

SESSION OF 2019

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 232**

As Amended by Senate Committee of the Whole

**Brief\***

SB 232, as amended, would amend the Adult Care Home Licensure Act (Act) regarding the application for licensure, financial solvency, and receivership of adult care homes. The bill would require the application for a license to operate an adult care home include evidence of access to sufficient working capital necessary to operate an adult care home and include a list of current or previously licensed facilities in Kansas or outside the state in which an applicant has or previously had any ownership interest in the operations or the real property of the facility.

With regard to a receivership, the bill would address restrictions on licensure; add a venue for filing an application for receivership; modify the powers and duties of a receiver; place a restriction on the application or renewal of a license for a licensee and applicant under a receivership; address the number of copies of an application for receivership to be sent to and posted at a facility; address the timing of hearings and continuances on an application for receivership; modify the powers and duties of a receiver; and add operators and any individuals or entities that appear on a license to operate an adult care home to the list of those who would be required to repay the payments made by the Secretary for Aging and Disability Services (Secretary) and personnel costs and other expenses to establish a receivership and assist the receiver, and who would be subject to a lien on non-exempt personal and real property until amounts owed are repaid.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Further, the bill would amend and create definitions and make technical and clarifying amendments.

### ***Definitions***

The bill would define “insolvent” to mean the adult care home, or any individual or entity that operates an adult care home or appears on the adult care home license, has stopped paying debts in the ordinary course of business or is unable to pay debts as they come due in the ordinary course of business.

As it pertains to the denial, suspension, or revocation of a license to operate an adult care home, the bill would amend the definition of “person” to eliminate the requirement that such individual have an indirect or direct ownership interest of 25 percent or more in an adult care home and would instead require the individual have only any indirect or direct ownership interest.

### ***Application for Licensure***

In addition to the presently required affirmative evidence of the applicant’s ability to comply with reasonable standards and rules and regulations adopted under the provisions of the Act, the bill would require an application for a license to operate an adult care home contain the following additional information, if applicable:

- A detailed projected budget for the first 12 months of operation prepared according to generally accepted accounting principles and certified by the principal officer of the applicant, accompanied by evidence of access to sufficient working capital to operate the adult care home in accordance with the budget, in the form of cash on deposit, a line of credit, applicant’s equity, or any combination of these; and

- A list of each current or previously licensed facility in Kansas or any other state, territory, or country or the District of Columbia in which the applicant has or previously had any percentage of ownership in the operations or the real property of the facility.

### ***Amendments to Receivership Statutes***

#### *Restrictions on New License or Reinstatement*

When the district court appoints a receiver, the bill would prohibit the applicant or licensee under the receivership from being eligible to apply for a new or reinstated license for ten years from the date of termination of the receivership action.

#### *Procedural Changes*

The bill would make the following procedural changes with regard to receiverships:

- Add Shawnee County District Court as another venue option for filing the application for receivership;
- Reduce from five to one the number of copies of the application for receivership the applicant would be required to send to the adult care home and require the adult care home to post only the one copy of the application in a conspicuous place within the adult care home;
- Require an answer to the application for receivership to be filed by a party within five days after the service of process of such application;
- Specify the time frame in which the application for receivership would have to be heard would be no later than the seventh day following the filing of the

answer or other responsive pleading, rather than the seventh day following the filing of the application;

- Extend the length of time for which the district court would be allowed to grant a continuance for good cause from 10 days to not more than 14 days; and
- Remove the requirement the receiver must apply for a license to operate an adult care home on forms provided by the licensing agency.

#### *Powers and Duties of Receiver*

The bill would reorganize and relocate the statutory powers and duties of the receiver within KSA 39-959 and would:

- Add the receiver would be entitled to the immediate use of all proceeds of any accounts receivable to discharge the powers and duties of the receiver;
- Add the authority to terminate contracts as necessary to carry out the receiver's powers and duties;
- Modify the receiver's authority to enter into contracts necessary to carry out the receiver's powers and duties and to incur expenses for individual items for repairs, improvements, or supplies without having to procure competitive bids, by removing the requirement that the total amount of such individual item could not exceed \$500;
- Add authorization for the receiver to repay the receiver's expenditures from moneys appropriated to the Kansas Department for Aging and Disability Services (KDADS) for receivership purposes set in statute, if incoming payments from the operation of

the adult care home exceed the costs incurred by the receiver in the performance of the receiver's powers and duties;

- Delete the requirement the receiver honor all existing leases, mortgages, chattel mortgages, and security interests; and
- Add, if incoming payments from the operation of the adult care home exceed the costs incurred by the receiver in the performance of the receiver's powers and duties, the receiver could pay post-receivership quality care assessments as established under state law.

#### *Payment and Liens*

Continuing law allows the Secretary to authorize expenditures from moneys appropriated for receiverships if incoming payments from the operation of the adult care home are less than the cost incurred by the receiver in the performance of the receiver's functions or for the initial operating expenses of the receivership. Continuing law also requires KDADS to keep an itemized ledger showing costs of personnel and other expenses in establishing the receivership and assisting the receiver and requires KDADS be paid for these costs.

The bill would add "operator" to the list of parties who would owe and be required to repay the payments made by the Secretary and the costs of personnel and other expenses described above and against whom a lien on all non-exempt personal and real property would be required until the debt is repaid. The bill would also clarify the owner, operator, or licensee responsible for payment of such debt and subject to a lien would include any individuals or entities that appear on the license to operate the adult care home.

### *Recovery of Expenses and Costs Upon Termination of Receivership*

The bill would remove the Secretary for Children and Families as an entity eligible to recover expenses and costs under a receivership, clarifying only KDADS is eligible to recover such expenses.

### **Background**

The bill was introduced by the Senate Committee on Ways and Means at the request of Senator McGinn on behalf of KDADS. The bill was referred to the Senate Committee on Public Health and Welfare. In the Senate Committee hearing, representatives of KDADS and the Kansas Health Care Association/Kansas Center for Assisted Living (KHCA/KCAL) provided proponent testimony. The KDADS representative stated the bill would provide additional information at the time of initial licensure to operate an adult care home, make needed changes to the receivership process, and address procedural changes to ensure the state is able to adequately and effectively protect vulnerable Kansans residing in adult care homes from applicants and licensees who are unfit and unqualified to provide for the residents' care. The KHCA/KCAL representative stated issues with ownership and change of ownership of adult care homes have needed addressing for some time to protect vulnerable elders and those who work in adult care homes.

Neutral testimony was provided by a representative of LeadingAge Kansas, who stated support for the efforts by KDADS to update the receivership statutes and improve the adult care home licensing statutes to better safeguard the public. The LeadingAge Kansas representative expressed concern the proposed definition of "insolvency" in the bill is too broad and ignores the financial situations faced by adult care home providers when the state and its contractors fail to pay nursing homes for the care being provided to residents. No other testimony was provided.

The Senate Committee amended the definition of “insolvent,” clarified the ten-year restriction on applying for a new license or seeking reinstatement of a license to operate an adult care home applies to an applicant or operator under receivership, and made technical amendments.

The Senate Committee of the Whole amended the definition of “insolvent” by removing language that would consider insolvent an adult care home, or any individual or entity that operates an adult care home or appears on the adult care license, if the liabilities substantially exceed the value of the adult care home’s, individual’s, or entity’s assets.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, KDADS indicates enactment of the bill would have a fiscal effect on KDADS but cannot estimate the amount. The fiscal effect of the unknown number of applicants and facilities that would be affected by the ten-year moratorium on applying for a new license or seeking reinstatement of a license after operating a facility that was placed on receivership is unknown. Further, KDADS cannot estimate how the new duties and powers provided in the bill would affect agency expenditures and how receiving additional application material would affect agency operations.

The Office of Judicial Administration (OJA) indicates enactment of the bill could have a fiscal effect on the courts because of procedural changes made in the bill. However, OJA cannot estimate the fiscal effect because it is unable to predict how procedural changes would affect court operations. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2020 Governor’s Budget Report*.

The fiscal note was issued after the Senate Committee on Public Health and Welfare took action on the bill.