



To: Chairman Barker, and Members, House Federal and State Affairs Committee
From: Rachel Monger, Vice President of Government Affairs
Date: May 16, 2017

Testimony in Opposition to House Bill 2427

Thank you, Mr. Chairman and Members of the Committee. I am Rachel Monger, Vice President of Government Affairs for LeadingAge Kansas, the state association for faith based and other not-for-profit aging services. We have 150 members across Kansas, which include not-for-profit nursing homes, retirement communities, hospital long-term care units, assisted living, homes plus, housing, low-income housing, home health agencies, home and community based service programs, PACE and Meals on Wheels. Our members serve more than 25,000 elders each day.

We are speaking to the Committee today in opposition to House Bill 2427, and its expansion of employment bans for adult care homes, along with the costs imposed on adult care homes in fulfilling criminal background check requirements. HB 2427 contains significant changes in policy that will effect all 807 adult care homes in Kansas, and tens of thousands of Kansas employees. These are issues that deserve serious scrutiny and discussion by the legislature, and we do not believe the veto session will provide sufficient time or attention to do so.

LeadingAge Kansas opposition to the bill are based upon two main concerns: (1) expansion of the adult care home employment ban to misdemeanor convictions and (2) failure to set an amount or limit on the newly required fingerprinting fee.

1. Misdemeanor Convictions

Currently, KSA 39-970 contains a list of crimes for which a *felony* conviction will result in a five year ban on employment in an adult care home. In HB 2427, a new paragraph (b)(3) has been inserted which adds twenty additional criminal statutes to the list of five year conviction bans. The key difference is these criminal bans are not limited to felony convictions, as has been the long-time statutory standard. Thirteen out of the twenty new crimes listed in HB 2427 contain a misdemeanor element, which is now included in the ban.

We see no logic or justification for why a policy change is warranted for the criminal convictions listed in paragraph (b)(3), and why the elements of the particular crimes listed in the paragraph require different treatment and expansion of a five year employment ban.

Expanding an employment ban to cover misdemeanor offenses is an extreme reversal in policy that will only exacerbate the workforce crisis afflicting Kansas health care in general, and the long term care sector in particular. In 2015, a survey conducted by the Kansas Department of Labor showed 4,645 job

vacancies for nurses and nurse aides in Kansas. Judging from reports from our members today, that number has only increased in the last two years. Our adult care homes are also under constant struggle to find workers in their dietary department, housekeepers, maintenance workers, social workers, activity directors and business office staff.

We believe that the expansion of the adult care home employment ban to the misdemeanor offenses listed in paragraph (b)(3) of the bill is an arbitrary and unwarranted change in state policy that has potential to cause significant damage to thousands of Kansans and employers.

We ask that the Committee delay consideration of HB 2427 pending further analysis of the effects of the bill. At the very least, we propose an amendment to paragraph (b)(3) that will put it in harmony with the rest of the statute in limiting the proposed five year ban to felony convictions only. The proposed amendment is attached.

2. Fingerprinting Fees

Our second area of concern is the increase in cost for a new fingerprinting requirement in adult care home employee background checks. Under current law, adult care homes pay \$10 to the Kansas Department for Aging and Disability Services for each background check they are required to conduct on an employee. Under HB 2427, in (d)(5), that fee to KDADS will double to \$19.00, *plus* an additional unnamed fee to be paid to the fingerprinting collection site.

Paragraph (d)(5) states that fingerprinting fee to the collection site may be paid by the adult care home, the prospective employee or the staffing agency. We know that as a practical matter, it will ultimately be the adult care home that will be picking up that bill. Doubling the background check fee is troubling enough, but tacking on an unidentified, unlimited fingerprinting fee is unacceptable. HB 2427 is not doubling, but likely more than quadrupling the costs of background check requirements for adult care homes.

We again ask that the Committee delay consideration of HB 2427 pending further analysis of the negative consequences such an increase in costs will have upon employers and employees. At the very least, we ask that the Committee set a reasonable statutory limit on the proposed fingerprinting fee, just as there is a \$19 statutory limit proposed on the KDADS background check fee. We do not have a specific amendment to submit with our testimony, because we believe that amount must be analyzed and submitted by KDADS staff.

In light of the issues outlined in our testimony, we respectfully request members of the Committee to oppose passage of House Bill 2427 pending further discussion and amendment.

Thank you so much for your consideration of this issue, and we are always available for questions.

HOUSE BILL No. 2427

By Committee on Federal and State Affairs

5-12

1 AN ACT concerning adult care homes; relating to licensure; employment;
2 background checks; amending K.S.A. 2016 Supp. 39-970 and repealing
3 the existing section.
4

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

6 Section 1. K.S.A. 2016 Supp. 39-970 is hereby amended to read as
7 follows: 39-970. (a) *As used in this section:*

8 (1) *"Adult care home" means any nursing facility, nursing facility for*
9 *mental health, intermediate care facility for people with intellectual*
10 *disability, assisted living facility, residential health care facility, home*
11 *plus, boarding care home or adult day care facility that is required to be*
12 *licensed to operate by the secretary for aging and disability services.*

13 (2) *"Applicant" means an individual who applies for employment*
14 *with an adult care home or applies to work for an employment agency or*
15 *as an independent contractor who provides staff to an adult care home.*

16 (3) *"Completion of the sentence" means the last day of the entire term*
17 *of incarceration imposed by a sentence, including any term that is*
18 *deferred, suspended or subject to parole, probation, diversion, community*
19 *corrections, fines, fees, restitution or any other imposed sentencing*
20 *requirements.*

21 (4) *"Department" means the Kansas department for aging and*
22 *disability services.*

23 (5) *"Direct access" means work that involves an actual or reasonable*
24 *expectation of one-on-one interaction with a consumer or a consumer's*
25 *property, personally identifiable information, medical records, treatment*
26 *information or financial information.*

27 (6) *"Direct supervision" means that a supervisor is physically present*
28 *within an immediate distance to a supervisee and is available to provide*
29 *constant direction, feedback and assistance to a client and the supervisee.*

30 (7) *"Employment agency" means an organization or entity that has a*
31 *contracted relationship with an adult care home to provide staff with*
32 *direct access to consumers.*

33 (8) *"Independent contractor" means an organization, entity, agency*
34 *or individual that provides contracted workers or services to an adult care*
35 *home.*

36 (9) *"Secretary" means the secretary for aging and disability services.*

1 (b) (1) No person shall knowingly operate an adult care home if, in
2 the adult care home, there works any person who has *adverse findings on*
3 *any state or national registry, as defined in rules and regulations adopted*
4 *by the secretary for aging and disability services, or has been convicted of*
5 *or has been adjudicated a juvenile offender because of having committed*
6 *an act*~~which~~ *that* if done by an adult would constitute the commission of
7 capital murder, pursuant to K.S.A. 21-3439, prior to its repeal, or K.S.A.
8 2016 Supp. 21-5401, and amendments thereto, first degree murder,
9 pursuant to K.S.A. 21-3401, prior to its repeal, or K.S.A. 2016 Supp. 21-
10 5402, and amendments thereto, second degree murder, pursuant to K.S.A.
11 21-3402(a), prior to its repeal, or K.S.A. 2016 Supp. 21-5403(a), and
12 amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403,
13 prior to its repeal, or K.S.A. 2016 Supp. 21-5404, and amendments
14 thereto, assisting suicide, pursuant to K.S.A. 21-3406, prior to its repeal, or
15 K.S.A. 2016 Supp. 21-5407, and amendments thereto, mistreatment of a
16 dependent adult or mistreatment of an elder person, pursuant to K.S.A. 21-
17 3437, prior to its repeal, or K.S.A. 2016 Supp. 21-5417, and amendments
18 thereto, human trafficking, pursuant to K.S.A. 21-3446, prior to its repeal,
19 or K.S.A. 2016 Supp. 21-5426(a), and amendments thereto, aggravated
20 human trafficking, pursuant to K.S.A. 21-3447, prior to its repeal, or
21 K.S.A. 2016 Supp. 21-5426(b), and amendments thereto, rape, pursuant to
22 K.S.A. 21-3502, prior to its repeal, or K.S.A. 2016 Supp. 21-5503, and
23 amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-
24 3503, prior to its repeal, or K.S.A. 2016 Supp. 21-5506(a), and
25 amendments thereto, aggravated indecent liberties with a child, pursuant to
26 K.S.A. 21-3504, prior to its repeal, or K.S.A. 2016 Supp. 21-5506(b), and
27 amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-
28 3506, prior to its repeal, or K.S.A. 2016 Supp. 21-5504(b), and
29 amendments thereto, indecent solicitation of a child, pursuant to K.S.A.
30 21-3510, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(a), and
31 amendments thereto, aggravated indecent solicitation of a child, pursuant
32 to K.S.A. 21-3511, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(b),
33 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A.
34 21-3516, prior to its repeal, or K.S.A. 2016 Supp. 21-5510, and
35 amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior to
36 its repeal, or K.S.A. 2016 Supp. 21-5505(a), and amendments thereto,
37 aggravated sexual battery, pursuant to K.S.A. 21-3518, prior to its repeal,
38 or K.S.A. 2016 Supp. 21-5505(b), and amendments thereto, commercial
39 sexual exploitation of a child, pursuant to K.S.A. 2016 Supp. 21-6422, and
40 amendments thereto, an attempt to commit any of the crimes listed in this
41 ~~subsection (a)(1) paragraph~~, pursuant to K.S.A. 21-3301, prior to its
42 repeal, or K.S.A. 2016 Supp. 21-5301, and amendments thereto, a
43 conspiracy to commit any of the crimes listed in this ~~subsection (a)(1)~~

1 *paragraph*, pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2016
2 Supp. 21-5302, and amendments thereto, or criminal solicitation of any of
3 the crimes listed in this ~~subsection (a)(1)~~ *paragraph*, pursuant to K.S.A.
4 21-3303, prior to its repeal, or K.S.A. 2016 Supp. 21-5303, and
5 amendments thereto, or similar statutes of other states or the federal
6 government. The provisions of subsection ~~(a)~~ *(b)(2)(C)* shall not apply to
7 any person who is employed by an adult care home on *or before* July 1,
8 2010, and while continuously employed by the same adult care home *or to*
9 *any person during or upon successful completion of a diversion*
10 *agreement.*

11 *An individual who has been disqualified for employment due to*
12 *conviction or adjudication of an offense listed in this paragraph (1) may*
13 *apply to the secretary for aging and disability services for a waiver of*
14 *such disqualification if seven years have elapsed since completion of the*
15 *sentence for such conviction. The secretary shall consider the following*
16 *criteria when rendering a decision on such a waiver request: Passage of*
17 *time; extenuating circumstances; demonstration of rehabilitation; and*
18 *relevancy of the criminal history information to the position for which the*
19 *applicant is applying.*

20 (2) A person operating an adult care home may employ an applicant
21 who has been convicted of any of the following if five or more years have
22 elapsed since ~~the applicant satisfied~~ *completion of the sentence imposed or*
23 *the applicant* was discharged from probation, a community correctional
24 services program, parole, postrelease supervision, conditional release or a
25 suspended sentence; ~~or~~ if five or more years have elapsed since the
26 applicant has been finally discharged from the custody of the
27 commissioner of juvenile justice or from probation or has been adjudicated
28 a juvenile offender, whichever time is longer; *or if the applicant has been*
29 *granted a waiver of such five-year disqualification: A felony conviction*
30 *for a crime which that is described in: (A) Article 34 of chapter 21 of the*
31 *Kansas Statutes Annotated, prior to their repeal, or article 54 of chapter 21*
32 *of the Kansas Statutes Annotated, or K.S.A. 2016 Supp. 21-6104, 21-6325,*
33 *21-6326 or 21-6418; and amendments thereto, except those crimes listed*
34 *in subsection ~~(a)~~ (b)(1), or sexual battery, pursuant to K.S.A. 21-3517,*
35 *prior to its repeal, or K.S.A. 2016 Supp. 21-5505(a), and amendments*
36 *thereto; (B) articles 35 or 36 of chapter 21 of the Kansas Statutes*
37 *Annotated, prior to their repeal, or article 55 or 56 of chapter 21 of the*
38 *Kansas Statutes Annotated, or K.S.A. 2016 Supp. 21-6419 through 21-*
39 *6421 21-6420, and amendments thereto, except those crimes listed in*
40 *subsection ~~(a)~~ (b)(1) and K.S.A. 21-3605, prior to its repeal, or K.S.A.*
41 *2016 Supp. 21-5606, and amendments thereto; (C) K.S.A. 21-3701, prior*
42 *to its repeal, or K.S.A. 2016 Supp. 21-5801, and amendments thereto; (D)*
43 *an attempt to commit any of the crimes listed in this ~~subsection (a)(2)~~*

1 *paragraph*, pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 2016
2 Supp. 21-5301, and amendments thereto; (E) a conspiracy to commit any
3 of the crimes listed in ~~subsection (a)(2) this paragraph~~, pursuant to K.S.A.
4 21-3302, prior to its repeal, or K.S.A. 2016 Supp. 21-5302, and
5 amendments thereto; (F) criminal solicitation of any of the crimes listed in
6 ~~subsection (a)(2) this paragraph~~, pursuant to K.S.A. 21-3303, prior to its
7 repeal, or K.S.A. 2016 Supp. 21-5303, and amendments thereto; or (G)
8 similar statutes of other states or the federal government.

9 *An individual who has been disqualified for employment due to*
10 *conviction or adjudication of an offense listed in this paragraph (2) may*
11 *apply to the secretary for aging and disability services for a waiver of*
12 *such disqualification if three years have elapsed since completion of the*
13 *sentence for such conviction. The secretary shall consider the following*
14 *criteria when rendering a decision on such a waiver request: Passage of*
15 *time; extenuating circumstances; demonstration of rehabilitation; and*
16 *relevancy of the criminal history information to the position for which the*
17 *applicant is applying.*

18 (3) *A person operating an adult care home may employ an applicant*
19 *who has been convicted of any of the following if five or more years have*
20 *elapsed since completion of the sentence imposed or the applicant was*
21 *discharged from probation, a community correctional services program,*
22 *parole, postrelease supervision, conditional release or a suspended*
23 *sentence; if five or more years have elapsed since the applicant has been*
24 *finally discharged from the custody of the commissioner of juvenile justice*
25 *or from probation or has been adjudicated a juvenile offender, whichever*
26 *time is longer; or if the applicant has been granted a waiver of such five-*
27 *year disqualification: Interference with custody of a committed person*
28 *pursuant to K.S.A. 21-3423, prior to its repeal, or K.S.A. 2016 Supp.*
29 *21-5410, and amendments thereto; mistreatment of a confined*
30 *person pursuant to K.S.A. 21-3425, prior to its repeal, or K.S.A. 2016*
31 *Supp. 21-5416, and amendments thereto; unlawful administration of a*
32 *substance pursuant to K.S.A. 21-3445, prior to its repeal, or K.S.A. 2016*
33 *Supp. 21-5425, and amendments thereto; **or a felony conviction***
34 ***for a crime described in:** unlawful manufacture of a controlled*
35 *substance pursuant to K.S.A. 2010 Supp. 21-36a03, prior to its repeal, or*
36 *K.S.A. 2016 Supp. 21-5703, and amendments thereto; unlawful cultivation*
37 *or distribution of a controlled substance pursuant to K.S.A. 2010 Supp.*
38 *21-36a05, prior to its repeal, or K.S.A. 2016 Supp. 21-5705, and*
39 *amendments thereto; unlawful manufacture, distribution, cultivation or*
40 *possession of a controlled substance using a communication facility*
41 *pursuant to K.S.A. 2010 Supp. 21-36a07, prior to its repeal, or K.S.A.*
42 *2016 Supp. 21-5707, and amendments thereto; unlawful obtainment or*
43 *sale of a prescription-only drug pursuant to K.S.A. 2010 Supp. 21-36a08,*
prior to its repeal, or K.S.A. 2016 Supp. 21-5708, and amendments