

HOUSE BILL No. 2343

By Committee on Children and Seniors

2-14

1 AN ACT concerning labor and employment; relating to adult care homes;
2 home health agencies; providers of disability services; provisional
3 employment; amending K.S.A. 65-5117 and K.S.A. 2018 Supp. 39-970
4 and 39-2009 and repealing the existing sections.

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

7 Section 1. K.S.A. 2018 Supp. 39-970 is hereby amended to read as
8 follows: 39-970. (a) As used in this section:

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

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

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

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

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

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

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

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

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

2 (b) (1) No person shall knowingly operate an adult care home if, in
3 the adult care home, there works any person who has adverse findings on
4 any state or national registry, as defined in rules and regulations adopted
5 by the secretary for aging and disability services, or has been convicted of
6 or has been adjudicated a juvenile offender because of having committed
7 an act that if done by an adult would constitute the commission of capital
8 murder, pursuant to K.S.A. 21-3439, prior to its repeal, or K.S.A. 2018
9 Supp. 21-5401, and amendments thereto, first degree murder, pursuant to
10 K.S.A. 21-3401, prior to its repeal, or K.S.A. 2018 Supp. 21-5402, and
11 amendments thereto, second degree murder, pursuant to K.S.A. 21-
12 3402(a), prior to its repeal, or K.S.A. 2018 Supp. 21-5403(a), and
13 amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403,
14 prior to its repeal, or K.S.A. 2018 Supp. 21-5404, and amendments
15 thereto, assisting suicide, pursuant to K.S.A. 21-3406, prior to its repeal, or
16 K.S.A. 2018 Supp. 21-5407, and amendments thereto, mistreatment of a
17 dependent adult or mistreatment of an elder person, pursuant to K.S.A. 21-
18 3437, prior to its repeal, or K.S.A. 2018 Supp. 21-5417, and amendments
19 thereto, human trafficking, pursuant to K.S.A. 21-3446, prior to its repeal,
20 or K.S.A. 2018 Supp. 21-5426(a), and amendments thereto, aggravated
21 human trafficking, pursuant to K.S.A. 21-3447, prior to its repeal, or
22 K.S.A. 2018 Supp. 21-5426(b), and amendments thereto, rape, pursuant to
23 K.S.A. 21-3502, prior to its repeal, or K.S.A. 2018 Supp. 21-5503, and
24 amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-
25 3503, prior to its repeal, or K.S.A. 2018 Supp. 21-5506(a), and
26 amendments thereto, aggravated indecent liberties with a child, pursuant to
27 K.S.A. 21-3504, prior to its repeal, or K.S.A. 2018 Supp. 21-5506(b), and
28 amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-
29 3506, prior to its repeal, or K.S.A. 2018 Supp. 21-5504(b), and
30 amendments thereto, indecent solicitation of a child, pursuant to K.S.A.
31 21-3510, prior to its repeal, or K.S.A. 2018 Supp. 21-5508(a), and
32 amendments thereto, aggravated indecent solicitation of a child, pursuant
33 to K.S.A. 21-3511, prior to its repeal, or K.S.A. 2018 Supp. 21-5508(b),
34 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A.
35 21-3516, prior to its repeal, or K.S.A. 2018 Supp. 21-5510, and
36 amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior to
37 its repeal, or K.S.A. 2018 Supp. 21-5505(a), and amendments thereto,
38 aggravated sexual battery, pursuant to K.S.A. 21-3518, prior to its repeal,
39 or K.S.A. 2018 Supp. 21-5505(b), and amendments thereto, commercial
40 sexual exploitation of a child, pursuant to K.S.A. 2018 Supp. 21-6422, and
41 amendments thereto, an attempt to commit any of the crimes listed in this
42 paragraph, pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 2018
43 Supp. 21-5301, and amendments thereto, a conspiracy to commit any of

1 the crimes listed in this paragraph, pursuant to K.S.A. 21-3302, prior to its
2 repeal, or K.S.A. 2018 Supp. 21-5302, and amendments thereto, or
3 criminal solicitation of any of the crimes listed in this paragraph, pursuant
4 to K.S.A. 21-3303, prior to its repeal, or K.S.A. 2018 Supp. 21-5303, and
5 amendments thereto, or similar statutes of other states or the federal
6 government. The provisions of subsection (b)(2)(C) shall not apply to any
7 person who is employed by an adult care home on or before July 1, 2010,
8 and while continuously employed by the same adult care home or to any
9 person during or upon successful completion of a diversion agreement.

10 (2) A person operating an adult care home may employ an applicant
11 who has been convicted of any of the following if six or more years have
12 elapsed since completion of the sentence imposed or the applicant was
13 discharged from probation, a community correctional services program,
14 parole, postrelease supervision, conditional release or a suspended
15 sentence; if six or more years have elapsed since the applicant has been
16 finally discharged from the custody of the commissioner of juvenile justice
17 or from probation or has been adjudicated a juvenile offender, whichever
18 time is longer; or if the applicant has been granted a waiver of such six-
19 year disqualification: A felony conviction for a crime that is described in:
20 (A) Article 34 of chapter 21 of the Kansas Statutes Annotated, prior to
21 their repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated,
22 and amendments thereto, except those crimes listed in subsection (b)(1);
23 (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior
24 to their repeal, or article 55 or 56 of chapter 21 of the Kansas Statutes
25 Annotated, or K.S.A. 2018 Supp. 21-6420, and amendments thereto,
26 except those crimes listed in subsection (b)(1) and K.S.A. 21-3605, prior
27 to its repeal, or K.S.A. 2018 Supp. 21-5606, and amendments thereto; (C)
28 K.S.A. 21-3701, prior to its repeal, or K.S.A. 2018 Supp. 21-5801, and
29 amendments thereto; (D) an attempt to commit any of the crimes listed in
30 this paragraph, pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A.
31 2018 Supp. 21-5301, and amendments thereto; (E) a conspiracy to commit
32 any of the crimes listed in this paragraph, pursuant to K.S.A. 21-3302,
33 prior to its repeal, or K.S.A. 2018 Supp. 21-5302, and amendments
34 thereto; (F) criminal solicitation of any of the crimes listed in this
35 paragraph, pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 2018
36 Supp. 21-5303, and amendments thereto; or (G) similar statutes of other
37 states or the federal government.

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

1 secretary in evaluating any such waiver request.

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

12 (i) Interference with custody of a committed person pursuant to
13 K.S.A. 21-3423, prior to its repeal, or K.S.A. 2018 Supp. 21-5410, and
14 amendments thereto; mistreatment of a confined person pursuant to K.S.A.
15 21-3425, prior to its repeal, or K.S.A. 2018 Supp. 21-5416, and
16 amendments thereto; unlawful administration of a substance pursuant to
17 K.S.A. 21-3445, prior to its repeal, or K.S.A. 2018 Supp. 21-5425, and
18 amendments thereto; violation of a protective order pursuant to K.S.A. 21-
19 3843, prior to its repeal, or K.S.A. 2018 Supp. 21-5924, and amendments
20 thereto; promoting obscenity or promoting obscenity to minors pursuant to
21 K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2018 Supp.
22 21-6401, and amendments thereto; or cruelty to animals pursuant to
23 K.S.A. 21-3727, 21-4310 or 21-4311, prior to their repeal, or K.S.A. 2018
24 Supp. 21-6412, and amendments thereto; or

25 (ii) any felony conviction of: Unlawful manufacture of a controlled
26 substance pursuant to K.S.A. 2010 Supp. 21-36a03, prior to its repeal, or
27 K.S.A. 2018 Supp. 21-5703, and amendments thereto; unlawful cultivation
28 or distribution of a controlled substance pursuant to K.S.A. 2010 Supp. 21-
29 36a05, prior to its repeal, or K.S.A. 2018 Supp. 21-5705, and amendments
30 thereto; unlawful manufacture, distribution, cultivation or possession of a
31 controlled substance using a communication facility pursuant to K.S.A.
32 2010 Supp. 21-36a07, prior to its repeal, or K.S.A. 2018 Supp. 21-5707,
33 and amendments thereto; unlawful obtainment or sale of a prescription-
34 only drug pursuant to K.S.A. 2010 Supp. 21-36a08, prior to its repeal, or
35 K.S.A. 2018 Supp. 21-5708, and amendments thereto; unlawful
36 distribution of drug precursors or drug paraphernalia pursuant to K.S.A.
37 2010 Supp. 21-36a10, prior to its repeal, or K.S.A. 2018 Supp. 21-5710,
38 and amendments thereto; unlawful distribution or possession of a
39 simulated controlled substance pursuant to K.S.A. 2010 Supp. 21-36a13,
40 prior to its repeal, or K.S.A. 2018 Supp. 21-5713, and amendments
41 thereto; forgery pursuant to K.S.A. 21-3710, prior to its repeal, or K.S.A.
42 2018 Supp. 21-5823, and amendments thereto; criminal use of a financial
43 card pursuant to K.S.A. 21-3729, prior to its repeal, or K.S.A. 2018 Supp.

1 21-5828, and amendments thereto; any violation of the Kansas medicaid
2 fraud control act pursuant to K.S.A. 21-3844 et seq., prior to their repeal,
3 or K.S.A. 2018 Supp. 21-5925 et seq., and amendments thereto; making a
4 false claim, statement or representation to the medicaid program pursuant
5 to K.S.A. 21-3846, prior to its repeal, or K.S.A. 2018 Supp. 21-5927, and
6 amendments thereto; unlawful acts relating to the medicaid program
7 pursuant to K.S.A. 21-3847, prior to its repeal, or K.S.A. 2018 Supp. 21-
8 5928, and amendments thereto; obstruction of a medicaid fraud
9 investigation pursuant to K.S.A. 21-3856, prior to its repeal, or K.S.A.
10 2018 Supp. 21-5929, and amendments thereto; identity theft or identity
11 fraud pursuant to K.S.A. 2010 Supp. 21-4018, prior to its repeal, or K.S.A.
12 2018 Supp. 21-6107, and amendments thereto; or social welfare fraud
13 pursuant to K.S.A. 39-720, and amendments thereto.

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

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

25 (c) No person shall operate an adult care home if such person has
26 been found to be in need of a guardian or conservator, or both as provided
27 in the act for obtaining a guardian or a conservator, or both. The provisions
28 of this subsection shall not apply to an individual who, as a minor, was
29 found to be in need of a guardian or conservator for reasons other than
30 impairment.

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

38 (2) The department shall require an applicant to be fingerprinted and
39 to submit to a state and national criminal history record check. The
40 fingerprints shall be used to identify the individual and to determine
41 whether the individual has a record of criminal history in this state or other
42 jurisdiction. The department is authorized to submit the fingerprints to the
43 Kansas bureau of investigation and the federal bureau of investigation for

1 a state and national criminal history record check. The department may use
2 the information obtained from fingerprinting and the criminal history
3 record check for purposes of verifying the identification of the person and
4 for making an official determination of the qualifications and fitness of the
5 person to work in the adult care home.

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

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

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

17 ~~(5)~~(4) If an applicant disputes the contents of a criminal history
18 record check, then the applicant may file an appeal with the Kansas bureau
19 of investigation.

20 ~~(6)~~(5) Individuals who have been disqualified for employment by
21 reason of their criminal history records and who have met the requirements
22 of this subsection may apply for a waiver with the department within 30
23 days of the receipt of the notice of employment prohibition.

24 ~~(7)~~(6) The department shall adopt rules and regulations specifying the
25 criteria and procedure for issuing a waiver of the employment prohibition.
26 The secretary shall consider the following criteria when rendering a
27 decision on such a waiver request: Passage of time; extenuating
28 circumstances; demonstration of rehabilitation; and relevancy of the
29 criminal history record information to the position for which the applicant
30 is applying. Any employment prohibition issued shall remain in effect
31 unless or until a waiver is granted.

32 (e) For the purpose of complying with this section, the operator of an
33 adult care home shall request from the Kansas department for aging and
34 disability services an eligibility determination regarding adult and juvenile
35 convictions and adjudications. ~~For the purpose of complying with this~~
36 ~~section,~~ The operator of an adult care home shall receive from any
37 employment agency or independent contractor that provides employees to
38 work in the adult care home written certification that such employees are
39 not prohibited from working in the adult care home under this section. ~~For~~
40 ~~the purpose of complying with this section, a person who operates an adult~~
41 ~~care home may hire an applicant for provisional employment on a one-~~
42 ~~time basis of 60 calendar days pending the results from the Kansas~~
43 ~~department for aging and disability services of a request for information~~

1 ~~under this subsection. A provisional employee may only be supervised by~~
2 ~~an employee that has completed all training required by federal~~
3 ~~regulations, rules and regulations of the department and the adult care~~
4 ~~home's policies and procedures. No adult care home, the operator or~~
5 ~~employees of an adult care home or an employment agency or an~~
6 ~~independent contractor shall be liable for civil damages resulting from any~~
7 ~~decision to employ, to refuse to employ or to discharge from employment~~
8 ~~any person based on such adult care home's compliance with the~~
9 ~~provisions of this section if such adult care home or employment agency~~
10 ~~acts in good faith to comply with this section.~~

11 (f) The secretary for aging and disability services shall provide each
12 operator requesting information under this section with a pass or fail
13 determination after review of any criminal history record information in
14 writing and within three working days of receipt of such information from
15 the Kansas bureau of investigation or the federal bureau of investigation.

16 (g) A person who volunteers in an adult care home shall not be
17 subject to the provisions of this section unless the volunteer performs
18 equivalent functions to those performed by direct access employees.

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

22 (i) The operator of an adult care home shall not be required under this
23 section to conduct a criminal history record check on an applicant for
24 employment with the adult care home if the applicant has been the subject
25 of a criminal history record check under this act within one year prior to
26 the application for employment with the adult care home.

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

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

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

42 (l) The Kansas department for aging and disability services may
43 implement the amendments made to this section by this act in phases for

1 different categories of employers. The department shall adopt rules and
2 regulations establishing dates and procedures for the implementation of the
3 criminal history record checks required by this section, and such dates may
4 be staggered to facilitate implementation of the criminal history record
5 checks required by this section.

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

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

17 Sec. 2. K.S.A. 2018 Supp. 39-2009 is hereby amended to read as
18 follows: 39-2009. (a) As used in this section:

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

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

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

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

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

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

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

43 (b) (1) No licensee shall knowingly operate a center, facility, hospital

1 or be a provider of services if any person who works in the center, facility,
2 hospital or for a provider of services has adverse findings on any state or
3 national registry, as defined in rules and regulations adopted by the
4 secretary for aging and disability services, or has been convicted of or has
5 been adjudicated a juvenile offender because of having committing
6 [committed] an act that if done by an adult would constitute the
7 commission of capital murder, pursuant to K.S.A. 21-3439, prior to its
8 repeal, or K.S.A. 2018 Supp. 21-5401, and amendments thereto, first
9 degree murder, pursuant to K.S.A. 21-3401, prior to its repeal, or K.S.A.
10 2018 Supp. 21-5402, and amendments thereto, second degree murder,
11 pursuant to K.S.A. 21-3402(a), prior to its repeal, or K.S.A. 2018 Supp.
12 21-5403(a), and amendments thereto, voluntary manslaughter, pursuant to
13 K.S.A. 21-3403, prior to its repeal, or K.S.A. 2018 Supp. 21-5404, and
14 amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406, prior
15 to its repeal, or K.S.A. 2018 Supp. 21-5407, and amendments thereto,
16 mistreatment of a dependent adult or mistreatment of an elder person,
17 pursuant to K.S.A. 21-3437, prior to its repeal, or K.S.A. 2018 Supp. 21-
18 5417, and amendments thereto, human trafficking, pursuant to K.S.A. 21-
19 3446, prior to its repeal, or K.S.A. 2018 Supp. 21-5426(a), and
20 amendments thereto, aggravated human trafficking, pursuant to K.S.A. 21-
21 3447, prior to its repeal, or K.S.A. 2018 Supp. 21-5426(b), and
22 amendments thereto, rape, pursuant to K.S.A. 21-3502, prior to its repeal,
23 or K.S.A. 2018 Supp. 21-5503, and amendments thereto, indecent liberties
24 with a child, pursuant to K.S.A. 21-3503, prior to its repeal, or K.S.A.
25 2018 Supp. 21-5506(a), and amendments thereto, aggravated indecent
26 liberties with a child, pursuant to K.S.A. 21-3504, prior to its repeal, or
27 K.S.A. 2018 Supp. 21-5506(b), and amendments thereto, aggravated
28 criminal sodomy, pursuant to K.S.A. 21-3506, prior to its repeal, or K.S.A.
29 2018 Supp. 21-5504(b), and amendments thereto, indecent solicitation of a
30 child, pursuant to K.S.A. 21-3510, prior to its repeal, or K.S.A. 2018 Supp.
31 21-5508(a), and amendments thereto, aggravated indecent solicitation of a
32 child, pursuant to K.S.A. 21-3511, prior to its repeal, or K.S.A. 2018 Supp.
33 21-5508(b), and amendments thereto, sexual exploitation of a child,
34 pursuant to K.S.A. 21-3516, prior to its repeal, or K.S.A. 2018 Supp. 21-
35 5510, and amendments thereto, sexual battery, pursuant to K.S.A. 21-
36 3517, prior to its repeal, or K.S.A. 2018 Supp. 21-5505(a), and
37 amendments thereto, aggravated sexual battery, pursuant to K.S.A. 21-
38 3518, prior to its repeal, or K.S.A. 2018 Supp. 21-5505(b), and
39 amendments thereto, commercial sexual exploitation of a child, pursuant
40 to K.S.A. 2018 Supp. 21-6422, and amendments thereto, an attempt to
41 commit any of the crimes listed in this paragraph, pursuant to K.S.A. 21-
42 3301, prior to its repeal, or K.S.A. 2018 Supp. 21-5301, and amendments
43 thereto, a conspiracy to commit any of the crimes listed in this paragraph,

1 pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2018 Supp. 21-
2 5302, and amendments thereto, or criminal solicitation of any of the
3 crimes listed in this paragraph, pursuant to K.S.A. 21-3303, prior to its
4 repeal, or K.S.A. 2018 Supp. 21-5303, and amendments thereto, or similar
5 statutes of other states or the federal government.

6 (2) A licensee operating a center, facility or hospital or as a provider
7 of services may employ an applicant who has been convicted of any of the
8 following if six or more years have elapsed since completion of the
9 sentence imposed or the applicant was discharged from probation, a
10 community correctional services program, parole, postrelease supervision,
11 conditional release or a suspended sentence; if six or more years have
12 elapsed since a community correctional services program, parole,
13 postrelease supervision, conditional release or a suspended sentence; or if
14 the applicant has been granted a waiver of such six-year disqualification: A
15 felony conviction for a crime that is described in: (A) Article 34 of chapter
16 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54 of
17 chapter 21 of the Kansas Statutes Annotated, and amendments thereto,
18 except those crimes listed in paragraph (1); (B) article 35 or 36 of chapter
19 21 of the Kansas Statutes Annotated, and amendments thereto, prior to
20 their repeal, or article 55 or 56 of chapter 21 of the Kansas Statutes
21 Annotated or K.S.A. 2018 Supp. 21-6420, and amendments thereto, except
22 those crimes listed in paragraph (1); (C) K.S.A. 21-3701, prior to its
23 repeal, or K.S.A. 2018 Supp. 21-5801, and amendments thereto; (D) an
24 attempt to commit any of the crimes listed in this paragraph pursuant to
25 K.S.A. 21-3301, prior to its repeal, or K.S.A. 2018 Supp. 21-5301, and
26 amendments thereto; (E) a conspiracy to commit any of the crimes listed
27 in this paragraph pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A.
28 2018 Supp. 21-5302, and amendments thereto; (F) criminal solicitation of
29 any of the crimes listed in this paragraph pursuant to K.S.A. 21-3303, prior
30 to its repeal, or K.S.A. 2018 Supp. 21-5303, and amendments thereto; or
31 (G) similar statutes of other states or the federal government.

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

39 (3) A licensee operating a center, facility, hospital or as a provider of
40 services may employ an applicant who has been convicted of any of the
41 following if six or more years have elapsed since completion of the
42 sentence imposed or the applicant was discharged from probation, a
43 community correctional services program, parole, postrelease supervision,

1 conditional release or a suspended sentence; if six or more years have
2 elapsed since the applicant has been finally discharged from the custody of
3 the commissioner of juvenile justice or from probation or has been
4 adjudicated a juvenile offender, whichever time is longer; or if the
5 applicant has been granted a waiver of such six-year disqualification:

6 (i) Interference with custody of a committed person pursuant to
7 K.S.A. 21-3423, prior to its repeal, or K.S.A. 2018 Supp. 21-5410, and
8 amendments thereto; mistreatment of a confined person pursuant to K.S.A.
9 21-3425, prior to its repeal, or K.S.A. 2018 Supp. 21-5416, and
10 amendments thereto; unlawful administration of a substance pursuant to
11 K.S.A. 21-3445, prior to its repeal, or K.S.A. 2018 Supp. 21-5425, and
12 amendments thereto; violation of a protective order pursuant to K.S.A. 21-
13 3843, prior to its repeal, or K.S.A. 2018 Supp. 21-5924; promoting
14 obscenity or promoting obscenity to minors pursuant to K.S.A. 21-4301 or
15 21-4301a, prior to their repeal, or K.S.A. 2018 Supp. 21-6401, and
16 amendments thereto; or cruelty to animals pursuant to K.S.A. 21-3727, 21-
17 4310 or 21-4311, prior to their repeal, or K.S.A. 2018 Supp. 21-6412, and
18 amendments thereto; or

19 (ii) any felony conviction of: Unlawful manufacture of a controlled
20 substance pursuant to K.S.A. 2010 Supp. 21-36a03, prior to its repeal, or
21 K.S.A. 2018 Supp. 21-5703, and amendments thereto; unlawful cultivation
22 or distribution of a controlled substance pursuant to K.S.A. 2010 Supp. 21-
23 36a05, prior to its repeal, or K.S.A. 2018 Supp. 21-5705, and amendments
24 thereto; unlawful manufacture, distribution, cultivation or possession of a
25 controlled substance using a communication facility pursuant to K.S.A.
26 2010 Supp. 21-36a07, prior to its repeal, or K.S.A. 2018 Supp. 21-5707,
27 and amendments thereto; unlawful obtainment or sale of a prescription-
28 only drug pursuant to K.S.A. 2010 Supp. 21-36a08, prior to its repeal, or
29 K.S.A. 2018 Supp. 21-5708, and amendments thereto; unlawful
30 distribution of drug precursors or drug paraphernalia pursuant to K.S.A.
31 2010 Supp. 21-36a10, prior to its repeal, or K.S.A. 2018 Supp. 21-5710,
32 and amendments thereto; unlawful distribution or possession of a
33 simulated controlled substance pursuant to K.S.A. 2010 Supp. 21-36a13,
34 prior to its repeal, or K.S.A. 2018 Supp. 21-5713, and amendments
35 thereto; forgery pursuant to K.S.A. 21-3710, prior to its repeal, or K.S.A.
36 2018 Supp. 21-5823, and amendments thereto; criminal use of a financial
37 card pursuant to K.S.A. 21-3729, prior to its repeal, or K.S.A. 2018 Supp.
38 21-5828, and amendments thereto; any violation of the Kansas medicaid
39 fraud control act pursuant to K.S.A. 21-3844 et seq., prior to their repeal,
40 or K.S.A. 2018 Supp. 21-5925 et seq., and amendments thereto; making a
41 false claim, statement or representation to the medicaid program pursuant
42 to K.S.A. 21-3846, prior to its repeal, or K.S.A. 2018 Supp. 21-5927, and
43 amendments thereto; unlawful acts relating to the medicaid program

1 pursuant to K.S.A. 21-3847, prior to its repeal, or K.S.A. 2018 Supp. 21-
2 5928, and amendments thereto; obstruction of a medicaid fraud
3 investigation pursuant to K.S.A. 21-3856, prior to its repeal, or K.S.A.
4 2018 Supp. 21-5929, and amendments thereto; identity theft or identity
5 fraud pursuant to K.S.A. 2010 Supp. 21-4018, prior to its repeal, or K.S.A.
6 2018 Supp. 21-6107, and amendments thereto; or social welfare fraud
7 pursuant to K.S.A. 39-720, and amendments thereto. The provisions of this
8 paragraph shall not apply to any person who is employed by a center,
9 facility, hospital or provider of services on or before July 1, 2018, and is
10 continuously employed by the same center, facility, hospital or provider of
11 services or to any person during or upon successful completion of a
12 diversion agreement.

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

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

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

35 (2) The department shall require an applicant to be fingerprinted and
36 to submit to a state and national criminal history record check. The
37 fingerprints shall be used to identify the individual and to determine
38 whether the individual has a record of criminal history in this state or other
39 jurisdiction. The department is authorized to submit the fingerprints to the
40 Kansas bureau of investigation and the federal bureau of investigation for
41 a state and national criminal history record check. The department may use
42 the information obtained from fingerprinting and the criminal history
43 record check for purposes of verifying the identification of the person and

1 for making an official determination of the qualifications and fitness of the
2 person to work in the center, facility, hospital or for a provider of services.

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

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

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

14 ~~(5)~~(4) If an applicant disputes the contents of a criminal history
15 record check, then the applicant may file an appeal with the Kansas bureau
16 of investigation.

17 ~~(6)~~(5) Individuals who have been disqualified for employment by
18 reason of their criminal history records and who have met the requirements
19 of this subsection may apply for a waiver with the department within 30
20 days of the receipt of the notice of employment prohibition.

21 ~~(7)~~(6) The department shall adopt rules and regulations specifying the
22 criteria and procedure for issuing a waiver of the employment prohibition.
23 The secretary shall consider the following criteria when rendering a
24 decision on such a waiver request: Passage of time; extenuating
25 circumstances; demonstration of rehabilitation; and relevancy of the
26 criminal history record information to the position for which the applicant
27 is applying. Any employment prohibition issued shall remain in effect
28 unless or until a waiver is granted.

29 (d) The secretary shall provide each licensee requesting information
30 under this section with a pass or fail determination after review of any
31 criminal history record information in writing and within three working
32 days of receipt of such information from the Kansas bureau of
33 investigation or the federal bureau of investigation.

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

40 (f) For the purpose of complying with this section, the licensee
41 operating a center, facility, hospital or a provider of services shall request
42 from the Kansas department for aging and disability services an eligibility
43 determination regarding adult and juvenile convictions and adjudications.

1 ~~For the purpose of complying with this section,~~ The licensee operating a
2 center, facility, hospital or a provider of services shall receive from any
3 employment agency or independent contractor that provides employees to
4 work in the center, facility, hospital or for the provider of services written
5 certification that such employees are not prohibited from working in the
6 center, facility, hospital or for the provider of services under this section.
7 ~~For the purpose of complying with this section, a licensee may hire an~~
8 ~~applicant for provisional employment on a one-time basis of 60 calendar~~
9 ~~days pending the results from the Kansas department for aging and~~
10 ~~disability services of an eligibility determination under this subsection. A~~
11 ~~provisional employee may only be supervised by an employee who has~~
12 ~~completed all training required by federal regulations, department rules~~
13 ~~and regulations and the center's, facility's, hospital's or provider of~~
14 ~~services' policies and procedures. No licensee, its contractors or~~
15 ~~employees, shall be liable for civil damages to any person refused~~
16 ~~employment or discharged from employment by reason of such licensee's~~
17 ~~compliance with the provisions of this section if such licensee acts in good~~
18 ~~faith to comply with this section.~~

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

27 Sec. 3. K.S.A. 65-5117 is hereby amended to read as follows: 65-
28 5117. (a) As used in this section:

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

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

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

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

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

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

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

10 (b) (1) No person shall knowingly operate a home health agency if,
11 for the home health agency, there works any person who has adverse
12 findings on any state or national registry, as defined in rules and
13 regulations adopted by the secretary for aging and disability services, or
14 has been convicted of or has been adjudicated a juvenile offender because
15 of having committed an act that if done by an adult would constitute the
16 commission of capital murder, pursuant to K.S.A. 21-3439, prior to its
17 repeal, or K.S.A. 2018 Supp. 21-5401, and amendments thereto, first
18 degree murder, pursuant to K.S.A. 21-3401, prior to its repeal, or K.S.A.
19 2018 Supp. 21-5402, and amendments thereto, second degree murder,
20 pursuant to K.S.A. 21-3402(a), prior to its repeal, or K.S.A. 2018 Supp.
21 21-5403(a), and amendments thereto, voluntary manslaughter, pursuant to
22 K.S.A. 21-3403, prior to its repeal, or K.S.A. 2018 Supp. 21-5404, and
23 amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406, prior
24 to its repeal, or K.S.A. 2018 Supp. 21-5407, and amendments thereto,
25 mistreatment of a dependent adult or mistreatment of an elder person,
26 pursuant to K.S.A. 21-3437, prior to its repeal, or K.S.A. 2018 Supp. 21-
27 5417, and amendments thereto, human trafficking, pursuant to K.S.A. 21-
28 3446, prior to its repeal, or K.S.A. 2018 Supp. 21-5426(a), and
29 amendments thereto, aggravated human trafficking, pursuant to K.S.A. 21-
30 3447, prior to its repeal, or K.S.A. 2018 Supp. 21-5426(b), and
31 amendments thereto, rape, pursuant to K.S.A. 21-3502, prior to its repeal,
32 or K.S.A. 2018 Supp. 21-5503, and amendments thereto, indecent liberties
33 with a child, pursuant to K.S.A. 21-3503, prior to its repeal, or K.S.A.
34 2018 Supp. 21-5506(a), and amendments thereto, aggravated indecent
35 liberties with a child, pursuant to K.S.A. 21-3504, prior to its repeal, or
36 K.S.A. 2018 Supp. 21-5506(b), and amendments thereto, aggravated
37 criminal sodomy, pursuant to K.S.A. 21-3506, prior to its repeal, or K.S.A.
38 2018 Supp. 21-5504(b), and amendments thereto, indecent solicitation of a
39 child, pursuant to K.S.A. 21-3510, prior to its repeal, or K.S.A. 2018 Supp.
40 21-5508(a), and amendments thereto, aggravated indecent solicitation of a
41 child, pursuant to K.S.A. 21-3511, prior to its repeal, or K.S.A. 2018 Supp.
42 21-5508(b), and amendments thereto, sexual exploitation of a child,
43 pursuant to K.S.A. 21-3516, prior to its repeal, or K.S.A. 2018 Supp. 21-

1 5510, and amendments thereto, sexual battery, pursuant to K.S.A. 21-
2 3517, prior to its repeal, or K.S.A. 2018 Supp. 21-5505(a), and
3 amendments thereto, aggravated sexual battery, pursuant to K.S.A. 21-
4 3518, prior to its repeal, or K.S.A. 2018 Supp. 21-5505(b), and
5 amendments thereto, commercial sexual exploitation of a child, pursuant
6 to K.S.A. 2018 Supp. 21-6422, and amendments thereto, an attempt to
7 commit any of the crimes listed in this paragraph, pursuant to K.S.A. 21-
8 3301, prior to its repeal, or K.S.A. 2018 Supp. 21-5301, and amendments
9 thereto, a conspiracy to commit any of the crimes listed in this paragraph,
10 pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2018 Supp. 21-
11 5302, and amendments thereto, or criminal solicitation of any of the
12 crimes listed in this paragraph, pursuant to K.S.A. 21-3303, prior to its
13 repeal, or K.S.A. 2018 Supp. 21-5303, and amendments thereto, or similar
14 statutes of other states or the federal government. The provisions of
15 subsection (b)(2)(C) shall not apply to any person who is employed by a
16 home health agency on or before July 1, 2010, and while continuously
17 employed by the same home health agency or to any person during or
18 upon successful completion of a diversion agreement.

19 (2) A person operating a home health agency may employ an
20 applicant who has been convicted of any of the following if six or more
21 years have elapsed since completion of the sentence imposed or the
22 applicant was discharged from probation, a community correctional
23 services program, parole, postrelease supervision, conditional release or a
24 suspended sentence; if six or more years have elapsed since the applicant
25 has been finally discharged from the custody of the commissioner of
26 juvenile justice or from probation or has been adjudicated a juvenile
27 offender, whichever time is longer; or if the applicant has been granted a
28 waiver of such six-year disqualification: A felony conviction for a crime
29 that is described in: (A) Article 34 of chapter 21 of the Kansas Statutes
30 Annotated, prior to their repeal, or article 54 of chapter 21 of the Kansas
31 Statutes Annotated, and amendments thereto, except those crimes listed in
32 subsection (b)(1); (B) article 35 or 36 of chapter 21 of the Kansas Statutes
33 Annotated, prior to their repeal, or article 55 or 56 of chapter 21 of the
34 Kansas Statutes Annotated, or K.S.A. 2018 Supp. 21-6420, and
35 amendments thereto, except those crimes listed in subsection (b)(1) and
36 K.S.A. 21-3605, prior to its repeal, or K.S.A. 2018 Supp. 21-5606, and
37 amendments thereto; (C) K.S.A. 21-3701, prior to its repeal, or K.S.A.
38 2018 Supp. 21-5801, and amendments thereto; (D) an attempt to commit
39 any of the crimes listed in this paragraph pursuant to K.S.A. 21-3301, prior
40 to its repeal, or K.S.A. 2018 Supp. 21-5301, and amendments thereto; (E)
41 a conspiracy to commit any of the crimes listed in this paragraph pursuant
42 to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2018 Supp. 21-5302, and
43 amendments thereto; (F) criminal solicitation of any of the crimes listed in

1 this paragraph pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A.
2 2018 Supp. 21-5303, and amendments thereto; or (G) similar statutes of
3 other states or the federal government.

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

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

21 (i) Interference with custody of a committed person pursuant to
22 K.S.A. 21-3423, prior to its repeal, or K.S.A. 2018 Supp. 21-5410, and
23 amendments thereto; mistreatment of a confined person pursuant to K.S.A.
24 21-3425, prior to its repeal, or K.S.A. 2018 Supp. 21-5416, and
25 amendments thereto; unlawful administration of a substance pursuant to
26 K.S.A. 21-3445, prior to its repeal, or K.S.A. 2018 Supp. 21-5425, and
27 amendments thereto; violation of a protective order pursuant to K.S.A. 21-
28 3843, prior to its repeal, or K.S.A. 2018 Supp. 21-5924; promoting
29 obscenity or promoting obscenity to minors pursuant to K.S.A. 21-4301 or
30 21-4301a, prior to their repeal, or K.S.A. 2018 Supp. 21-6401, and
31 amendments thereto; or cruelty to animals pursuant to K.S.A. 21-3727, 21-
32 4310 or 21-4311, prior to their repeal, or K.S.A. 2018 Supp. 21-6412, and
33 amendments thereto; or

34 (ii) any felony conviction of: Unlawful manufacture of a controlled
35 substance pursuant to K.S.A. 2010 Supp. 21-36a03, prior to its repeal, or
36 K.S.A. 2018 Supp. 21-5703, and amendments thereto; unlawful cultivation
37 or distribution of a controlled substance pursuant to K.S.A. 2010 Supp. 21-
38 36a05, prior to its repeal, or K.S.A. 2018 Supp. 21-5705, and amendments
39 thereto; unlawful manufacture, distribution, cultivation or possession of a
40 controlled substance using a communication facility pursuant to K.S.A.
41 2010 Supp. 21-36a07, prior to its repeal, or K.S.A. 2018 Supp. 21-5707,
42 and amendments thereto; unlawful obtainment or sale of a prescription-
43 only drug pursuant to K.S.A. 2010 Supp. 21-36a08, prior to its repeal, or

1 K.S.A. 2018 Supp. 21-5708, and amendments thereto; unlawful
2 distribution of drug precursors or drug paraphernalia pursuant to K.S.A.
3 2010 Supp. 21-36a10, prior to its repeal, or K.S.A. 2018 Supp. 21-5710,
4 and amendments thereto; unlawful distribution or possession of a
5 simulated controlled substance pursuant to K.S.A. 2010 Supp. 21-36a13,
6 prior to its repeal, or K.S.A. 2018 Supp. 21-5713, and amendments
7 thereto; forgery pursuant to K.S.A. 21-3710, prior to its repeal, or K.S.A.
8 2018 Supp. 21-5823, and amendments thereto; criminal use of a financial
9 card pursuant to K.S.A. 21-3729, prior to its repeal, or K.S.A. 2018 Supp.
10 21-5828, and amendments thereto; any violation of the Kansas medicaid
11 fraud control act pursuant to K.S.A. 21-3844 et seq., prior to their repeal,
12 or K.S.A. 2018 Supp. 21-5925 et seq., and amendments thereto; making a
13 false claim, statement or representation to the medicaid program pursuant
14 to K.S.A. 21-3846, prior to its repeal, or K.S.A. 2018 Supp. 21-5927, and
15 amendments thereto; unlawful acts relating to the medicaid program
16 pursuant to K.S.A. 21-3847, prior to its repeal, or K.S.A. 2018 Supp. 21-
17 5928, and amendments thereto; obstruction of a medicaid fraud
18 investigation pursuant to K.S.A. 21-3856, prior to its repeal, or K.S.A.
19 2018 Supp. 21-5929, and amendments thereto; identity theft or identity
20 fraud pursuant to K.S.A. 21-4018, prior to its repeal, or K.S.A. 2018 Supp.
21 21-6107, and amendments thereto; or social welfare fraud pursuant to
22 K.S.A. 39-720, and amendments thereto. The provisions of this paragraph
23 shall not apply to any person who is employed by a home health agency on
24 or before July 1, 2018, and is continuously employed by the same home
25 health agency or to any person during or upon successful completion of a
26 diversion agreement.

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

34 (c) No person shall operate a home health agency if such person has
35 been found to be a person in need of a guardian or a conservator, or both,
36 as provided in the act for obtaining a guardian or a conservator, or both.
37 The provisions of this subsection shall not apply to an individual who, as a
38 minor, was found to be in need of a guardian or conservator for reasons
39 other than impairment.

40 (d) (1) The Kansas bureau of investigation shall release all records of
41 adult and juvenile convictions and adjudications and adult and juvenile
42 convictions and adjudications of any other state or country concerning
43 persons working in a home health agency to the secretary for aging and

1 disability services. The Kansas bureau of investigation may charge to the
2 Kansas department for aging and disability services a reasonable fee for
3 providing criminal history record information under this subsection.

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

15 ~~(3) An applicant for employment in an home health agency shall have~~
16 ~~20 calendar days after receipt of authorization to submit the applicant's~~
17 ~~fingerprints through an authorized collection site in order to be eligible for~~
18 ~~provisional employment or the applicant's application shall be deemed~~
19 ~~withdrawn.~~

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

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

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

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

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

41 (e) For the purpose of complying with this section, the operator of a
42 home health agency shall request from the Kansas department for aging
43 and disability services an eligibility determination regarding adult and

1 juvenile convictions and adjudications. For the purpose of complying with
2 this section, a person who operates a home health agency may hire an
3 applicant for provisional employment on a one-time basis of 60 calendar
4 days pending the results from the Kansas department for aging and
5 disability services of a request for information under this subsection. A
6 provisional employee may only be supervised by an employee who has
7 completed all training required by federal regulations, rules and
8 regulations of the department and the home health agency's policies and
9 procedures. No home health agency, the operator or employees of a home
10 health agency or an employment agency or an independent contractor shall
11 be liable for civil damages resulting from any decision to employ, to refuse
12 to employ or to discharge from employment any person based on such
13 home health agency's compliance with the provisions of this section if
14 such home health agency or employment agency acts in good faith to
15 comply with this section.

16 (f) The secretary for aging and disability services shall provide each
17 operator requesting information under this section with a pass or fail
18 determination after review of any criminal history information in writing
19 and within three working days of receipt of such information from the
20 Kansas bureau of investigation or the federal bureau of investigation.

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

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

27 (i) The operator of a home health agency shall not be required under
28 this section to conduct a criminal history record check on an applicant for
29 employment with the home health agency if the applicant has been the
30 subject of a criminal history record check under this act within one year
31 prior to the application for employment with the home health agency.

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

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

40 (2) All moneys collected and remitted to the department for fees
41 charged for criminal history record checks conducted pursuant to this
42 section shall be remitted to the state treasurer in accordance with K.S.A.
43 65-5113, and amendments thereto. Upon receipt of each such remittance,

1 the state treasurer shall deposit the entire amount into the state treasury to
2 the credit of the state licensure fee fund created by K.S.A. 39-930, and
3 amendments thereto.

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

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

14 Sec. 4. K.S.A. 65-5117 and K.S.A. 2018 Supp. 39-970 and 39-2009
15 are hereby repealed.

16 Sec. 5. This act shall take effect and be in force from and after its
17 publication in the statute book.