when further confirmation  
26 regarding criminal history record information is required from the  
27 appropriate court of jurisdiction or Kansas department of corrections, the  
28 secretary shall notify each sponsor that requests information under this  
29 section in writing and within three working days of receipt from the  
30 Kansas bureau of investigation that further confirmation is required. The  
31 secretary shall provide to the sponsor requesting information under this  
32 section information in writing within three working days of receipt of such  
33 information from the appropriate court of jurisdiction or Kansas  
34 department of corrections regarding confirmation regarding the criminal  
35 history record information.

36 (3) Whenever the criminal history record information reveals that the  
37 subject of the request has no criminal history on record, the secretary shall  
38 provide notice to each sponsor requesting information under this section,  
39 in writing and within three working days after receipt of such information  
40 from the Kansas bureau of investigation or federal bureau of investigation.

41 (4) The secretary shall not provide each sponsor requesting  
42 information under this section with the juvenile criminal history record  
43 information which relates to a person subject to a background check as is

1 provided by K.S.A. 2014 Supp. 38-2326, and amendments thereto, except  
2 for adjudications of a juvenile offender for an offense described in K.S.A.  
3 21-3701, prior to its repeal, or K.S.A. 2014 Supp. 21-5801, and  
4 amendments thereto. The secretary shall notify the sponsor that requested  
5 the information, in writing and within three working days of receipt of  
6 such information from the Kansas bureau of investigation or federal  
7 bureau of investigation, whether juvenile criminal history record  
8 information received pursuant to this section reveals that the sponsor  
9 would or would not be prohibited by this section from enrolling the subject  
10 of the request for information and whether such information contains  
11 adjudications of a juvenile offender for an offense described in K.S.A. 21-  
12 3701, prior to its repeal, or K.S.A. 2014 Supp. 21-5801, and amendments  
13 thereto.

14 (5) A sponsor who receives criminal history record information under  
15 this subsection shall keep such information confidential, except that the  
16 sponsor may disclose such information to the person who is the subject of  
17 the request for information. A violation of this paragraph (5) shall be an  
18 unclassified misdemeanor punishable by a fine of \$100.

19 (g) For purposes of this section, the Kansas bureau of investigation  
20 shall report any criminal history information, convictions under K.S.A. 21-  
21 3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2014 Supp. 21-  
22 5417, 21-5505(a) and 21-5801, and amendments thereto, adjudications of  
23 a juvenile offender which if committed by an adult would have been a  
24 felony conviction, and adjudications of a juvenile offender for an offense  
25 described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal,  
26 or K.S.A. 2014 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments  
27 thereto, to the secretary when a background check is requested.

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