

**CORRECTED**  
*SESSION OF 2018*

**CONFERENCE COMMITTEE REPORT BRIEF  
SENATE SUBSTITUTE FOR SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 2386**

As Agreed to April 3, 2018

**Brief\***

Senate Sub. for Senate Sub. for HB 2386 would amend law related to licensure, certification, or registration (licensure) qualifications; amend qualifications for employment at adult care homes, hospitals, and home health agencies; and add all employees of the Kansas Commission on Veterans' Affairs Office (KCVAO) to the definition of "safety sensitive positions" found in law.

***Licensure Qualifications***

The bill would require any person, board, commission, or similar body (board) that determines the qualifications of individuals for licensure to revise their existing requirements to list the specific civil and criminal records (record) that could disqualify an applicant from receiving a license, certification, or registration (license). The revision would need to occur within 180 days after the effective date of the bill.

The board could only list any disqualifying records directly related to protecting the general welfare and the duties and responsibilities for such entities. In no case would non-specific terms, such as moral turpitude or good character, or any arrests that do not result in a conviction be used to disqualify an individual's application for licensure.

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

The bill would mandate that if an individual has a record that would disqualify the individual from receiving a license, other than a conviction for a crime that is a felony or a class A misdemeanor or any conviction for which issuing the license could conflict with federal law, and the individual has not been convicted of any other crime in the five years immediately preceding the application for a license, the record could not be used to disqualify the individual for licensure for more than five years after the person satisfied the sentence imposed.

The record could not be used to disqualify the individual for licensure for more than five years from the date of conviction unless the conviction is a class A misdemeanor, felony, sexually violent crime, or any conviction for which issuing a license would conflict with federal law.

The bill would allow any individual with a record to petition the board responsible for licensure at any time for an informal, written advisory opinion (opinion) concerning whether the individual's record would disqualify the individual from obtaining a license. The petition would include details of the record. The board would be required to issue the opinion within 120 days of receiving the petition and the opinion would be non-binding. The board would be authorized to charge up to \$50 for the review and issuance of the opinion in response to the petition.

#### *Agencies Exempted from Licensure Provisions*

In addition, the bill would exempt the following entities from the bill's provisions related to licensure qualifications:

- Kansas Commission on Peace Officers' Standards and Training;
- Kansas Highway Patrol;
- Board of Accountancy;
- Behavioral Sciences Regulatory Board (BSRB);

- State Board of Healing Arts (Healing Arts Board);
- State Board of Pharmacy (Pharmacy Board);
- Emergency Medical Services Board;
- Board of Nursing;
- Kansas Real Estate Commission;
- Kansas Insurance Department;
- Office of the Attorney General;
- Any municipality, as defined in KSA 75-6102; and
- Any profession that has an educational requirement for licensure that requires a degree beyond a bachelor's degree.

The bill would require all boards to adopt and publicly maintain all necessary rules and regulations for the implementation of the bill.

***Qualifications for Employment at Adult Care Homes, Hospitals, and Home Health Agencies***

***Conviction of Crimes Subject to a Complete Prohibition***

The bill would create and amend law related to qualifications for employment at adult care homes, hospitals, and home health agencies, and would define terms related to the provisions of the bill.

Current law provides that persons convicted of certain crimes as an adult, or adjudicated as a juvenile, may not be employed at an adult care home. The bill would expand such classes of persons to include persons who have adverse findings on any state or national registry, which would be defined by the Secretary for Aging and Disability Services (Secretary) in rules and regulations. The bill would specify

that the provisions of this section of the bill would not apply to persons currently participating in or upon successful completion of a diversion agreement, or who had been employed by an adult care home on or before July 1, 2018, and was continuously employed by the same adult care home.

Current law provides that persons convicted of theft may not be employed at listed facilities unless such person was employed at the facility on July 1, 2010, and while such person is continuously employed by the same adult care home. The bill would clarify that the prohibition would not apply to persons who were employed by an adult care home either on or before July 1, 2010. The bill would further provide that the prohibition would not apply during or upon successful completion of a diversion agreement.

#### *Conviction of Crimes Subject to a Six-year Prohibition*

Current law allows an adult care home to employ persons convicted of certain listed crimes if six or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from supervision. The bill would clarify that the sentence must be completed, or the individual released from supervision. The bill would also allow employment of an applicant who has been granted a waiver of the six-year disqualification. The bill would remove certain crimes from the list of those having a six-year disqualification.

The bill would subject additional crimes to the six-year employment prohibition. Additional crimes subject to the six-year prohibition include:

- Interference with custody of a committed person;
- Mistreatment of a confined person;
- Unlawful administration of a substance;
- Violation of a protective order;

- Promoting obscenity or promoting obscenity to minors; or
- Cruelty to animals.

The bill would also subject the following felony convictions to the six-year employment prohibition:

- Unlawful manufacture of a controlled substance;
- Unlawful cultivation or distribution of a controlled substance;
- Unlawful cultivation or distribution of a controlled substance using a communication facility;
- Unlawful obtainment or sale of a prescription-only drug;
- Unlawful distribution of drug precursors or drug paraphernalia;
- Unlawful distribution or possession of a simulated controlled substance;
- Forgery;
- Criminal use of a financial card;
- Violation of the Kansas Medicaid Fraud Control Act;
- Making a false claim, statement, or representation to the Medicaid program;
- Unlawful acts relating to the Medicaid program;
- Obstruction of a Medicaid fraud investigation;
- Identity theft or identity fraud; or
- Social welfare fraud.

The bill would provide that the prohibition of employment of persons convicted of the above crimes would not apply to persons employed by an adult care home on or before July 1, 2018, and while such person is continuously employed by the

same adult care home, or to any person during or upon successful completion of a diversion agreement.

The bill would also provide that any person subject to a six-year prohibition of employment at a facility could apply to the Secretary for a waiver if five or more years have passed since completion of the sentence associated with the disqualifying conviction.

In addition, the bill would direct the Secretary to adopt rules and regulations establishing the waiver process and criteria to be considered in evaluating any such waiver request.

#### *Release of Records*

The bill would direct the Kansas Bureau of Investigation (KBI) to release all records of adult and juvenile convictions and adjudications, and records pertaining to the same from other states or countries, concerning persons working in adult care homes. The KBI would be authorized to charge the Kansas Department for Aging and Disability Services (KDADS) a reasonable fee for providing these records.

#### *Fingerprinting of Applicants*

The bill would require KDADS to require applicants to be fingerprinted and to submit to a state and national criminal history record check. Fingerprints would be used to identify persons, and to determine whether the applicant has a record of criminal history in Kansas or other jurisdictions.

The bill would authorize KDADS to submit fingerprints to the KBI and the Federal Bureau of Investigation (FBI) for such criminal history checks. KDADS would be allowed to use the information obtained from fingerprinting and the criminal history record check to verify the identify of the person, and for making an official determination of the

qualifications and fitness of the person to work in the adult care home.

Applicants would be given 20 days to submit fingerprints through an authorized collection site in order to be eligible for provisional employment, or the applicant's application would be considered withdrawn.

The bill would also require current or prospective employers of applicants to pay a fee not to exceed \$19 to KDADS for each applicant's criminal history record check. Such fee would be paid at the time of fingerprinting to the authorized collection site.

#### *Criminal History Record Check Dispute and Waiver*

If applicants dispute the contents of a criminal history record check, the applicant could file an appeal with the KBI.

The bill would allow persons who have been disqualified for employment by reason of their criminal history records, and who have submitted fingerprints, to apply for a waiver with KDADS within 30 days of receipt of notice of employment prohibition.

KDADS would be directed to adopt rules and regulations specifying the criteria and procedure for issuing a waiver of the employment prohibition. The Secretary would be directed to consider the following criteria in granting a waiver:

- Passage of time;
- Extenuating circumstances;
- Demonstration of rehabilitation; and
- Relevancy of criminal history information to the position for which the applicant is applying.

Any employment prohibition issued would remain in effect unless or until a waiver is granted.

#### *Eligibility Determination*

The bill would require adult care home operators to request eligibility determinations regarding adult and juvenile convictions and adjudications from KDADS. The bill would also require independent contractors that provide employees to work in adult care homes to provide written certification of the employment eligibility of such employees.

The Secretary would be directed to provide a pass or fail determination after review of any criminal history record information in writing within three working days of receipt of such information from the KBI or the FBI.

#### *Provisional Employment*

The bill would allow adult care home operators to hire applicants on a one-time provisional basis of 60 calendar days, pending the results of the criminal history record check. Provisional employees could only be supervised by employees who completed all training required by federal regulations, rules, and regulations of KDADS, and the adult care home's policies and procedures.

Current law provides that no adult care homes, operators or employees of an adult care home, or an employment agency would be liable for civil damages arising from the decision to employ, refuse to employ, or to discharge from employment any person based on compliance with the above provisions, if such home or employment agency acts in good faith. The bill would include independent contractors in these liability provisions.

### *Exclusion from Criminal History Record Check*

The bill would specify that persons continuously employed by the same adult care home since July 1, 1992, would not be subject to a criminal history record check while continuously employed by such adult care home.

Current law excludes volunteers who work in adult care homes from the criminal history check requirements. The bill would specify that volunteers at adult care homes would not be subject to the provisions of the bill unless they performed functions equivalent to those of direct access employees.

The bill would also specify that applicants who have been subject to a criminal history record check within the past year would not be required to submit to a subsequent criminal history record check.

### *Fees, Deposit*

The bill would direct the Secretary to establish fees for criminal history record checks through rules and regulations. All fees collected and remitted to KDADS for charges related to criminal history record checks would be remitted to the State Treasurer (Treasurer). The Treasurer would be directed to deposit the entire amount in the State Treasury to the credit of the State Licensure Fee Fund.

### *Implementation of Criminal History Checks*

The bill would allow KDADS to implement the criminal history check provisions in phases for different categories of employers. KDADS would be directed to adopt rules and regulations establishing dates and procedures for the implementation of criminal history record checks, and such dates could be staggered to facilitate implementation.

### *Submission of Fingerprints by Other State Agencies*

The bill would provide that upon authorization by the Secretary, other state agencies could submit fingerprints for state and national criminal history record checks and review the resulting criminal history and records as part of the screening process for current or prospective employees.

Authorized agencies and providers could access an Internet-based application portal that is operated and maintained by KDADS for the purposes of processing criminal history record information requests. Agencies would be prohibited from sharing criminal history record information or the resulting pass or fail determinations with any other agency. The Secretary would be able to charge an authorized agency \$1 per request.

### *Employment in Hospitals*

The bill would subject applicants for employment in a center, facility, hospital, or a provider of services to the same provisions applied to adult care homes as described above. The bill would also provide that the following crimes would result in a prohibition of employment (this is already present in current law for adult care home workers):

- Capital murder;
- First degree murder;
- Second degree murder;
- Voluntary manslaughter;
- Assisting suicide;
- Mistreatment of a dependent adult or mistreatment of an elder person;
- Human trafficking;
- Aggravated human trafficking;
- Rape;
- Indecent liberties with a child;

- Aggravated indecent liberties with a child;
- Aggravated criminal sodomy;
- Indecent solicitation of a child;
- Aggravated indecent solicitation of a child;
- Sexual exploitation of a child;
- Sexual battery;
- Aggravated sexual battery;
- Commercial sexual exploitation of a child; and
- Attempt or conspiracy to commit any of the listed crimes, or similar statutes of other states or the federal government.

#### *Prohibition of Operation*

Current law prohibits a licensee from operating a center, facility, hospital, or providing of services if such licensee has been found to be an adult with impairment in need of a guardian, conservator, or both. The bill would specify that the prohibition would not apply to licensees who, as a minor, were found to be in need of a guardian or conservator for reasons other than impairment.

#### *Employment by Home Health Agencies*

The bill would subject applicants for employment at home health agencies, employment agencies, or as an independent contractor that provides staff to a home health agency to the same provisions applied to applicants in adult care homes and hospitals as described above.

#### ***Drug Screening for Safety Sensitive Positions***

The bill would add all employees of the KCVAO to the definition of “safety sensitive positions” found in current law.

The Director of the Division of Personnel Services, Department of Administration, has the authority to establish and implement drug screening programs for safety sensitive positions, including the ability to screen applicants for illegal drug use upon a conditional offer of employment and to screen employees upon reasonable suspicion of illegal drug use. Currently, only employees of the State's veterans' homes are subject to a drug screening upon reasonable suspicion of illegal drug use.

Current "safety sensitive positions" include:

- All state law enforcement officers authorized to carry firearms;
- All state corrections officers;
- All state parole officers;
- Heads of state agencies who are appointed by the Governor and employees on the Governor's staff;
- All employees with access to secure facilities of a correctional institution;
- All employees of a juvenile correctional facility;
- All employees within an institution of mental health; and
- All employees with access to a secured biological laboratory in the Office of Laboratory Services, Kansas Department of Health and Environment.

### **Conference Committee Action**

The Conference Committee agreed to the contents of Senate Sub. for Senate Sub. for HB 2386, as amended by the Senate Committee of the Whole, with the following changes:

- Exempt the Kansas Real Estate Commission, the Office of the Attorney General, and the Kansas Insurance Department from the licensure provisions of Senate Sub. for Senate Sub. for HB 2386, as amended by the Senate Committee of the Whole;
- Add the contents of Sub. for HB 2427, as recommended by the House Committee on Federal and State Affairs;
- Add the contents of HB 2465, as amended by the Senate Committee on Federal and State Affairs; and
- Change the effective date to upon publication the statute book.

### **Background**

The bill contains the contents of Senate Sub. for Senate Sub. for HB 2386, as amended by the Senate Committee of the Whole; Sub. for HB 2427, as recommended by the House Committee on Federal and State Affairs; and HB 2465, as amended by the Senate Committee on Federal and State Affairs.

### ***Senate Sub. for Senate Sub. for HB 2386 (Licensure Qualifications)***

The Senate Committee on Federal and State Affairs removed the contents of the first substitute bill, regarding amendments to the Kansas Expanded Lottery Act relating to racetrack gaming facilities, and replaced them with the provisions of SB 421, as amended by the Senate Committee on Federal and State Affairs, and recommended these provisions be placed in a second substitute bill.

The Senate Committee of the Whole amended Senate Sub. for Senate Sub. for HB 2386 to:

- Clarify language regarding when a record could be used to disqualify an individual from receiving a license; and
- Add the Healing Arts Board, Pharmacy Board, the Emergency Medical Services Board, and the Board of Nursing to the list of agencies exempted from the provisions of the bill. [*Note:* The Conference Committee retained these amendments.]

#### *SB 421*

SB 421 was introduced by the Senate Committee on Federal and State Affairs. In the Senate Committee hearing, representatives of American Civil Liberties Union–Kansas and Opportunity Solutions Project provided proponent testimony. Written-only proponent testimony was submitted by Americans for Prosperity.

Neutral testimony was provided by a representative of the League of Kansas Municipalities. Written-only neutral testimony was submitted by the Office of the Attorney General.

Opponent testimony was provided by the Executive Secretary of the Pharmacy Board, Executive Director of the Kansas Dental Board (Dental Board), Executive Director of the Healing Arts Board, the Commission Counsel of the Kansas Commission on Peace Officers' Standards and Training, and a representative of the Kansas Association of Realtors. Written-only opponent testimony was submitted by a representative of the Board of Adult Care Home Administrators.

The Senate Committee amended the bill to:

- Increase from 120 to 180 the number of days after the effective date the board would have to revise existing requirements to list specific records that could disqualify an applicant from receiving a license;
- Add a class A misdemeanor and any conviction for which issuance of a license would conflict with federal law to those crimes, which, if committed in the previous five years, would be considered during licensure;
- Clarify that an individual can petition a board for an informal, written advisory opinion rather than a determination;
- Add language to establish the informal, written advisory opinion is non-binding and the board must respond to the petition within 120 days;
- Authorize the board to charge up to \$50 for review and issuance of the informal, written advisory opinion; and
- Exempt from the bill the Kansas Commission on Peace Officers' Standards and Training, Kansas Highway Patrol, Board of Accountancy, BSRB, any municipality as defined in current law, and any profession that has an educational requirement for licensure that requires a degree beyond a bachelor's degree. [Note: The Conference Committee retained these amendments.]

According to the fiscal note prepared by the Division of the Budget on SB 421, as introduced, the Pharmacy Board estimates the bill would increase its expenditures by \$127,600 annually for 2.0 FTE positions of administrative assistants or paralegals, including \$119,6000 for salaries and wages, \$5,000 for office space, and \$3,000 for computer equipment, software, and supplies. Additional other operating

costs would include \$5,200 for two additional board meetings, \$500 to publish new rules and regulations in the *Kansas Register*, \$5,000 for software and website updates, and a minimum of \$125 per month for monthly meetings with its investigative member. The Pharmacy Board indicates the bill could also increase administrative and attorney costs related to additional complaints, investigations, and disciplinary actions related to impaired licensees and violations of the Pharmacy Practice Act, but an estimate of these costs is unknown. In addition, the Pharmacy Board indicates the bill could reduce annual revenues, but no estimate was provided.

The Healing Arts Board estimates SB 421 would increase annual expenditures by \$126,600, which includes \$61,100 for 1.0 legal assistant FTE position, \$47,840 for 1.0 licensure analyst FTE position, \$14,000 for additional office and computer equipment and supplies, \$2,400 for additional phone, e-mail, and Internet lines, and \$1,260 to publish new rules and regulations in the *Kansas Register*. The Healing Arts Board indicates the bill could also increase administrative and attorney costs related to additional complaints, investigations, and disciplinary actions related to violations, but an estimate of these costs cannot be made. In addition, the Healing Arts Board indicates the bill could reduce annual revenues for those individuals who are disqualified from licensure under these provisions.

The BSRB indicates the requirements of SB 421 would increase its expenditures by \$53,707 annually, which includes costs for one additional staff member and for doubling the number of board meetings required to be held. In addition, the BSRB indicates the bill could increase revenues to the BSRB by increasing the number of individuals eligible for licensure.

The Kansas Board of Optometry (Optometry Board) indicates the provision in SB 421 that would require the Optometry Board to respond to petitions within 30 days of receipt could increase its expenditures by \$5,400 annually for additional board member pay, travel expenses, and legal

fees, since it would double the number of board meetings required. The Optometry Board estimates the bill could also decrease revenues by \$1,500 annually for those individuals who are disqualified from licensure under these provisions.

The Dental Board indicates SB 421 would require an extensive, comprehensive legal review of the Dental Board's statutory and regulatory structure relative to current and future investigations and existing administrative litigation. It would also require the Dental Board to ascertain whether an applicant's past conviction in another state could or should be classified as a person felony or sexually violent crime under KSA 22-4902. In addition, it would require the Dental Board to support additional in-person or telephonic meetings to process each petition to pre-determine whether a civil or criminal record would disqualify the applicant from obtaining a license. While the cost is difficult to predict, the Dental Board indicates its contract attorney rate is \$150 per hour and its contract dentist investigator has a rate of \$125 per hour. The Dental Board notes it has nine members and if it was required to make the pre-determination decisions in-person, each Dental Board member would also receive a daily rate of \$35 per day, plus mileage and hotel reimbursement. If the Dental Board could make the pre-determination decisions telephonically, each member would receive their daily rate of \$35 per day. The Dental Board currently holds only four public meetings each year with its attorney and dentist investigator.

The Real Estate Appraisal Board indicates it is unable to determine if enactment of SB 421 would have a fiscal effect on its operations.

Both the KBI and the Kansas Board of Accountancy indicate SB 421 would have no fiscal effect on agency operations.

This fiscal note includes fiscal effect information provided from only a sample of agencies that could be affected by the provisions in SB 421. Any fiscal effect

associated with enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.

***Sub. for HB 2427 (Qualifications for Employment at Adult Care Homes, Hospitals, and Home Health Agencies)***

HB 2427 was introduced by the House Committee on Federal and State Affairs at the request of Representative Weber. In the House Committee hearing on May 16, 2017, proponent testimony was provided by a representative of KDADS and the State Long-Term Care Ombudsman. Written-only proponent testimony was provided by the AARP. Opponent testimony was presented by a representative Leading Age Kansas. Written-only opponent testimony was provided by the Office of the Attorney General. Neutral testimony was presented by a representative of the Kansas Health Care Association. No other testimony was provided. The House Committee took no action on the bill during the 2017 Session.

In the House Committee hearing on February 8, 2018, proponent testimony was presented by representatives of Kansas Adult Care Executives, KDADS, and LeadingAge Kansas. Written-only proponent testimony was provided by the AARP, the Kansas Department of Health and Environment, the Kansas Health Care Association, and the Office of the Attorney General. Opponent testimony was presented by a representative of InterHab. No other testimony was provided.

The House Committee recommended adoption of a substitute bill, which incorporates a technical amendment and amendments to amend the waiver process, amend the length of prohibition after conviction of certain crimes, further specify that certain prohibitions extend only to felony convictions of certain crimes, and specify that state agencies may not share criminal history record information or resulting pass or fail determinations with other state agencies. The House Committee also extended the provisions of the bill applicable

to adult care homes to include applicants for employment at hospitals, centers, or facilities, and to applicants for employment at home health care providers.

According to the fiscal note prepared by the Division of the Budget on HB 2427, as introduced, KDADS indicates enactment of the bill would not have a fiscal effect since the agency has received grant funding from the Centers for Medicare and Medicaid Services to develop and maintain a background check system that would transition to a self-sustaining system once the grant funding expires. As additional agencies request use of the system, the costs would increase; however, the maintenance fee per request would help sustain the system.

The KBI indicates enactment of the bill would increase expenditures by \$442,701 in FY 2018 and would require the addition of 9.00 FTE positions. The expenditures would include salaries and wages for the training and fingerprint processing duties of new laboratory technician positions, employees to research and respond to appeals related to the bill, and employees to update and maintain the automated fingerprint identification system, for a total of \$250,595 in employee-related costs.

The KBI also indicates the bill would require \$92,106 in additional maintenance costs, and would increase revenues to the Record Check Fee Fund in FY 2018 by \$2,452,800. The revenue estimate is based on the number of name-based record checks the KBI conducted for KDADS in FY 2016. Although the KBI states the number of checks that would be conducted in FY 2019 could not be estimated, the Division of the Budget has included the same estimates for FY 2019 that have been provided for FY 2018. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2018 Governor's Budget Report*.

A fiscal note on Sub. for HB 2427 was not immediately available.

### ***HB 2465 (Drug Screening for Safety Sensitive Positions)***

HB 2465 was introduced by the House Committee on Veterans and Military at the request of the KCVAO. In the House Committee hearing, a representative of KCVAO testified in favor of the bill. The representative stated the bill would improve patient care, increase productivity, keep patients out of harm, and reduce employee turnover and absenteeism. No neutral or opponent testimony was provided.

The House Committee recommended the bill be placed on the Consent Calendar.

In the Senate Committee on Federal and State Affairs hearing, a KCVAO representative testified in favor of the bill. No other testimony was provided.

The Senate Committee amended the bill to change the effective date from upon publication in the statute book to upon publication in the *Kansas Register*. [Note: The Conference Committee did not maintain this amendment.]

According to the fiscal note prepared by the Division of the Budget on HB 2465, as introduced, the KCVAO estimates the total annual cost to conduct drug screenings would be \$10,000, including \$800 from the State General Fund. The estimate includes \$9,000 for drug screening costs and \$1,000 for administrative costs. Any fiscal effect associated with the enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.

licensing; licensure; background checks; adult care homes; Kansas Department for Aging and Disability Services; drug screening; Kansas Commission on Veterans' Affairs Office; state agencies

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