AN ACT concerning labor and employment; relating to adult care homes; home health agencies; providers of disability services; provisional employment; amending K.S.A. 65-5117 and K.S.A. 2019 Supp. 39-970 and 39-2009 and repealing the existing sections.

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

Section 1. K.S.A. 2019 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, postrelease supervision, conditional release, aftercare, fines, fees, restitution, or any other imposed sentencing requirements, whichever is later.

(4) "Conviction" means the entry of a plea or verdict of guilty or a conviction following a plea of nolo contendere, a diversion agreement entered into in lieu of further criminal proceedings or a juvenile adjudication.

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

(6) "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.

(7) "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.
"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.

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

"Secretary" means the secretary for aging and disability services.

(b) 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 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. 2019 Supp. 21-5401, and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401, prior to its repeal, or K.S.A. 2019 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. 2019 Supp. 21-5403(a), and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3437, prior to its repeal, or K.S.A. 2019 Supp. 21-5404, and amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406, prior to its repeal, or K.S.A. 2019 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. 2019 Supp. 21-5417, and amendments thereto, human trafficking, pursuant to K.S.A. 21-3446, prior to its repeal, or K.S.A. 2019 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. 2019 Supp. 21-5426(b), and amendments thereto, rape, pursuant to K.S.A. 21-3502, prior to its repeal, or K.S.A. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 Supp. 21-5510, and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior to
its repeal, or K.S.A. 2019 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. 2019 Supp. 21-5505(b), and amendments thereto, commercial sexual exploitation of a child, pursuant to K.S.A. 2019 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. 2019 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. 2019 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. 2019 Supp. 21-5303, and amendments thereto, or similar statutes of other states or the federal government a violation under the laws of another state or other jurisdiction that is in substantial conformity with the crimes specified in this paragraph. The provisions of subsection (b)(2)(C)(A)(iii) 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) 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: A felony conviction for a crime that is described in: (A) (i) 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 subsection (b)(1); (B) (ii) 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. 2019 Supp. 21-6420, and amendments thereto, except those crimes listed in subsection (b)(1) and K.S.A. 21-3605, prior to its repeal, or K.S.A. 2019 Supp. 21-5606, and amendments thereto; (C) (iii) K.S.A. 21-3701, prior to its repeal, or K.S.A. 2019 Supp. 21-5801, and amendments thereto; (D) (iv) 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. 2019 Supp. 21-5301, and amendments thereto; (E) (v) 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. 2019 Supp. 21-5302, and amendments thereto;
SB 313

Supp. 21-5302, and amendments thereto; (vi) 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. 2019 Supp. 21-5303, and amendments thereto; or (G) similar statutes of other states or the federal government (vii) the laws of another state or other jurisdiction that is in substantial conformity with the crimes specified in this paragraph.

(B) 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) 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 Supp. 21-5713, and amendments thereto; forgery pursuant to K.S.A. 21-3710, prior to its repeal, or K.S.A. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 Supp. 21-6107, and amendments thereto; or social welfare fraud pursuant to K.S.A. 39-720, and amendments thereto.

(B) 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.

(C) 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.

(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 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.

(d) (1) The Kansas bureau of investigation shall release all records of
SB 313

adult and juvenile convictions and juvenile adjudications and adult and juvenile such convictions and adjudications of any other another state or country other jurisdiction 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.

(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 an eligibility determination regarding adult and juvenile convictions and juvenile adjudications. For the purpose of complying with this section, the operator of an adult care home shall receive from any employment agency 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, a person who operates an adult care home may hire an applicant for provisional employment on a 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 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.

(f) The secretary for aging and disability services shall provide each operator 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.

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

(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.

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

(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.

   (k) (1) All fees charged by the secretary for criminal history record
check 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 a part of and supplemental to the adult care
home licensure act.

Sec. 2. K.S.A. 2019 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, postrelease supervision, conditional release, aftercare, fines,
fees, restitution, or any other imposed sentencing requirements, whichever
is later.
   (3) "Conviction" means the entry of a plea or verdict of guilty or a
conviction following a plea of nolo contendere, a diversion agreement
entered into in lieu of further criminal proceedings or a juvenile
adjudication.
(4) "Department" means the Kansas department for aging and
disability services.
(4)(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.
(5)(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.
(6)(7) "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)(8) "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 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. 2019 Supp. 21-
5401, and amendments thereto, first degree murder, pursuant to K.S.A. 21-
3401, prior to its repeal, or K.S.A. 2019 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. 2019 Supp. 21-5403(a), and amendments thereto,
voluntary manslaughter, pursuant to K.S.A. 21-3403, prior to its repeal, or
K.S.A. 2019 Supp. 21-5404, and amendments thereto, assisting suicide,
pursuant to K.S.A. 21-3406, prior to its repeal, or K.S.A. 2019 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. 2019 Supp. 21-5417, and amendments thereto, human
trafficking, pursuant to K.S.A. 21-3446, prior to its repeal, or K.S.A. 2019
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. 2019 Supp. 21-
5426(b), and amendments thereto, rape, pursuant to K.S.A. 21-3502, prior
to its repeal, or K.S.A. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 Supp. 21-5510, and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior to its repeal, or K.S.A. 2019 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. 2019 Supp. 21-5505(b), and amendments thereto, commercial sexual exploitation of a child, pursuant to K.S.A. 2019 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. 2019 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. 2019 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. 2019 Supp. 21-5303, and amendments thereto, or similar statutes of other states or the federal government a violation under the laws of another state or other jurisdiction that is in substantial conformity with the crimes specified in this subsection.

(2)(A) 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) (i) 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) (ii) 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. 2019 Supp. 21-6420, and amendments thereto, except those crimes listed in paragraph (1); (C) (iii) K.S.A. 21-3701, prior to its repeal, or K.S.A. 2019 Supp. 21-5801, and amendments thereto; (D) (iv)
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. 2019 Supp. 21-5301, and
amendments thereto; (E) (v) 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. 2019 Supp. 21-5302, and amendments thereto; (F) (vi) 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. 2019 Supp. 21-5303, and
amendments thereto; or (G) similar statutes of other states or the federal
government (vii) the laws of another state or other jurisdiction that is in
substantial conformity with the crimes specified in this paragraph.

(B) 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 the criteria to be utilized by the
secretary in evaluating any such waiver request.

(3)(A) 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 Supp. 21-5707, and amendments thereto; unlawful obtaining or sale of a prescription-only drug pursuant to K.S.A. 2010 Supp. 21-36a08, prior to its repeal, or K.S.A. 2019 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. 2019 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. 2019 Supp. 21-5713, and amendments thereto; forgery pursuant to K.S.A. 21-3710, prior to its repeal, or K.S.A. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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.

(B) 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.

(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 juvenile adjudications and adult and
juvenile such convictions and adjudications of any other state or
country other jurisdiction 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) (4) 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) (5) 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) (6) 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) The secretary shall provide each licensee 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.

(e)(f) 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)(g) 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 an eligibility determination regarding adult and juvenile convictions and juvenile adjudications. For the purpose of complying with this section, the licensee operating a center, facility, hospital or a provider of services shall 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 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. 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.

(g)(h) 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 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.

Sec. 3. K.S.A. 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, postrelease supervision, conditional release, aftercare, fines,
fees, restitution, or any other imposed sentencing requirements, whichever
is later.
3. "Conviction" means the entry of a plea or verdict of guilty or a
conviction following a plea of nolo contendere, a diversion agreement
entered into in lieu of further criminal proceedings or a juvenile
adjudication.
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 a home health agency 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 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 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. 2019 Supp. 21-5401, and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401, prior to its repeal, or K.S.A. 2019 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. 2019 Supp. 21-5403(a), and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403, prior to its repeal, or K.S.A. 2019 Supp. 21-5404, and amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406, prior to its repeal, or K.S.A. 2019 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. 2019 Supp. 21-5417, and amendments thereto, human trafficking, pursuant to K.S.A. 21-3446, prior to its repeal, or K.S.A. 2019 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. 2019 Supp. 21-5426(b), and amendments thereto, rape, pursuant to K.S.A. 21-3502, prior to its repeal, or K.S.A. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 Supp. 21-5510, and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior to its repeal, or K.S.A. 2019 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. 2019 Supp. 21-5505(b), and amendments thereto, commercial sexual exploitation of a child, pursuant to K.S.A. 2019 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. 2019 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. 2019 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. 2019 Supp. 21-5303, and amendments thereto, or similar statutes of other states or the federal government.
with the crimes specified in this subsection. The provisions of subsection
(b)(2)(C)(A)(iii) 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) 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 on 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: A felony conviction for a crime
that is described in: (A)(i) 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
subsection (b)(1); (B) (ii) 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. 2019 Supp. 21-6420, and
amendments thereto, except those crimes listed in subsection (b)(1) and
K.S.A. 21-3605, prior to their repeal, or K.S.A. 2019 Supp. 21-5606, and
amendments thereto; (C) (iii) K.S.A. 21-3701, prior to its repeal, or K.S.A.
2019 Supp. 21-5801, and amendments thereto; (D) (iv) 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. 2019 Supp. 21-5301, and amendments
thereof; (E) (v) 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. 2019
Supp. 21-5302, and amendments thereto; (F) (vi) 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. 2019 Supp. 21-5303, and amendments thereto; or
(G) similar statutes of other states or the federal government (vii) the laws
of another state or other jurisdiction that is in substantial conformity with
the crimes specified in this paragraph.

(B) 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 the criteria to be utilized by the
secretary in evaluating any such waiver request.

(3)(A) 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 Supp. 21-6401, and amendments thereto; or cruelty to animals pursuant to K.S.A. 21-3727, 21-3727, 21-4310 or 21-4311, prior to their repeal, or K.S.A. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 Supp. 21-5713, and amendments thereto; forgery pursuant to K.S.A. 21-3710, prior to its repeal, or K.S.A. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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. 2019 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.

(B) 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.

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 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.

d) (1) The Kansas bureau of investigation shall release all records of adult and juvenile convictions and juvenile adjudications and adult and juvenile such convictions and adjudications of any other another state or country other jurisdiction 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 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)(4) 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)(5) 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)(6) 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) 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 an eligibility determination regarding adult and
juvenile convictions and juvenile 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 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 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.

(f) The secretary for aging and disability services shall provide each
operator requesting information under this section with a pass or fail
determination after review of any criminal history 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.

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

(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.

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

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


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