

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2386** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed with Senate Committee of the Whole amendments, as follows:

On page 2, following line 30, by inserting:

- "(9) Kansas real estate commission;
- (10) office of the attorney general;
- (11) department of insurance;"

And by redesignating subsections, paragraphs, subparagraphs and clauses accordingly;

Also, on page 2, following line 34, by inserting:

"Sec. 2. K.S.A. 2017 Supp. 39-970 is hereby amended to read as follows: 39-970. (a)

As used in this section:

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

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

(3) "Completion of the sentence" means the last day of the entire term of incarceration

imposed by a sentence, including any term that is deferred, suspended or subject to parole, probation, diversion, community corrections, fines, fees, restitution or any other imposed sentencing requirements.

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

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

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

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

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

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

(b) (1) No person shall knowingly operate an adult care home if, in the adult care home, there works any person who has adverse findings on any state or national registry, as defined in rules and regulations adopted by the secretary for aging and disability services, or has been convicted of or has been adjudicated a juvenile offender because of having committed an act which that if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439, prior to its repeal, or K.S.A. 2017 Supp. 21-5401, and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401, prior to its repeal, or K.S.A. 2017 Supp. 21-5402, and amendments thereto, second degree murder, pursuant to K.S.A. 21-3402(a), prior to its repeal, or K.S.A. 2017 Supp. 21-5403(a), and amendments thereto, voluntary manslaughter,

pursuant to K.S.A. 21-3403, prior to its repeal, or K.S.A. 2017 Supp. 21-5404, and amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406, prior to its repeal, or K.S.A. 2017 Supp. 21-5407, and amendments thereto, mistreatment of a dependent adult or mistreatment of an elder person, pursuant to K.S.A. 21-3437, prior to its repeal, or K.S.A. 2017 Supp. 21-5417, and amendments thereto, human trafficking, pursuant to K.S.A. 21-3446, prior to its repeal, or K.S.A. 2017 Supp. 21-5426(a), and amendments thereto, aggravated human trafficking, pursuant to K.S.A. 21-3447, prior to its repeal, or K.S.A. 2017 Supp. 21-5426(b), and amendments thereto, rape, pursuant to K.S.A. 21-3502, prior to its repeal, or K.S.A. 2017 Supp. 21-5503, and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503, prior to its repeal, or K.S.A. 2017 Supp. 21-5506(a), and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504, prior to its repeal, or K.S.A. 2017 Supp. 21-5506(b), and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506, prior to its repeal, or K.S.A. 2017 Supp. 21-5504(b), and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510, prior to its repeal, or K.S.A. 2017 Supp. 21-5508(a), and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511, prior to its repeal, or K.S.A. 2017 Supp. 21-5508(b), and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516, prior to its repeal, or K.S.A. 2017 Supp. 21-5510, and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior to its repeal, or K.S.A. 2017 Supp. 21-5505(a), and amendments thereto, aggravated sexual battery, pursuant to K.S.A. 21-3518, prior to its repeal, or K.S.A. 2017 Supp. 21-5505(b), and amendments thereto, commercial sexual exploitation of a child, pursuant to K.S.A. 2017 Supp. 21-6422, and amendments thereto, an attempt to commit any of the crimes listed in this ~~subsection (a)(1)~~ paragraph, pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 2017 Supp. 21-5301, and amendments thereto, a conspiracy to commit any of the crimes listed in this ~~subsection (a)(1)~~

paragraph, pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2017 Supp. 21-5302, and amendments thereto, or criminal solicitation of any of the crimes listed in this ~~subsection (a)(1)~~ paragraph, pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 2017 Supp. 21-5303, and amendments thereto, or similar statutes of other states or the federal government. The provisions of subsection ~~(a)(2)(C)~~ (b)(2)(C) shall not apply to any person who is employed by an adult care home on or before July 1, 2010, and while continuously employed by the same adult care home or to any person during or upon successful completion of a diversion agreement.

(2) A person operating an adult care home may employ an applicant who has been convicted of any of the following if ~~five~~ six or more years have elapsed since ~~the applicant satisfied completion of the sentence imposed or the applicant was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence;~~ ~~or~~ if ~~five~~ six or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer; or if the applicant has been granted a waiver of such six-year disqualification: A felony conviction for a crime ~~which that~~ is described in: (A) Article 34 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated, ~~or K.S.A. 2017 Supp. 21-6104, 21-6325, 21-6326 or 21-6418,~~ and amendments thereto, except those crimes listed in subsection ~~(a)~~ (+) ~~(b)(1)~~; (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2017 Supp. ~~21-6419 through 21-6421~~ 21-6420, and amendments thereto, except those crimes listed in subsection ~~(a)(+)~~ (b)(1) and K.S.A. 21-3605, prior to its repeal, or K.S.A. 2017 Supp. 21-5606, and amendments thereto; (C) K.S.A. 21-3701, prior to its repeal, or K.S.A. 2017 Supp. 21-5801, and amendments thereto; (D) an attempt to commit any of the crimes listed in this ~~subsection (a)~~

(2) paragraph, pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 2017 Supp. 21-5301, and amendments thereto; (E) a conspiracy to commit any of the crimes listed in ~~subsection (a)(2)~~ this paragraph, pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2017 Supp. 21-5302, and amendments thereto; (F) criminal solicitation of any of the crimes listed in ~~subsection (a)(2)~~ this paragraph, pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 2017 Supp. 21-5303, and amendments thereto; or (G) similar statutes of other states or the federal government.

An individual who has been disqualified for employment due to conviction or adjudication of an offense listed in this paragraph (2) may apply to the secretary for aging and disability services for a waiver of such disqualification if five years have elapsed since completion of the sentence for such conviction. The secretary shall adopt rules and regulations establishing the waiver process and criteria to be considered by the secretary in evaluating any such waiver request.

(3) A person operating an adult care home may employ an applicant who has been convicted of any of the following if six or more years have elapsed since completion of the sentence imposed or the applicant was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; if six or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer; or if the applicant has been granted a waiver of such six-year disqualification:

(i) Interference with custody of a committed person pursuant to K.S.A. 21-3423, prior to its repeal, or K.S.A. 2017 Supp. 21-5410, and amendments thereto; mistreatment of a confined person pursuant to K.S.A. 21-3425, prior to its repeal, or K.S.A. 2017 Supp. 21-5416, and amendments thereto; unlawful administration of a substance pursuant to K.S.A. 21-3445, prior to

its repeal, or K.S.A. 2017 Supp. 21-5425, and amendments thereto; violation of a protective order pursuant to K.S.A. 21-3843, prior to its repeal, or K.S.A. 2017 Supp. 21-5924, and amendments thereto; promoting obscenity or promoting obscenity to minors pursuant to K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2017 Supp. 21-6401, and amendments thereto; or cruelty to animals pursuant to K.S.A. 21-3727, 21-4310 or 21-4311, prior to their repeal, or K.S.A. 2017 Supp. 21-6412, and amendments thereto; or

(ii) any felony conviction of: Unlawful manufacture of a controlled substance pursuant to K.S.A. 2010 Supp. 21-36a03, prior to its repeal, or K.S.A. 2017 Supp. 21-5703, and amendments thereto; unlawful cultivation or distribution of a controlled substance pursuant to K.S.A. 2010 Supp. 21-36a05, prior to its repeal, or K.S.A. 2017 Supp. 21-5705, and amendments thereto; unlawful manufacture, distribution, cultivation or possession of a controlled substance using a communication facility pursuant to K.S.A. 2010 Supp. 21-36a07, prior to its repeal, or K.S.A. 2017 Supp. 21-5707, and amendments thereto; unlawful obtainment or sale of a prescription-only drug pursuant to K.S.A. 2010 Supp. 21-36a08, prior to its repeal, or K.S.A. 2017 Supp. 21-5708, and amendments thereto; unlawful distribution of drug precursors or drug paraphernalia pursuant to K.S.A. 2010 Supp. 21-36a10, prior to its repeal, or K.S.A. 2017 Supp. 21-5710, and amendments thereto; unlawful distribution or possession of a simulated controlled substance pursuant to K.S.A. 2010 Supp. 21-36a13, prior to its repeal, or K.S.A. 2017 Supp. 21-5713, and amendments thereto; forgery pursuant to K.S.A. 21-3710, prior to its repeal, or K.S.A. 2017 Supp. 21-5823, and amendments thereto; criminal use of a financial card pursuant to K.S.A. 21-3729, prior to its repeal, or K.S.A. 2017 Supp. 21-5828, and amendments thereto; any violation of the Kansas medicaid fraud control act pursuant to K.S.A. 21-3844 et seq., prior to their repeal, or K.S.A. 2017 Supp. 21-5925 et seq., and amendments thereto; making a false claim, statement or representation to the medicaid program pursuant to K.S.A. 21-3846, prior to

its repeal, or K.S.A. 2017 Supp. 21-5927, and amendments thereto; unlawful acts relating to the medicaid program pursuant to K.S.A. 21-3847, prior to its repeal, or K.S.A. 2017 Supp. 21-5928, and amendments thereto; obstruction of a medicaid fraud investigation pursuant to K.S.A. 21-3856, prior to its repeal, or K.S.A. 2017 Supp. 21-5929, and amendments thereto; identity theft or identity fraud pursuant to K.S.A. 2010 Supp. 21-4018, prior to its repeal, or K.S.A. 2017 Supp. 21-6107, and amendments thereto; or social welfare fraud pursuant to K.S.A. 39-720, and amendments thereto.

The provisions of this paragraph (3) shall not apply to any person who is employed by an adult care home on or before July 1, 2018, and is continuously employed by the same adult care home or to any person during or upon successful completion of a diversion agreement.

An individual who has been disqualified for employment due to conviction or adjudication of an offense listed in this paragraph (3) may apply to the secretary for aging and disability services for a waiver of such disqualification if five years have elapsed since completion of the sentence for such conviction. The secretary shall adopt rules and regulations establishing the waiver process and criteria to be considered by the secretary in evaluating any such waiver request.

~~(b)(c)~~ No person shall operate an adult care home if such person has been found to be in need of a guardian or conservator, or both as provided in ~~K.S.A. 59-3050 through 59-3095, and amendments thereto~~ the act for obtaining a guardian or a conservator, or both. The provisions of this subsection shall not apply to an individual who, as a minor, was found to be in need of a guardian or conservator for reasons other than impairment.

~~(e)~~ ~~The secretary for aging and disability services shall have access to any criminal history record information in the possession of the Kansas bureau of investigation regarding any eriminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to~~

~~their repeal, or K.S.A. 2017 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2017 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto, concerning persons working in an adult care home. The secretary shall have access to these records for the purpose of determining whether or not the adult care home meets the requirements of this section. The Kansas bureau of investigation may charge to the Kansas department for aging and disability services a reasonable fee for providing criminal history record information under this subsection.~~

(d) (1) The Kansas bureau of investigation shall release all records of adult and juvenile convictions and adjudications and adult and juvenile convictions and adjudications of any other state or country concerning persons working in an adult care home to the secretary for aging and disability services. The Kansas bureau of investigation may charge to the Kansas department for aging and disability services a reasonable fee for providing criminal history record information under this subsection.

(2) The department shall require an applicant to be fingerprinted and to submit to a state and national criminal history record check. The fingerprints shall be used to identify the individual and to determine whether the individual has a record of criminal history in this state or other jurisdiction. The department is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The department may use the information obtained from fingerprinting and the criminal history record check for purposes of verifying the identification of the person and for making an official determination of the qualifications and fitness of the person to work in the adult care home.



(3) An applicant for employment in an adult care home shall have 20 calendar days after receipt of authorization to submit the applicant's fingerprints through an authorized collection site in order to be eligible for provisional employment or the applicant's application shall be deemed withdrawn.

(4) (A) The current or prospective employer of an applicant shall pay a fee not to exceed \$19 of the total cost for criminal history record information to the department for each applicant submitted.

(B) The prospective employer, employee or independent contractor shall pay the fingerprint collection fee at the time of fingerprinting to the authorized collection site.

(5) If an applicant disputes the contents of a criminal history record check, then the applicant may file an appeal with the Kansas bureau of investigation.

(6) Individuals who have been disqualified for employment by reason of their criminal history records and who have met the requirements of this subsection may apply for a waiver with the department within 30 days of the receipt of the notice of employment prohibition.

(7) The department shall adopt rules and regulations specifying the criteria and procedure for issuing a waiver of the employment prohibition. The secretary shall consider the following criteria when rendering a decision on such a waiver request: Passage of time; extenuating circumstances; demonstration of rehabilitation; and relevancy of the criminal history record information to the position for which the applicant is applying. Any employment prohibition issued shall remain in effect unless or until a waiver is granted.

~~(d)(e) For the purpose of complying with this section, the operator of an adult care home shall request from the Kansas department for aging and disability services information regarding any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2017 Supp. 21-5417, 21-5505(a) and 21-5801, and~~

~~amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2017 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto, and which relates to a person who works in the adult care home, or is being considered for employment by the adult care home, for the purpose of determining whether such person is subject to the provision of this section~~ an eligibility determination regarding adult and juvenile convictions and adjudications. For the purpose of complying with this section, the operator of an adult care home shall receive from any employment agency ~~which~~ or independent contractor that provides employees to work in the adult care home written certification that such employees are not prohibited from working in the adult care home under this section. ~~For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary for aging and disability services determines the search for such information could reasonably be performed and the information obtained within a two-week period.~~ For the purpose of complying with this section, a person who operates an adult care home may hire an applicant for provisional employment on a ~~conditional~~ one-time basis of 60 calendar days pending the results from the Kansas department for aging and disability services of a request for information under this subsection. A provisional employee may only be supervised by an employee that has completed all training required by federal regulations, rules and regulations of the department and the adult care home's policies and procedures. No adult care home, the operator or employees of an adult care home or an employment agency, ~~or the operator or employees of an employment agency, or~~ an independent contractor shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such adult

care home's compliance with the provisions of this section if such adult care home or employment agency acts in good faith to comply with this section.

~~(e) The secretary for aging and disability services shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted to the department under this section.~~

~~(f)(1) The secretary for aging and disability services shall provide each operator requesting information under this section with the criminal history record information concerning a pass or fail determination after review of any criminal history record information and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2017 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation or the federal bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).~~

~~(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.~~

~~(3) Whenever the criminal history record information reveals that the subject of the~~

~~request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.~~

~~(4) The secretary for aging and disability services shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 2017 Supp. 38-2326, and amendments thereto, except for adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, prior to its repeal, or K.S.A. 2017 Supp. 21-5801, and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information and whether such information contains adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, prior to its repeal, or K.S.A. 2017 Supp. 21-5801, and amendments thereto.~~

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

~~(g) No person who works for an adult care home and who is currently licensed or registered by an agency of this state to provide professional services in the state and who provides such services as part of the work which such person performs for the adult care home shall be subject to the provisions of this section.~~

~~(h)(g) A person who volunteers in an adult care home shall not be subject to the~~

provisions of this section ~~because of such volunteer activity~~ unless the volunteer performs equivalent functions to those performed by direct access employees.

~~(i) An operator may request from the Kansas department for aging and disability services criminal history information on persons employed under subsections (g) and (h).~~

~~(j)(h)~~ No person who has been continuously employed by the same adult care home since July 1, 1992, shall be subject to the provisions of this section while employed by such adult care home.

~~(k)(i)~~ The operator of an adult care home shall not be required under this section to conduct a ~~background~~ criminal history record check on an applicant for employment with the adult care home if the applicant has been the subject of a ~~background~~ criminal history record check under this act within one year prior to the application for employment with the adult care home. ~~The operator of an adult care home where the applicant was the subject of such background check may release a copy of such background check to the operator of an adult care home where the applicant is currently applying.~~

~~(l)(j)~~ No person who is in the custody of the secretary of corrections and who provides services, under direct supervision in nonpatient areas, on the grounds or other areas designated by the superintendent of the Kansas soldiers' home or the Kansas veterans' home shall be subject to the provisions of this section while providing such services.

~~(m) For purposes of this section, the Kansas bureau of investigation shall report any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2017 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2017 Supp. 21-5417, 21-5505(a) and 21-~~

~~5801, and amendments thereto, to the secretary for aging and disability services when a background check is requested.~~

(k) (1) All fees charged by the secretary for criminal history record checks conducted pursuant to this section shall be established by rules and regulations of the secretary.

(2) All moneys collected and remitted to the Kansas department for aging and disability services for fees charged for criminal history record checks conducted pursuant to this section shall be remitted to the state treasurer in accordance with K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the state licensure fee fund created by K.S.A. 39-930, and amendments thereto.

(l) The Kansas department for aging and disability services may implement the amendments made to this section by this act in phases for different categories of employers. The department shall adopt rules and regulations establishing dates and procedures for the implementation of the criminal history record checks required by this section, and such dates may be staggered to facilitate implementation of the criminal history record checks required by this section.

(m) Upon authorization by the secretary for aging and disability services, other state agencies may access an internet-based application portal that is operated and maintained by the Kansas department for aging and disability services for purposes of processing criminal history record information requests in accordance with this section. Agencies may not share criminal history record information or the resulting pass or fail determinations with any other agency. The secretary for aging and disability services may charge an authorized agency the amount of \$1 per request made pursuant to this subsection.

(n) This section shall be part of and supplemental to the adult care home licensure act.

Sec. 3. K.S.A. 2017 Supp. 39-2009 is hereby amended to read as follows: 39-2009. (a)

As used in this section:

(1) "Applicant" means an individual who applies for employment with a center, facility, hospital or a provider of services or applies to work for an employment agency or as an independent contractor that provides staff to a center, facility, hospital or a provider of services.

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

(3) "Department" means the Kansas department for aging and disability services.

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

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

(6) "Employment agency" means an organization or entity that has a contracted relationship with a center, hospital, facility or provider of services to provide staff with direct access to consumers.

(7) "Independent contractor" means an organization, entity, agency or individual that provides contracted workers or services to a center, facility, hospital or provider of services.

(b) (1) No licensee shall knowingly operate a center, facility, hospital or be a provider of services if any person who works in the center, facility, hospital or for a provider of services:

(1) (A) ~~Has a felony conviction for a crime against persons;~~

~~(B) has a felony conviction under K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, or article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009;~~

~~(C) has a conviction of any act which is described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2017 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, and amendments thereto, or a conviction of an attempt under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2017 Supp. 21-5301, and amendments thereto, to commit any such act or a conviction of conspiracy under K.S.A. 21-3302, prior to its repeal, or K.S.A. 2017 Supp. 21-5302, and amendments thereto, to commit such act, or similar statutes of other states or the federal government; or~~

~~(D) has been convicted of any act which is described in K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2017 Supp. 21-6401, and amendments thereto, or similar statutes of other states or the federal government;~~

~~(2) has been adjudicated a juvenile offender because of having committed an act which if committed by an adult would constitute the commission of a felony and which is a crime against persons, is any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2017 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, and amendments thereto, or similar statutes of other states or the federal government, or is any act described in K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2017 Supp. 21-6401, and amendments thereto, or similar statutes of other states or the federal government;~~

~~(3) has committed an act of physical, mental or emotional abuse or neglect or sexual~~



~~abuse and who is listed in the child abuse and neglect registry maintained by the Kansas department for children and families pursuant to K.S.A. 2017 Supp. 38-2226, and amendments thereto, and:~~

~~(A) The person has failed to successfully complete a corrective action plan which had been deemed appropriate and approved by the Kansas department for children and families; or~~

~~(B) the record has not been expunged pursuant to rules and regulations adopted by the secretary for children and families;~~

~~(4) has had a child removed from home based on a court order pursuant to K.S.A. 2017 Supp. 38-2251, and amendments thereto, in this state, or a court order in any other state based upon a similar statute that finds the child to be deprived or a child in need of care based on a finding of physical, mental or emotional abuse or neglect or sexual abuse and the child has not been returned to the home or the child reaches majority before being returned to the home and the person has failed to satisfactorily complete a corrective action plan;~~

~~(5) has had parental rights terminated pursuant to the revised Kansas code for the care of children or a similar statute of another state; or~~

~~(6) has signed a diversion agreement pursuant to K.S.A. 22-2906 et seq., and amendments thereto, or an immediate intervention agreement pursuant to K.S.A. 2017 Supp. 38-2346, and amendments thereto, involving a charge of child abuse or a sexual offense has adverse findings on any state or national registry, as defined in rules and regulations adopted by the secretary for aging and disability services, or has been convicted of or has been adjudicated a juvenile offender because of having committing an act that if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439, prior to its repeal, or K.S.A. 2017 Supp. 21-5401, and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401, prior to its repeal, or K.S.A. 2017 Supp. 21-5402, and amendments thereto, second degree murder,~~

pursuant to K.S.A. 21-3402(a), prior to its repeal, or K.S.A. 2017 Supp. 21-5403(a), and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403, prior to its repeal, or K.S.A. 2017 Supp. 21-5404, and amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406, prior to its repeal, or K.S.A. 2017 Supp. 21-5407, and amendments thereto, mistreatment of a dependent adult or mistreatment of an elder person, pursuant to K.S.A. 21-3437, prior to its repeal, or K.S.A. 2017 Supp. 21-5417, and amendments thereto, human trafficking, pursuant to K.S.A. 21-3446, prior to its repeal, or K.S.A. 2017 Supp. 21-5426(a), and amendments thereto, aggravated human trafficking, pursuant to K.S.A. 21-3447, prior to its repeal, or K.S.A. 2017 Supp. 21-5426(b), and amendments thereto, rape, pursuant to K.S.A. 21-3502, prior to its repeal, or K.S.A. 2017 Supp. 21-5503, and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503, prior to its repeal, or K.S.A. 2017 Supp. 21-5506(a), and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504, prior to its repeal, or K.S.A. 2017 Supp. 21-5506(b), and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506, prior to its repeal, or K.S.A. 2017 Supp. 21-5504(b), and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510, prior to its repeal, or K.S.A. 2017 Supp. 21-5508(a), and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511, prior to its repeal, or K.S.A. 2017 Supp. 21-5508(b), and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516, prior to its repeal, or K.S.A. 2017 Supp. 21-5510, and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior to its repeal, or K.S.A. 2017 Supp. 21-5505(a), and amendments thereto, aggravated sexual battery, pursuant to K.S.A. 21-3518, prior to its repeal, or K.S.A. 2017 Supp. 21-5505(b), and amendments thereto, commercial sexual exploitation of a child, pursuant to K.S.A. 2017 Supp. 21-6422, and amendments thereto, an attempt to commit any of the crimes listed in this paragraph, pursuant to K.S.A. 21-3301, prior to its repeal, or

K.S.A. 2017 Supp. 21-5301, and amendments thereto, a conspiracy to commit any of the crimes listed in this paragraph, pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2017 Supp. 21-5302, and amendments thereto, or criminal solicitation of any of the crimes listed in this paragraph, pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 2017 Supp. 21-5303, and amendments thereto, or similar statutes of other states or the federal government.

(2) A licensee operating a center, facility or hospital or as a provider of services may employ an applicant who has been convicted of any of the following if six or more years have elapsed since completion of the sentence imposed or the applicant was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; if six or more years have elapsed since a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if the applicant has been granted a waiver of such six-year disqualification: A felony conviction for a crime that is described in: (A) Article 34 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, except those crimes listed in paragraph (1); (B) article 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, prior to their repeal, or article 55 or 56 of chapter 21 of the Kansas Statutes Annotated or K.S.A. 2017 Supp. 21-6420, and amendments thereto, except those crimes listed in paragraph (1); (C) K.S.A. 21-3701, prior to its repeal, or K.S.A. 2017 Supp. 21-5801, and amendments thereto; (D) an attempt to commit any of the crimes listed in this paragraph pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 2017 Supp. 21-5301, and amendments thereto; (E) a conspiracy to commit any of the crimes listed in this paragraph pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2017 Supp. 21-5302, and amendments thereto; (F) criminal solicitation of any of the crimes listed in this paragraph pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 2017 Supp. 21-5303, and amendments

thereto; or (G) similar statutes of other states or the federal government.

An individual who has been disqualified for employment due to conviction or adjudication of an offense of an offense listed in this paragraph (2) may apply to the secretary for aging and disability services for a waiver of such disqualification if five years have elapsed since completion of the sentence for such conviction. The secretary shall adopt rules and regulations establishing the waiver process and the criteria to be utilized by the secretary in evaluating any such waiver request.

(3) A licensee operating a center, facility, hospital or as a provider of services may employ an applicant who has been convicted of any of the following if six or more years have elapsed since completion of the sentence imposed or the applicant was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; if six or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer; or if the applicant has been granted a waiver of such six-year disqualification:

(i) Interference with custody of a committed person pursuant to K.S.A. 21-3423, prior to its repeal, or K.S.A. 2017 Supp. 21- 5410, and amendments thereto; mistreatment of a confined person pursuant to K.S.A. 21-3425, prior to its repeal, or K.S.A. 2017 Supp. 21- 5416, and amendments thereto; unlawful administration of a substance pursuant to K.S.A. 21-3445, prior to its repeal, or K.S.A. 2017 Supp. 21-5425, and amendments thereto; violation of a protective order pursuant to K.S.A. 21-3843, prior to its repeal, or K.S.A. 2017 Supp. 21-5924; promoting obscenity or promoting obscenity to minors pursuant to K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2017 Supp. 21-6401, and amendments thereto; or cruelty to animals pursuant to K.S.A. 21-3727, 21-4310 or 21-4311, prior to their repeal, or K.S.A. 2017

Supp. 21-6412, and amendments thereto; or

(ii) any felony conviction of: Unlawful manufacture of a controlled substance pursuant to K.S.A. 2010 Supp. 21-36a03, prior to its repeal, or K.S.A. 2017 Supp. 21-5703, and amendments thereto; unlawful cultivation or distribution of a controlled substance pursuant to K.S.A. 2010 Supp. 21-36a05, prior to its repeal, or K.S.A. 2017 Supp. 21-5705, and amendments thereto; unlawful manufacture, distribution, cultivation or possession of a controlled substance using a communication facility pursuant to K.S.A. 2010 Supp. 21-36a07, prior to its repeal, or K.S.A. 2017 Supp. 21-5707, and amendments thereto; unlawful obtainment or sale of a prescription-only drug pursuant to K.S.A. 2010 Supp. 21-36a08, prior to its repeal, or K.S.A. 2017 Supp. 21-5708, and amendments thereto; unlawful distribution of drug precursors or drug paraphernalia pursuant to K.S.A. 2010 Supp. 21-36a10, prior to its repeal, or K.S.A. 2017 Supp. 21-5710, and amendments thereto; unlawful distribution or possession of a simulated controlled substance pursuant to K.S.A. 2010 Supp. 21-36a13, prior to its repeal, or K.S.A. 2017 Supp. 21-5713, and amendments thereto; forgery pursuant to K.S.A. 21-3710, prior to its repeal, or K.S.A. 2017 Supp. 21-5823, and amendments thereto; criminal use of a financial card pursuant to K.S.A. 21-3729, prior to its repeal, or K.S.A. 2017 Supp. 21-5828, and amendments thereto; any violation of the Kansas medicaid fraud control act pursuant to K.S.A. 21-3844 et seq., prior to their repeal, or K.S.A. 2017 Supp. 21-5925 et seq., and amendments thereto; making a false claim, statement or representation to the medicaid program pursuant to K.S.A. 21-3846, prior to its repeal, or K.S.A. 2017 Supp. 21-5927, and amendments thereto; unlawful acts relating to the medicaid program pursuant to K.S.A. 21-3847, prior to its repeal, or K.S.A. 2017 Supp. 21-5928, and amendments thereto; obstruction of a medicaid fraud investigation pursuant to K.S.A. 21-3856, prior to its repeal, or K.S.A. 2017 Supp. 21-5929, and amendments thereto; identity theft or identity fraud pursuant to K.S.A. 2010 Supp. 21-4018, prior to its repeal, or K.S.A. 2017

Supp. 21-6107, and amendments thereto; or social welfare fraud pursuant to K.S.A. 39-720, and amendments thereto. The provisions of this paragraph shall not apply to any person who is employed by a center, facility, hospital or provider of services on or before July 1, 2018, and is continuously employed by the same center, facility, hospital or provider of services or to any person during or upon successful completion of a diversion agreement.

An individual who has been disqualified for employment due to conviction or adjudication of an offense listed in this paragraph (3) may apply to the secretary for aging and disability services for a waiver of such disqualification if five years have elapsed since completion of the sentence for such conviction. The secretary shall adopt rules and regulations establishing the waiver process and criteria to be considered by the secretary in evaluating any such waiver request.

(b)(c) No licensee shall operate a center, facility, hospital or be a provider of services if such person has been found to be an adult with an impairment in need of a guardian or a conservator, or both, as provided in the act for obtaining a guardian or conservator, or both. The provisions of this subsection shall not apply to an individual who, as a minor, was found to be in need of a guardian or conservator for reasons other than impairment.

(d) (1) The Kansas bureau of investigation shall release all records of adult and juvenile convictions and adjudications and adult and juvenile convictions and adjudications of any other state or country concerning persons working in a center, facility, hospital or for a provider of services to the secretary for aging and disability services. The Kansas bureau of investigation may charge to the Kansas department for aging and disability services a reasonable fee for providing criminal history record information under this subsection.

(2) The department shall require an applicant to be fingerprinted and to submit to a state and national criminal history record check. The fingerprints shall be used to identify the

individual and to determine whether the individual has a record of criminal history in this state or other jurisdiction. The department is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The department may use the information obtained from fingerprinting and the criminal history record check for purposes of verifying the identification of the person and for making an official determination of the qualifications and fitness of the person to work in the center, facility, hospital or for a provider of services.

(3) An applicant for employment in an center, facility, hospital or for a provider of services shall have 20 calendar days after receipt of authorization to submit the applicant's fingerprints through an authorized collection site in order to be eligible for provisional employment or the applicant's application shall be deemed withdrawn.

(4) (A) The current or prospective employer of an applicant shall pay a fee not to exceed \$19 of the total cost for criminal history record information to the department for each applicant submitted.

(B) The prospective employer, employee or independent contractor shall pay the fingerprint collection fee at the time of fingerprinting to the authorized collection site.

(5) If an applicant disputes the contents of a criminal history record check, then the applicant may file an appeal with the Kansas bureau of investigation.

(6) Individuals who have been disqualified for employment by reason of their criminal history records and who have met the requirements of this subsection may apply for a waiver with the department within 30 days of the receipt of the notice of employment prohibition.

(7) The department shall adopt rules and regulations specifying the criteria and procedure for issuing a waiver of the employment prohibition. The secretary shall consider the following criteria when rendering a decision on such a waiver request: Passage of time;

extenuating circumstances; demonstration of rehabilitation; and relevancy of the criminal history record information to the position for which the applicant is applying. Any employment prohibition issued shall remain in effect unless or until a waiver is granted.

~~(e)(d)~~ The secretary shall ~~notify the~~ provide each licensee, ~~within 10 business days,~~ when the result of the national criminal history record check or other appropriate review reveals unfitness as specified in subsections (a)(1) through (6) with regard to the person who is the subject of the review requesting information under this section with a pass or fail determination after review of any criminal history record information in writing and within three working days of receipt of such information from the Kansas bureau of investigation or the federal bureau of investigation.

~~(d)~~ No licensee, its contractors or employees, shall be liable for civil damages to any person refused employment or discharged from employment by reason of such licensee's compliance with the provisions of this section if such licensee acts in good faith to comply with this section.

(e) Any licensee or member of the staff who receives information concerning the fitness or unfitness of any person shall keep such information confidential, except that the staff person may disclose such information to the person who is the subject of the request for information. A violation of this subsection shall be an unclassified misdemeanor punishable by a fine of \$100.

~~(f)~~ The licensing agency may require a person seeking licensure or applying to work in a facility to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the person and to determine whether the person has a record of criminal history in this state or other jurisdiction. The licensing agency is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The licensing agency may use the information



~~obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the person to be issued or to maintain a license, work with, or provide services to individuals as applicable under this act.~~

~~(g) The secretary shall have access to any criminal history record information in the possession of the Kansas bureau of investigation regarding any criminal history information, including adjudications of a juvenile offender which if committed by an adult would have been a felony conviction for the purposes specified in this act. The Kansas bureau of investigation may charge to the Kansas department for aging and disability services a reasonable fee for providing criminal history record information under this subsection.~~

~~(h) The secretary shall charge each person or licensee requesting information under this section a fee equal to cost for each person about which an information request has been submitted to the department under this section.~~

~~(i)(f) For the purpose of complying with this section, the licensee operating a center, facility, hospital or a provider of services shall request from the Kansas department for aging and disability services information regarding any criminal history information relating to a person who works in the center, facility, hospital or for a provider of services, or who is being considered for employment or volunteer work in the facility, center, hospital or with the service provider, for the purpose of determining whether such person is subject to the provisions of this section an eligibility determination regarding adult and juvenile convictions and adjudications.~~

~~For the purpose of complying with this section, the licensee operating a center, facility, hospital or a provider of services shall report the dates of employment and separation of all persons working for the licensee operating a center, facility, hospital or a provider of services. For the purposes of complying with this section, any employment agency which provides employees to~~

~~work in a center, facility, hospital or a provider of services shall request and receive an eligibility determination from the Kansas department for aging and disability services. Any licensee operating a center, facility, hospital or a provider of services will obtain written documentation that such employees are eligible to work receive from any employment agency or independent contractor that provides employees to work in the center, facility, hospital or for the provider of services written certification that such employees are not prohibited from working in the center, facility, hospital or for the provider of services under this section. For the purpose of complying with this section, a licensee may hire an applicant for provisional employment on a ~~conditional one-time~~ basis of 60 calendar days pending the results from the Kansas department for aging and disability services of an eligibility determination under this subsection. ~~As required by the patient protection and affordable care act, 42 U.S.C. § 18001, a person disqualified from employment due to a valid background check may appeal in accordance with requirements, standards, rules and regulations to be promulgated by the secretary~~ A provisional employee may only be supervised by an employee who has completed all training required by federal regulations, department rules and regulations and the center's, facility's, hospital's or provider of services' policies and procedures. No licensee, its contractors or employees, shall be liable for civil damages to any person refused employment or discharged from employment by reason of such licensee's compliance with the provisions of this section if such licensee acts in good faith to comply with this section.~~

~~(j) No person who works for a center, facility or hospital and who is currently licensed or registered by an agency of this state to provide professional services in the state and who provides such services as part of the work which such person performs for the center, facility or hospital shall be subject to the provisions of this section.~~

~~(k) A licensee may request from the Kansas department for aging and disability services~~

~~criminal history information on persons employed under subsection (j).~~

(~~h~~)(g) The licensee operating a center, facility, hospital or a provider of services shall not require an applicant under this section to be fingerprinted, if the applicant has been the subject of a ~~background~~ criminal history record check under this act within one year prior to the application for employment with the licensee operating a center, facility, hospital or a provider of services and has maintained a record of continuous employment, with no lapse of employment of over 90 days in any center, facility, hospital or a provider of services covered by this act.

~~(m) No person who is in the custody of the secretary of corrections and who provides services under direct supervision in non-patient areas on the grounds or other areas designated by the secretary of corrections shall be subject to the provisions of this section while providing such services.~~

Sec. 4. K.S.A. 2017 Supp. 65-5117 is hereby amended to read as follows: 65-5117. (a)

As used in this section:

(1) "Applicant" means an individual who applies for employment with a home health agency or applies to work for an employment agency or as an independent contractor that provides staff to a home health agency.

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

(3) "Department" means the Kansas department for aging and disability services.

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

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

(6) "Employment agency" means an organization or entity that has a contracted relationship with a home health agency to provide staff with direct access to consumers.

(7) "Independent contractor" means an organization, entity, agency or individual that provides contracted workers or services to a home health agency.

(b) (1) No person shall knowingly operate a home health agency if, for the home health agency, there works any person who has adverse findings on any state or national registry, as defined in rules and regulations adopted by the secretary for aging and disability services, or has been convicted of or has been adjudicated a juvenile offender because of having committed an act~~which~~ that if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439, prior to its repeal, or K.S.A. 2017 Supp. 21-5401, and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401, prior to its repeal, or K.S.A. 2017 Supp. 21-5402, and amendments thereto, second degree murder, pursuant to K.S.A. 21-3402(a), prior to its repeal, or K.S.A. 2017 Supp. 21-5403(a), and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403, prior to its repeal, or K.S.A. 2017 Supp. 21-5404, and amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406, prior to its repeal, or K.S.A. 2017 Supp. 21-5407, and amendments thereto, mistreatment of a dependent adult or mistreatment of an elder person, pursuant to K.S.A. 21-3437, prior to its repeal, or K.S.A. 2017 Supp. 21-5417, and amendments thereto, human trafficking, pursuant to K.S.A. 21-3446, prior to its repeal, or K.S.A. 2017 Supp. 21-5426(a), and amendments thereto, aggravated human trafficking, pursuant to K.S.A. 21-3447, prior to its repeal, or K.S.A. 2017 Supp. 21-5426(b), and amendments thereto, rape, pursuant to K.S.A. 21-3502, prior to its repeal, or K.S.A. 2017 Supp. 21-5503, and

amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503, prior to its repeal, or K.S.A. 2017 Supp. 21-5506(a), and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504, prior to its repeal, or K.S.A. 2017 Supp. 21-5506(b), and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506, prior to its repeal, or K.S.A. 2017 Supp. 21-5504(b), and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510, prior to its repeal, or K.S.A. 2017 Supp. 21-5508(a), and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511, prior to its repeal, or K.S.A. 2017 Supp. 21-5508(b), and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516, prior to its repeal, or K.S.A. 2017 Supp. 21-5510, and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior to its repeal, or K.S.A. 2017 Supp. 21-5505(a), and amendments thereto, aggravated sexual battery, pursuant to K.S.A. 21-3518, prior to its repeal, or K.S.A. 2017 Supp. 21-5505(b), and amendments thereto, commercial sexual exploitation of a child, pursuant to K.S.A. 2017 Supp. 21-6422, and amendments thereto, an attempt to commit any of the crimes listed in this paragraph, pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 2017 Supp. 21-5301, and amendments thereto, a conspiracy to commit any of the crimes listed in this paragraph, pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2017 Supp. 21-5302, and amendments thereto, or criminal solicitation of any of the crimes listed in this paragraph, pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 2017 Supp. 21-5303, and amendments thereto, or similar statutes of other states or the federal government. The provisions of subsection ~~(a)~~ (b)(2)(C) shall not apply to any person who is employed by a home health agency on or before July 1, 2010, and while continuously employed by the same home health agency or to any person during or upon successful completion of a diversion agreement.

- (2) A person operating a home health agency may employ an applicant who has been

convicted of any of the following if ~~five~~ six or more years have elapsed since ~~the applicant satisfied completion of~~ the sentence imposed or the applicant was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; ~~or if five~~ six or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer; or if the applicant has been granted a waiver of such six-year disqualification: A felony conviction for a crime ~~which that~~ is described in: (A) Article 34 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated, ~~or K.S.A. 2017 Supp. 21-6104, 21-6325, 21-6326 or 21-6418,~~ and amendments thereto, except those crimes listed in subsection ~~(a)~~ (b)(1); (B) ~~articles~~ article 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2017 Supp. ~~21-6419 through 21-6421~~ 21-6420, and amendments thereto, except those crimes listed in subsection ~~(a)~~ (b)(1) and K.S.A. 21-3605, prior to its repeal, or K.S.A. 2017 Supp. 21-5606, and amendments thereto; (C) K.S.A. 21-3701, prior to its repeal, or K.S.A. 2017 Supp. 21-5801, and amendments thereto; (D) an attempt to commit any of the crimes listed in this paragraph pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 2017 Supp. 21-5301, and amendments thereto; (E) a conspiracy to commit any of the crimes listed in this paragraph pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2017 Supp. 21-5302, and amendments thereto; (F) criminal solicitation of any of the crimes listed in this paragraph pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 2017 Supp. 21-5303, and amendments thereto; or (G) similar statutes of other states or the federal government.

An individual who has been disqualified for employment due to conviction or adjudication of an offense of an offense listed in this paragraph (2) may apply to the secretary for

aging and disability services for a waiver of such disqualification if five years have elapsed since completion of the sentence for such conviction. The secretary shall adopt rules and regulations establishing the waiver process and the criteria to be utilized by the secretary in evaluating any such waiver request.

(3) A person operating a home health agency may employ an applicant who has been convicted of any of the following if six or more years have elapsed since completion of the sentence imposed or the applicant was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; if six or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer; or if the applicant has been granted a waiver of such six-year disqualification:

(i) Interference with custody of a committed person pursuant to K.S.A. 21-3423, prior to its repeal, or K.S.A. 2017 Supp. 21-5410, and amendments thereto; mistreatment of a confined person pursuant to K.S.A. 21-3425, prior to its repeal, or K.S.A. 2017 Supp. 21- 5416, and amendments thereto; unlawful administration of a substance pursuant to K.S.A. 21-3445, prior to its repeal, or K.S.A. 2017 Supp. 21-5425, and amendments thereto; violation of a protective order pursuant to K.S.A. 21-3843, prior to its repeal, or K.S.A. 2017 Supp. 21-5924; promoting obscenity or promoting obscenity to minors pursuant to K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2017 Supp. 21-6401, and amendments thereto; or cruelty to animals pursuant to K.S.A. 21-3727, 21-4310 or 21-4311, prior to their repeal, or K.S.A. 2017 Supp. 21-6412, and amendments thereto; or

(ii) any felony conviction of: Unlawful manufacture of a controlled substance pursuant to K.S.A. 2010 Supp. 21-36a03, prior to its repeal, or K.S.A. 2017 Supp. 21-5703, and

amendments thereto; unlawful cultivation or distribution of a controlled substance pursuant to K.S.A. 2010 Supp. 21-36a05, prior to its repeal, or K.S.A. 2017 Supp. 21-5705, and amendments thereto; unlawful manufacture, distribution, cultivation or possession of a controlled substance using a communication facility pursuant to K.S.A. 2010 Supp. 21-36a07, prior to its repeal, or K.S.A. 2017 Supp. 21-5707, and amendments thereto; unlawful obtainment or sale of a prescription-only drug pursuant to K.S.A. 2010 Supp. 21-36a08, prior to its repeal, or K.S.A. 2017 Supp. 21-5708, and amendments thereto; unlawful distribution of drug precursors or drug paraphernalia pursuant to K.S.A. 2010 Supp. 21-36a10, prior to its repeal, or K.S.A. 2017 Supp. 21-5710, and amendments thereto; unlawful distribution or possession of a simulated controlled substance pursuant to K.S.A. 2010 Supp. 21-36a13, prior to its repeal, or K.S.A. 2017 Supp. 21-5713, and amendments thereto; forgery pursuant to K.S.A. 21-3710, prior to its repeal, or K.S.A. 2017 Supp. 21-5823, and amendments thereto; criminal use of a financial card pursuant to K.S.A. 21-3729, prior to its repeal, or K.S.A. 2017 Supp. 21-5828, and amendments thereto; any violation of the Kansas medicaid fraud control act pursuant to K.S.A. 21-3844 et seq., prior to their repeal, or K.S.A. 2017 Supp. 21-5925 et seq., and amendments thereto; making a false claim, statement or representation to the medicaid program pursuant to K.S.A. 21-3846, prior to its repeal, or K.S.A. 2017 Supp. 21-5927, and amendments thereto; unlawful acts relating to the medicaid program pursuant to K.S.A. 21-3847, prior to its repeal, or K.S.A. 2017 Supp. 21-5928, and amendments thereto; obstruction of a medicaid fraud investigation pursuant to K.S.A. 21-3856, prior to its repeal, or K.S.A. 2017 Supp. 21-5929, and amendments thereto; identity theft or identity fraud pursuant to K.S.A. 21-4018, prior to its repeal, or K.S.A. 2017 Supp. 21-6107, and amendments thereto; or social welfare fraud pursuant to K.S.A. 39-720, and amendments thereto. The provisions of this paragraph shall not apply to any person who is employed by a home health agency on or before July 1, 2018, and is continuously employed by the same home



health agency or to any person during or upon successful completion of a diversion agreement.

An individual who has been disqualified for employment due to conviction or adjudication of an offense listed in this paragraph (3) may apply to the secretary for aging and disability services for a waiver of such disqualification if five years have elapsed since completion of the sentence for such conviction. The secretary shall adopt rules and regulations establishing the waiver process and criteria to be considered by the secretary in evaluating any such waiver request.

~~(b)(c)~~ No person shall operate a home health agency if such person has been found to be a person in need of a guardian or a conservator, or both, as provided in ~~K.S.A. 59-3050 through 59-3095, and amendments thereto~~ the act for obtaining a guardian or a conservator, or both. The provisions of this subsection shall not apply to an individual who, as a minor, was found to be in need of a guardian or conservator for reasons other than impairment.

~~(e) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation regarding any eriminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2017 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2017 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto, concerning persons working for a home health agency. The secretary shall have access to these records for the purpose of determining whether or not the home health agency meets the requirements of this section.~~

(d) (1) The Kansas bureau of investigation shall release all records of adult and juvenile convictions and adjudications and adult and juvenile convictions and adjudications of any other

state or country concerning persons working in a home health agency to the secretary for aging and disability services. The Kansas bureau of investigation may charge to the Kansas department of health and environment for aging and disability services a reasonable fee for providing criminal history record information under this subsection.

(2) The department shall require an applicant to be fingerprinted and to submit to a state and national criminal history record check. The fingerprints shall be used to identify the individual and to determine whether the individual has a record of criminal history in this state or other jurisdiction. The department is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The department may use the information obtained from fingerprinting and the criminal history record check for purposes of verifying the identification of the person and for making an official determination of the qualifications and fitness of the person to work in the home health agency.

(3) An applicant for employment in an home health agency shall have 20 calendar days after receipt of authorization to submit the applicant's fingerprints through an authorized collection site in order to be eligible for provisional employment or the applicant's application shall be deemed withdrawn.

(4) (A) The current or prospective employer of an applicant shall pay a fee not to exceed \$19 of the total cost for criminal history record information to the department for each applicant submitted.

(B) The prospective employer, employee or independent contractor shall pay the fingerprint collection fee at the time of fingerprinting to the authorized collection site.

(5) If an applicant disputes the contents of a criminal history record check, then the applicant may file an appeal with the Kansas bureau of investigation.

(6) Individuals who have been disqualified for employment by reason of their criminal history records and who have met the requirements of this subsection may apply for a waiver with the department within 30 days of the receipt of the notice of employment prohibition.

(7) The department shall adopt rules and regulations specifying the criteria and procedure for issuing a waiver of the employment prohibition. The secretary shall consider the following criteria when rendering a decision on such a waiver request: Passage of time; extenuating circumstances; demonstration of rehabilitation; and relevancy of the criminal history record information to the position for which the applicant is applying. Any employment prohibition issued shall remain in effect unless or until a waiver is granted.

~~(d)(e) For the purpose of complying with this section, the operator of a home health agency shall request from the Kansas department for aging and disability services information regarding any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2017 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2017 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto, and which relates to a person who works for the home health agency or is being considered for employment by the home health agency, for the purpose of determining whether such person is subject to the provisions of this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary for aging and disability services determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, the operator of a home health~~

~~agency shall receive from any employment agency which provides employees to work for the home health agency written certification that such employees are not prohibited from working for the home health agency under this section~~ an eligibility determination regarding adult and juvenile convictions and adjudications. For the purpose of complying with this section, a person who operates a home health agency may hire an applicant for provisional employment on a ~~conditional one-time~~ basis of 60 calendar days pending the results from the Kansas department for aging and disability services of a request for information under this subsection. A provisional employee may only be supervised by an employee who has completed all training required by federal regulations, rules and regulations of the department and the home health agency's policies and procedures. No home health agency, the operator or employees of a home health agency or an employment agency, ~~or the operator or employees of an employment agency, which provides employees to work for the home health agency or an independent contractor~~ shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such home health agency's compliance with the provisions of this section if such home health agency or employment agency acts in good faith to comply with this section.

~~(e) The secretary for aging and disability services shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted under this section.~~

~~(f)(1)~~ The secretary for aging and disability services shall provide each operator requesting information under this section with ~~the criminal history record information concerning a pass or fail determination after review of any criminal history information and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2017-Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto,~~ in writing and within three

working days of receipt of such information from the Kansas bureau of investigation or the federal bureau of investigation. ~~The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).~~

~~(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary for aging and disability services shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary for aging and disability services shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.~~

~~(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary for aging and disability services shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.~~

~~(4) The secretary for aging and disability services shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 2017 Supp. 38-2326, and amendments thereto, except for adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, prior to its repeal, or K.S.A. 2017 Supp. 21-5801, and amendments thereto. The secretary shall notify the operator that requested the information, in writing and~~

~~within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information and whether such information contains adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, prior to its repeal, or K.S.A. 2017 Supp. 21-5801, and amendments thereto.~~

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

~~(g) No person who works for a home health agency and who is currently licensed or registered by an agency of this state to provide professional services in this state and who provides such services as part of the work which such person performs for the home health agency shall be subject to the provisions of this section.~~

~~(h)(g) A person who volunteers to assist a home health agency shall not be subject to the provisions of this section because of such volunteer activity unless the volunteer performs functions equivalent to functions performed by direct access employees.~~

~~(i) An operator may request from the department of health and environment criminal history information on persons employed under subsections (g) and (h).~~

~~(j)(h) No person who has been continuously employed by the same home health agency since July 1, 1992, shall be subject to the requirements of this section while employed by such home health agency.~~

~~(k)(i) The operator of a home health agency shall not be required under this section to conduct a background criminal history record check on an applicant for employment with the~~

home health agency if the applicant has been the subject of a ~~background criminal history record~~ check under this act within one year prior to the application for employment with the home health agency. ~~The operator of a home health agency where the applicant was the subject of such background check may release a copy of such background check to the operator of a home health agency where the applicant is currently applying.~~

~~(l) For purposes of this section, the Kansas bureau of investigation shall only report felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2017 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2017 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto, to the secretary for aging and disability services when a background check is requested.~~

(j) No person who is in the custody of the secretary of corrections and who provides services, under direct supervision in non-patient areas, on the grounds or other areas designated by the superintendent of the Kansas soldiers' home or the Kansas veterans' home shall be subject to the provisions of this section while providing such services.

(k) (1) All fees charged by the secretary for criminal history record checks conducted pursuant to this section shall be established by rules and regulations of the secretary.

(2) All moneys collected and remitted to the department for fees charged for criminal history record checks conducted pursuant to this section shall be remitted to the state treasurer in accordance with K.S.A. 65-5113, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the state licensure fee fund created by K.S.A. 39-930, and amendments thereto.

(l) The department may implement the amendments made to this section by this act in phases for different categories of employers. The department shall adopt rules and regulations establishing dates and procedures for the implementation of the criminal history record checks required by this section, and such dates may be staggered to facilitate implementation of the criminal history record checks required by this section.

(m) This section shall be part of and supplemental to the provisions of article 51 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 5. K.S.A. 2017 Supp. 75-4362 is hereby amended to read as follows: 75-4362. (a) The director of the division of personnel services of the department of administration shall have the authority to establish and implement a drug screening program for persons taking office as governor, lieutenant governor, attorney general or members of the Kansas senate or house of representatives and for applicants for safety sensitive positions in state government, but no applicant for a safety sensitive position shall be required to submit to a test as a part of this program unless the applicant is first given a conditional offer of employment.

(b) The director also shall have the authority to establish and implement a drug screening program based upon a reasonable suspicion of illegal drug use by any person currently holding one of the following positions or offices:

- (1) The office of governor, lieutenant governor or attorney general;
- (2) members of the Kansas senate or house of representatives;
- (3) any safety sensitive position;
- (4) any position in an institution of mental health, as defined in K.S.A. 76-12a01, and amendments thereto, that is not a safety sensitive position;
- (5) any position in the Kansas state school for the blind, as established under K.S.A. 76-1101 et seq., and amendments thereto; or



(6) any position in the Kansas state school for the deaf, as established under K.S.A. 76-1001 et seq., and amendments thereto;~~or~~

~~(7) any employee of a state veteran's home operated by the director of the Kansas commission on veterans affairs office as described in K.S.A. 76-1901 et seq. and K.S.A. 76-1951 et seq., and amendments thereto.~~

(c) Any public announcement or advertisement soliciting applications for employment in a safety sensitive position in state government shall include a statement of the requirements of the drug screening program established under this section for applicants for and employees holding a safety sensitive position.

(d) Except for a person who has access to a secured biological laboratory in the office of laboratory services of the department of health and environment, no person shall be terminated solely due to positive results of a test administered as a part of a program authorized by this section if:

(1) The employee has not previously had a valid positive test result; and

(2) the employee undergoes a drug evaluation and successfully completes any education or treatment program recommended as a result of the evaluation. Nothing herein shall be construed as prohibiting demotions, suspensions or terminations pursuant to K.S.A. 75-2949e or 75-2949f, and amendments thereto.

(e) Except in hearings before the state civil service board regarding disciplinary action taken against the employee, the results of any test administered as a part of a program authorized by this section shall be confidential and shall not be disclosed publicly.

(f) The secretary of administration may adopt such rules and regulations as necessary to carry out the provisions of this section.

(g) "Safety sensitive positions" means the following:

- (1) All state law enforcement officers who are authorized to carry firearms;
- (2) all state corrections officers;
- (3) all state parole officers;
- (4) heads of state agencies who are appointed by the governor and employees on the governor's staff;
- (5) all employees with access to secure facilities of a correctional institution, as defined in K.S.A. 2017 Supp. 21-5914, and amendments thereto;
- (6) all employees of a juvenile correctional facility, as defined in K.S.A. 2017 Supp. 38-2302, and amendments thereto;
- (7) all employees within an institution of mental health, as defined in K.S.A. 76-12a01, and amendments thereto, who provide clinical, therapeutic or habilitative services to the clients and patients of those institutions;~~and~~
- (8) all employees who have access to a secured biological laboratory in the office of laboratory services of the department of health and environment;and
- (9) all employees of the Kansas commission on veterans affairs office.";

Also on page 2, in line 35, by striking "is" and inserting "and K.S.A. 2017 Supp. 39-970, 39-2009, 65-5117 and 75-4362 are";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, after "labor" by inserting "and employment"; in line 3, after the semicolon by inserting "Kansas commission on veterans affairs office; drug screening programs; Kansas department for aging and disability services regarding certain providers and facilities; providing for licensure, employment and background checks of employees;"; also in line 3, after "and" by inserting "K.S.A. 2017 Supp. 39-970, 39-2009, 65-5117 and 75-4362 and"; in line 4, by striking "section" and inserting "sections";

And your committee on conference recommends the adoption of this report.

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Conferees on part of Senate

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Conferees on part of House