

**SENATE BILL No. 313**

By Committee on Judiciary

1-27

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

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

7 Section 1. K.S.A. 2019 Supp. 39-970 is hereby amended to read as  
8 follows: 39-970. (a) As used in this section:

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

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

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

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

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

29 ~~(5)~~(6) "Direct access" means work that involves an actual or  
30 reasonable expectation of one-on-one interaction with a consumer or a  
31 consumer's property, personally identifiable information, medical records,  
32 treatment information or financial information.

33 ~~(6)~~(7) "Direct supervision" means that a supervisor is physically  
34 present within an immediate distance to a supervisee and is available to  
35 provide constant direction, feedback and assistance to a client and the  
36 supervisee.

1 (7)(8) "Employment agency" means an organization or entity that has  
2 a contracted relationship with an adult care home to provide staff with  
3 direct access to consumers.

4 (8)(9) "Independent contractor" means an organization, entity, agency  
5 or individual that provides contracted workers or services to an adult care  
6 home.

7 (9)(10) "Secretary" means the secretary for aging and disability  
8 services.

9 (b) (1) No person shall knowingly operate an adult care home if, in  
10 the adult care home, there works any person who has adverse findings on  
11 any state or national registry, as defined in rules and regulations adopted  
12 by the secretary for aging and disability services, or has been convicted of  
13 ~~or has been adjudicated a juvenile offender because of having committed~~  
14 ~~an act that if done by an adult would constitute the commission of capital~~  
15 murder, pursuant to K.S.A. 21-3439, prior to its repeal, or K.S.A. 2019  
16 Supp. 21-5401, and amendments thereto, first degree murder, pursuant to  
17 K.S.A. 21-3401, prior to its repeal, or K.S.A. 2019 Supp. 21-5402, and  
18 amendments thereto, second degree murder, pursuant to K.S.A. 21-  
19 3402(a), prior to its repeal, or K.S.A. 2019 Supp. 21-5403(a), and  
20 amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403,  
21 prior to its repeal, or K.S.A. 2019 Supp. 21-5404, and amendments  
22 thereto, assisting suicide, pursuant to K.S.A. 21-3406, prior to its repeal, or  
23 K.S.A. 2019 Supp. 21-5407, and amendments thereto, mistreatment of a  
24 dependent adult or mistreatment of an elder person, pursuant to K.S.A. 21-  
25 3437, prior to its repeal, or K.S.A. 2019 Supp. 21-5417, and amendments  
26 thereto, human trafficking, pursuant to K.S.A. 21-3446, prior to its repeal,  
27 or K.S.A. 2019 Supp. 21-5426(a), and amendments thereto, aggravated  
28 human trafficking, pursuant to K.S.A. 21-3447, prior to its repeal, or  
29 K.S.A. 2019 Supp. 21-5426(b), and amendments thereto, rape, pursuant to  
30 K.S.A. 21-3502, prior to its repeal, or K.S.A. 2019 Supp. 21-5503, and  
31 amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-  
32 3503, prior to its repeal, or K.S.A. 2019 Supp. 21-5506(a), and  
33 amendments thereto, aggravated indecent liberties with a child, pursuant to  
34 K.S.A. 21-3504, prior to its repeal, or K.S.A. 2019 Supp. 21-5506(b), and  
35 amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-  
36 3506, prior to its repeal, or K.S.A. 2019 Supp. 21-5504(b), and  
37 amendments thereto, indecent solicitation of a child, pursuant to K.S.A.  
38 21-3510, prior to its repeal, or K.S.A. 2019 Supp. 21-5508(a), and  
39 amendments thereto, aggravated indecent solicitation of a child, pursuant  
40 to K.S.A. 21-3511, prior to its repeal, or K.S.A. 2019 Supp. 21-5508(b),  
41 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A.  
42 21-3516, prior to its repeal, or K.S.A. 2019 Supp. 21-5510, and  
43 amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior to

1 its repeal, or K.S.A. 2019 Supp. 21-5505(a), and amendments thereto,  
 2 aggravated sexual battery, pursuant to K.S.A. 21-3518, prior to its repeal,  
 3 or K.S.A. 2019 Supp. 21-5505(b), and amendments thereto, commercial  
 4 sexual exploitation of a child, pursuant to K.S.A. 2019 Supp. 21-6422, and  
 5 amendments thereto, an attempt to commit any of the crimes listed in this  
 6 paragraph, pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 2019  
 7 Supp. 21-5301, and amendments thereto, a conspiracy to commit any of  
 8 the crimes listed in this paragraph, pursuant to K.S.A. 21-3302, prior to its  
 9 repeal, or K.S.A. 2019 Supp. 21-5302, and amendments thereto, or  
 10 criminal solicitation of any of the crimes listed in this paragraph, pursuant  
 11 to K.S.A. 21-3303, prior to its repeal, or K.S.A. 2019 Supp. 21-5303, and  
 12 amendments thereto, or ~~similar statutes of other states or the federal~~  
 13 ~~government~~ *a violation under the laws of another state or other*  
 14 *jurisdiction that is in substantial conformity with the crimes specified in*  
 15 *this paragraph.* The provisions of subsection (b)(2)(~~C~~)(A)(iii) shall not  
 16 apply to any person who is employed by an adult care home on or before  
 17 July 1, 2010, and while continuously employed by the same adult care  
 18 home or to any person during or upon successful completion of a diversion  
 19 agreement.

20 (2)(A) A person operating an adult care home may employ an  
 21 applicant who has been convicted of any of the following, if six or more  
 22 years have elapsed since completion of the sentence imposed ~~or the~~  
 23 ~~applicant was discharged from probation, a community correctional~~  
 24 ~~services program, parole, postrelease supervision, conditional release or a~~  
 25 ~~suspended sentence; if six or more years have elapsed since the applicant~~  
 26 ~~has been finally discharged from the custody of the commissioner of~~  
 27 ~~juvenile justice or from probation or has been adjudicated a juvenile~~  
 28 ~~offender, whichever time is longer; or if the applicant has been granted a~~  
 29 waiver of such six-year disqualification: A felony conviction for a crime  
 30 that is described in: ~~(A)~~ (i) Article 34 of chapter 21 of the Kansas Statutes  
 31 Annotated, prior to their repeal, or article 54 of chapter 21 of the Kansas  
 32 Statutes Annotated, and amendments thereto, except those crimes listed in  
 33 subsection (b)(1); ~~(B)~~ (ii) articles 35 or 36 of chapter 21 of the Kansas  
 34 Statutes Annotated, prior to their repeal, or article 55 or 56 of chapter 21 of  
 35 the Kansas Statutes Annotated, or K.S.A. 2019 Supp. 21-6420, and  
 36 amendments thereto, except those crimes listed in subsection (b)(1) and  
 37 K.S.A. 21-3605, prior to its repeal, or K.S.A. 2019 Supp. 21-5606, and  
 38 amendments thereto; ~~(C)~~ (iii) K.S.A. 21-3701, prior to its repeal, or K.S.A.  
 39 2019 Supp. 21-5801, and amendments thereto; ~~(D)~~ (iv) an attempt to  
 40 commit any of the crimes listed in this paragraph, pursuant to K.S.A. 21-  
 41 3301, prior to its repeal, or K.S.A. 2019 Supp. 21-5301, and amendments  
 42 thereto; ~~(E)~~ (v) a conspiracy to commit any of the crimes listed in this  
 43 paragraph, pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2019

1 Supp. 21-5302, and amendments thereto; ~~(F)~~ (vi) criminal solicitation of  
2 any of the crimes listed in this paragraph, pursuant to K.S.A. 21-3303,  
3 prior to its repeal, or K.S.A. 2019 Supp. 21-5303, and amendments  
4 thereto; or ~~(G) similar statutes of other states or the federal~~  
5 ~~government~~ (vii) *the laws of another state or other jurisdiction that is in*  
6 *substantial conformity with the crimes specified in this paragraph.*

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

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

24 (i) Interference with custody of a committed person pursuant to  
25 K.S.A. 21-3423, prior to its repeal, or K.S.A. 2019 Supp. 21-5410, and  
26 amendments thereto; mistreatment of a confined person pursuant to K.S.A.  
27 21-3425, prior to its repeal, or K.S.A. 2019 Supp. 21-5416, and  
28 amendments thereto; unlawful administration of a substance pursuant to  
29 K.S.A. 21-3445, prior to its repeal, or K.S.A. 2019 Supp. 21-5425, and  
30 amendments thereto; violation of a protective order pursuant to K.S.A. 21-  
31 3843, prior to its repeal, or K.S.A. 2019 Supp. 21-5924, and amendments  
32 thereto; promoting obscenity or promoting obscenity to minors pursuant to  
33 K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2019 Supp.  
34 21-6401, and amendments thereto; or cruelty to animals pursuant to  
35 K.S.A. 21-3727, 21-4310 or 21-4311, prior to their repeal, or K.S.A. 2019  
36 Supp. 21-6412, and amendments thereto; or

37 (ii) any felony conviction of: Unlawful manufacture of a controlled  
38 substance pursuant to K.S.A. 2010 Supp. 21-36a03, prior to its repeal, or  
39 K.S.A. 2019 Supp. 21-5703, and amendments thereto; unlawful cultivation  
40 or distribution of a controlled substance pursuant to K.S.A. 2010 Supp. 21-  
41 36a05, prior to its repeal, or K.S.A. 2019 Supp. 21-5705, and amendments  
42 thereto; unlawful manufacture, distribution, cultivation or possession of a  
43 controlled substance using a communication facility pursuant to K.S.A.

1 2010 Supp. 21-36a07, prior to its repeal, or K.S.A. 2019 Supp. 21-5707,  
2 and amendments thereto; unlawful obtainment or sale of a prescription-  
3 only drug pursuant to K.S.A. 2010 Supp. 21-36a08, prior to its repeal, or  
4 K.S.A. 2019 Supp. 21-5708, and amendments thereto; unlawful  
5 distribution of drug precursors or drug paraphernalia pursuant to K.S.A.  
6 2010 Supp. 21-36a10, prior to its repeal, or K.S.A. 2019 Supp. 21-5710,  
7 and amendments thereto; unlawful distribution or possession of a  
8 simulated controlled substance pursuant to K.S.A. 2010 Supp. 21-36a13,  
9 prior to its repeal, or K.S.A. 2019 Supp. 21-5713, and amendments  
10 thereto; forgery pursuant to K.S.A. 21-3710, prior to its repeal, or K.S.A.  
11 2019 Supp. 21-5823, and amendments thereto; criminal use of a financial  
12 card pursuant to K.S.A. 21-3729, prior to its repeal, or K.S.A. 2019 Supp.  
13 21-5828, and amendments thereto; any violation of the Kansas medicaid  
14 fraud control act pursuant to K.S.A. 21-3844 et seq., prior to their repeal,  
15 or K.S.A. 2019 Supp. 21-5925 et seq., and amendments thereto; making a  
16 false claim, statement or representation to the medicaid program pursuant  
17 to K.S.A. 21-3846, prior to its repeal, or K.S.A. 2019 Supp. 21-5927, and  
18 amendments thereto; unlawful acts relating to the medicaid program  
19 pursuant to K.S.A. 21-3847, prior to its repeal, or K.S.A. 2019 Supp. 21-  
20 5928, and amendments thereto; obstruction of a medicaid fraud  
21 investigation pursuant to K.S.A. 21-3856, prior to its repeal, or K.S.A.  
22 2019 Supp. 21-5929, and amendments thereto; identity theft or identity  
23 fraud pursuant to K.S.A. 2010 Supp. 21-4018, prior to its repeal, or K.S.A.  
24 2019 Supp. 21-6107, and amendments thereto; or social welfare fraud  
25 pursuant to K.S.A. 39-720, and amendments thereto.

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

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

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

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

1 adult and juvenile convictions and *juvenile* adjudications and ~~adult and~~  
2 ~~juvenile~~ *such* convictions and adjudications of ~~any other~~ *another* state or  
3 ~~country~~ *other jurisdiction* concerning persons working in an adult care  
4 home to the secretary for aging and disability services. The Kansas bureau  
5 of investigation may charge to the Kansas department for aging and  
6 disability services a reasonable fee for providing criminal history record  
7 information under this subsection.

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

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

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

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

30 ~~(5)(4)~~ If an applicant disputes the contents of a criminal history  
31 record check, then the applicant may file an appeal with the Kansas bureau  
32 of investigation.

33 ~~(6)(5)~~ Individuals who have been disqualified for employment by  
34 reason of their criminal history records and who have met the requirements  
35 of this subsection may apply for a waiver with the department within 30  
36 days of the receipt of the notice of employment prohibition.

37 ~~(7)(6)~~ The department shall adopt rules and regulations specifying the  
38 criteria and procedure for issuing a waiver of the employment prohibition.  
39 The secretary shall consider the following criteria when rendering a  
40 decision on such a waiver request: Passage of time; extenuating  
41 circumstances; demonstration of rehabilitation; and relevancy of the  
42 criminal history record information to the position for which the applicant  
43 is applying. Any employment prohibition issued shall remain in effect

1 unless or until a waiver is granted.

2 (e) For the purpose of complying with this section, the operator of an  
3 adult care home shall request from the Kansas department for aging and  
4 disability services an eligibility determination regarding adult and juvenile  
5 convictions and *juvenile* adjudications. ~~For the purpose of complying with~~  
6 ~~this section,~~ The operator of an adult care home shall receive from any  
7 employment agency or independent contractor that provides employees to  
8 work in the adult care home written certification that such employees are  
9 not prohibited from working in the adult care home under this section. ~~For~~  
10 ~~the purpose of complying with this section,~~ a person who operates an adult  
11 care home may hire an applicant for provisional employment on a one-  
12 time basis of 60 calendar days pending the results from the Kansas  
13 department for aging and disability services of a request for information  
14 under this subsection. ~~A provisional employee may only be supervised by~~  
15 ~~an employee that has completed all training required by federal~~  
16 ~~regulations, rules and regulations of the department and the adult care~~  
17 ~~home's policies and procedures.~~ No adult care home, the operator or  
18 employees of an adult care home or an employment agency or an  
19 independent contractor shall be liable for civil damages resulting from any  
20 decision to employ, to refuse to employ or to discharge from employment  
21 any person based on such adult care home's compliance with the  
22 provisions of this section if such adult care home or employment agency  
23 acts in good faith to comply with this section.

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

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

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

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

40 (j) No person who is in the custody of the secretary of corrections and  
41 who provides services, under direct supervision in nonpatient areas, on the  
42 grounds or other areas designated by the superintendent of the Kansas  
43 soldiers' home or the Kansas veterans' home shall be subject to the

1 provisions of this section while providing such services.

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

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

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

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

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

30 Sec. 2. K.S.A. 2019 Supp. 39-2009 is hereby amended to read as  
31 follows: 39-2009. (a) As used in this section:

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

36 (2) "Completion of the sentence" means the last day of the entire term  
37 of incarceration imposed by a sentence, including any term that is  
38 deferred, suspended or subject to parole, probation, diversion, community  
39 corrections, *postrelease supervision*, *conditional release*, *aftercare*, fines,  
40 fees, restitution, or any other imposed sentencing requirements, *whichever*  
41 *is later*.

42 (3) "*Conviction*" means the entry of a plea or verdict of guilty or a  
43 conviction following a plea of *nolo contendere*, a diversion agreement



1 *entered into in lieu of further criminal proceedings or a juvenile*  
2 *adjudication.*

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

5 ~~(4)~~(5) "Direct access" means work that involves an actual or  
6 reasonable expectation of one-on-one interaction with a consumer or a  
7 consumer's property, personally identifiable information, medical records,  
8 treatment information or financial information.

9 ~~(5)~~(6) "Direct supervision" means that a supervisor is physically  
10 present within an immediate distance to a supervisee and is available to  
11 provide constant direction, feedback and assistance to a client and the  
12 supervisee.

13 ~~(6)~~(7) "Employment agency" means an organization or entity that has  
14 a contracted relationship with a center, hospital, facility or provider of  
15 services to provide staff with direct access to consumers.

16 ~~(7)~~(8) "Independent contractor" means an organization, entity, agency  
17 or individual that provides contracted workers or services to a center,  
18 facility, hospital or provider of services.

19 (b) (1) No licensee shall knowingly operate a center, facility, hospital  
20 or be a provider of services if any person who works in the center, facility,  
21 hospital or for a provider of services has adverse findings on any state or  
22 national registry, as defined in rules and regulations adopted by the  
23 secretary for aging and disability services, or has been convicted of ~~or has~~  
24 ~~been adjudicated a juvenile offender because of having committing an act~~  
25 ~~that if done by an adult would constitute the commission of capital murder,~~  
26 pursuant to K.S.A. 21-3439, prior to its repeal, or K.S.A. 2019 Supp. 21-  
27 5401, and amendments thereto, first degree murder, pursuant to K.S.A. 21-  
28 3401, prior to its repeal, or K.S.A. 2019 Supp. 21-5402, and amendments  
29 thereto, second degree murder, pursuant to K.S.A. 21-3402(a), prior to its  
30 repeal, or K.S.A. 2019 Supp. 21-5403(a), and amendments thereto,  
31 voluntary manslaughter, pursuant to K.S.A. 21-3403, prior to its repeal, or  
32 K.S.A. 2019 Supp. 21-5404, and amendments thereto, assisting suicide,  
33 pursuant to K.S.A. 21-3406, prior to its repeal, or K.S.A. 2019 Supp. 21-  
34 5407, and amendments thereto, mistreatment of a dependent adult or  
35 mistreatment of an elder person, pursuant to K.S.A. 21-3437, prior to its  
36 repeal, or K.S.A. 2019 Supp. 21-5417, and amendments thereto, human  
37 trafficking, pursuant to K.S.A. 21-3446, prior to its repeal, or K.S.A. 2019  
38 Supp. 21-5426(a), and amendments thereto, aggravated human trafficking,  
39 pursuant to K.S.A. 21-3447, prior to its repeal, or K.S.A. 2019 Supp. 21-  
40 5426(b), and amendments thereto, rape, pursuant to K.S.A. 21-3502, prior  
41 to its repeal, or K.S.A. 2019 Supp. 21-5503, and amendments thereto,  
42 indecent liberties with a child, pursuant to K.S.A. 21-3503, prior to its  
43 repeal, or K.S.A. 2019 Supp. 21-5506(a), and amendments thereto,

1 aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504,  
 2 prior to its repeal, or K.S.A. 2019 Supp. 21-5506(b), and amendments  
 3 thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506, prior to  
 4 its repeal, or K.S.A. 2019 Supp. 21-5504(b), and amendments thereto,  
 5 indecent solicitation of a child, pursuant to K.S.A. 21-3510, prior to its  
 6 repeal, or K.S.A. 2019 Supp. 21-5508(a), and amendments thereto,  
 7 aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511,  
 8 prior to its repeal, or K.S.A. 2019 Supp. 21-5508(b), and amendments  
 9 thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516, prior to  
 10 its repeal, or K.S.A. 2019 Supp. 21-5510, and amendments thereto, sexual  
 11 battery, pursuant to K.S.A. 21-3517, prior to its repeal, or K.S.A. 2019  
 12 Supp. 21-5505(a), and amendments thereto, aggravated sexual battery,  
 13 pursuant to K.S.A. 21-3518, prior to its repeal, or K.S.A. 2019 Supp. 21-  
 14 5505(b), and amendments thereto, commercial sexual exploitation of a  
 15 child, pursuant to K.S.A. 2019 Supp. 21-6422, and amendments thereto, an  
 16 attempt to commit any of the crimes listed in this paragraph, pursuant to  
 17 K.S.A. 21-3301, prior to its repeal, or K.S.A. 2019 Supp. 21-5301, and  
 18 amendments thereto, a conspiracy to commit any of the crimes listed in  
 19 this paragraph, pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A.  
 20 2019 Supp. 21-5302, and amendments thereto, or criminal solicitation of  
 21 any of the crimes listed in this paragraph, pursuant to K.S.A. 21-3303,  
 22 prior to its repeal, or K.S.A. 2019 Supp. 21-5303, and amendments  
 23 thereto, or ~~similar statutes of other states or the federal government~~ a  
 24 *violation under the laws of another state or other jurisdiction that is in*  
 25 *substantial conformity with the crimes specified in this subsection.*

26 (2)(A) A licensee operating a center, facility or hospital or as a  
 27 provider of services may employ an applicant who has been convicted of  
 28 any of the following, if six or more years have elapsed since completion of  
 29 the sentence imposed ~~or the applicant was discharged from probation, a~~  
 30 ~~community correctional services program, parole, postrelease supervision,~~  
 31 ~~conditional release or a suspended sentence; if six or more years have~~  
 32 ~~elapsed since a community correctional services program, parole,~~  
 33 ~~postrelease supervision, conditional release or a suspended sentence; or if~~  
 34 the applicant has been granted a waiver of such six-year disqualification: A  
 35 felony conviction for a crime that is described in: ~~(A)~~ (i) Article 34 of  
 36 chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article  
 37 54 of chapter 21 of the Kansas Statutes Annotated, and amendments  
 38 thereto, except those crimes listed in paragraph (1); ~~(B)~~ (ii) article 35 or 36  
 39 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto,  
 40 prior to their repeal, or article 55 or 56 of chapter 21 of the Kansas Statutes  
 41 Annotated or K.S.A. 2019 Supp. 21-6420, and amendments thereto, except  
 42 those crimes listed in paragraph (1); ~~(C)~~ (iii) K.S.A. 21-3701, prior to its  
 43 repeal, or K.S.A. 2019 Supp. 21-5801, and amendments thereto; ~~(D)~~ (iv)

1 an attempt to commit any of the crimes listed in this paragraph pursuant to  
2 K.S.A. 21-3301, prior to its repeal, or K.S.A. 2019 Supp. 21-5301, and  
3 amendments thereto; ~~(E)~~ (v) a conspiracy to commit any of the crimes  
4 listed in this paragraph pursuant to K.S.A. 21-3302, prior to its repeal, or  
5 K.S.A. 2019 Supp. 21-5302, and amendments thereto; ~~(F)~~ (vi) criminal  
6 solicitation of any of the crimes listed in this paragraph pursuant to K.S.A.  
7 21-3303, prior to its repeal, or K.S.A. 2019 Supp. 21-5303, and  
8 amendments thereto; or ~~(G) similar statutes of other states or the federal~~  
9 ~~government~~ (vii) *the laws of another state or other jurisdiction that is in*  
10 *substantial conformity with the crimes specified in this paragraph.*

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

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

28 (i) Interference with custody of a committed person pursuant to  
29 K.S.A. 21-3423, prior to its repeal, or K.S.A. 2019 Supp. 21-5410, and  
30 amendments thereto; mistreatment of a confined person pursuant to K.S.A.  
31 21-3425, prior to its repeal, or K.S.A. 2019 Supp. 21-5416, and  
32 amendments thereto; unlawful administration of a substance pursuant to  
33 K.S.A. 21-3445, prior to its repeal, or K.S.A. 2019 Supp. 21-5425, and  
34 amendments thereto; violation of a protective order pursuant to K.S.A. 21-  
35 3843, prior to its repeal, or K.S.A. 2019 Supp. 21-5924; promoting  
36 obscenity or promoting obscenity to minors pursuant to K.S.A. 21-4301 or  
37 21-4301a, prior to their repeal, or K.S.A. 2019 Supp. 21-6401, and  
38 amendments thereto; or cruelty to animals pursuant to K.S.A. 21-3727, 21-  
39 4310 or 21-4311, prior to their repeal, or K.S.A. 2019 Supp. 21-6412, and  
40 amendments thereto; or

41 (ii) any felony conviction of: Unlawful manufacture of a controlled  
42 substance pursuant to K.S.A. 2010 Supp. 21-36a03, prior to its repeal, or  
43 K.S.A. 2019 Supp. 21-5703, and amendments thereto; unlawful cultivation

1 or distribution of a controlled substance pursuant to K.S.A. 2010 Supp. 21-  
2 36a05, prior to its repeal, or K.S.A. 2019 Supp. 21-5705, and amendments  
3 thereto; unlawful manufacture, distribution, cultivation or possession of a  
4 controlled substance using a communication facility pursuant to K.S.A.  
5 2010 Supp. 21-36a07, prior to its repeal, or K.S.A. 2019 Supp. 21-5707,  
6 and amendments thereto; unlawful obtainment or sale of a prescription-  
7 only drug pursuant to K.S.A. 2010 Supp. 21-36a08, prior to its repeal, or  
8 K.S.A. 2019 Supp. 21-5708, and amendments thereto; unlawful  
9 distribution of drug precursors or drug paraphernalia pursuant to K.S.A.  
10 2010 Supp. 21-36a10, prior to its repeal, or K.S.A. 2019 Supp. 21-5710,  
11 and amendments thereto; unlawful distribution or possession of a  
12 simulated controlled substance pursuant to K.S.A. 2010 Supp. 21-36a13,  
13 prior to its repeal, or K.S.A. 2019 Supp. 21-5713, and amendments  
14 thereto; forgery pursuant to K.S.A. 21-3710, prior to its repeal, or K.S.A.  
15 2019 Supp. 21-5823, and amendments thereto; criminal use of a financial  
16 card pursuant to K.S.A. 21-3729, prior to its repeal, or K.S.A. 2019 Supp.  
17 21-5828, and amendments thereto; any violation of the Kansas medicaid  
18 fraud control act pursuant to K.S.A. 21-3844 et seq., prior to their repeal,  
19 or K.S.A. 2019 Supp. 21-5925 et seq., and amendments thereto; making a  
20 false claim, statement or representation to the medicaid program pursuant  
21 to K.S.A. 21-3846, prior to its repeal, or K.S.A. 2019 Supp. 21-5927, and  
22 amendments thereto; unlawful acts relating to the medicaid program  
23 pursuant to K.S.A. 21-3847, prior to its repeal, or K.S.A. 2019 Supp. 21-  
24 5928, and amendments thereto; obstruction of a medicaid fraud  
25 investigation pursuant to K.S.A. 21-3856, prior to its repeal, or K.S.A.  
26 2019 Supp. 21-5929, and amendments thereto; identity theft or identity  
27 fraud pursuant to K.S.A. 2010 Supp. 21-4018, prior to its repeal, or K.S.A.  
28 2019 Supp. 21-6107, and amendments thereto; or social welfare fraud  
29 pursuant to K.S.A. 39-720, and amendments thereto. The provisions of this  
30 paragraph shall not apply to any person who is employed by a center,  
31 facility, hospital or provider of services on or before July 1, 2018, and is  
32 continuously employed by the same center, facility, hospital or provider of  
33 services or to any person during or upon successful completion of a  
34 diversion agreement.

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

42 (c) No licensee shall operate a center, facility, hospital or be a  
43 provider of services if such person has been found to be an adult with an

1 impairment in need of a guardian or a conservator, or both, as provided in  
2 the act for obtaining a guardian or conservator, or both. The provisions of  
3 this subsection shall not apply to an individual who, as a minor, was found  
4 to be in need of a guardian or conservator for reasons other than  
5 impairment.

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

14 (2) The department shall require an applicant to be fingerprinted and  
15 to submit to a state and national criminal history record check. The  
16 fingerprints shall be used to identify the individual and to determine  
17 whether the individual has a record of criminal history in this state or other  
18 jurisdiction. The department is authorized to submit the fingerprints to the  
19 Kansas bureau of investigation and the federal bureau of investigation for  
20 a state and national criminal history record check. The department may use  
21 the information obtained from fingerprinting and the criminal history  
22 record check for purposes of verifying the identification of the person and  
23 for making an official determination of the qualifications and fitness of the  
24 person to work in the center, facility, hospital or for a provider of services.

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

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

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

36 ~~(5)~~(4) If an applicant disputes the contents of a criminal history  
37 record check, then the applicant may file an appeal with the Kansas bureau  
38 of investigation.

39 ~~(6)~~(5) Individuals who have been disqualified for employment by  
40 reason of their criminal history records and who have met the requirements  
41 of this subsection may apply for a waiver with the department within 30  
42 days of the receipt of the notice of employment prohibition.

43 ~~(7)~~(6) The department shall adopt rules and regulations specifying the

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

8 ~~(d)~~(e) The secretary shall provide each licensee requesting  
9 information under this section with a pass or fail determination after  
10 review of any criminal history record information in writing and within  
11 three working days of receipt of such information from the Kansas bureau  
12 of investigation or the federal bureau of investigation.

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

19 ~~(f)~~(g) For the purpose of complying with this section, the licensee  
20 operating a center, facility, hospital or a provider of services shall request  
21 from the Kansas department for aging and disability services an eligibility  
22 determination regarding adult ~~and juvenile~~ convictions and *juvenile*  
23 adjudications. ~~For the purpose of complying with this section,~~ The licensee  
24 operating a center, facility, hospital or a provider of services shall receive  
25 from any employment agency or independent contractor that provides  
26 employees to work in the center, facility, hospital or for the provider of  
27 services written certification that such employees are not prohibited from  
28 working in the center, facility, hospital or for the provider of services  
29 under this section. ~~For the purpose of complying with this section, a~~  
30 ~~licensee may hire an applicant for provisional employment on a one-time~~  
31 ~~basis of 60 calendar days pending the results from the Kansas department~~  
32 ~~for aging and disability services of an eligibility determination under this~~  
33 ~~subsection. A provisional employee may only be supervised by an~~  
34 ~~employee who has completed all training required by federal regulations,~~  
35 ~~department rules and regulations and the center's, facility's, hospital's or~~  
36 ~~provider of services' policies and procedures. No licensee, its contractors~~  
37 ~~or employees, shall be liable for civil damages to any person refused~~  
38 ~~employment or discharged from employment by reason of such licensee's~~  
39 ~~compliance with the provisions of this section if such licensee acts in good~~  
40 ~~faith to comply with this section.~~

41 ~~(g)~~(h) The licensee operating a center, facility, hospital or a provider  
42 of services shall not require an applicant under this section to be  
43 fingerprinted, if the applicant has been the subject of a criminal history

1 record check under this act within one year prior to the application for  
2 employment with the licensee operating a center, facility, hospital or a  
3 provider of services and has maintained a record of continuous  
4 employment, with no lapse of employment of over 90 days in any center,  
5 facility, hospital or a provider of services covered by this act.

6 Sec. 3. K.S.A. 65-5117 is hereby amended to read as follows: 65-  
7 5117. (a) As used in this section:

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

12 (2) "Completion of the sentence" means the last day of the entire term  
13 of incarceration imposed by a sentence, including any term that is  
14 deferred, suspended or subject to parole, probation, diversion, community  
15 corrections, *postrelease supervision*, *conditional release*, *aftercare*, fines,  
16 fees, restitution, or any other imposed sentencing requirements, *whichever*  
17 *is later*.

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

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

24 ~~(4)~~(5) "Direct access" means work that involves an actual or  
25 reasonable expectation of one-on-one interaction with a consumer or a  
26 consumer's property, personally identifiable information, medical records,  
27 treatment information or financial information.

28 ~~(5)~~(6) "Direct supervision" means that a supervisor is physically  
29 present within an immediate distance to a supervisee and is available to  
30 provide constant direction, feedback and assistance to a client and the  
31 supervisee.

32 ~~(6)~~(7) "Employment agency" means an organization or entity that has  
33 a contracted relationship with a home health agency to provide staff with  
34 direct access to consumers.

35 ~~(7)~~(8) "Independent contractor" means an organization, entity, agency  
36 or individual that provides contracted workers or services to a home health  
37 agency.

38 (b) (1) No person shall knowingly operate a home health agency if,  
39 for the home health agency, there works any person who has adverse  
40 findings on any state or national registry, as defined in rules and  
41 regulations adopted by the secretary for aging and disability services, or  
42 has been convicted of ~~or has been adjudicated a juvenile offender because~~  
43 ~~of having committed an act that if done by an adult would constitute the~~

1 ~~commission of~~ capital murder, pursuant to K.S.A. 21-3439, prior to its  
2 repeal, or K.S.A. 2019 Supp. 21-5401, and amendments thereto, first  
3 degree murder, pursuant to K.S.A. 21-3401, prior to its repeal, or K.S.A.  
4 2019 Supp. 21-5402, and amendments thereto, second degree murder,  
5 pursuant to K.S.A. 21-3402(a), prior to its repeal, or K.S.A. 2019 Supp.  
6 21-5403(a), and amendments thereto, voluntary manslaughter, pursuant to  
7 K.S.A. 21-3403, prior to its repeal, or K.S.A. 2019 Supp. 21-5404, and  
8 amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406, prior  
9 to its repeal, or K.S.A. 2019 Supp. 21-5407, and amendments thereto,  
10 mistreatment of a dependent adult or mistreatment of an elder person,  
11 pursuant to K.S.A. 21-3437, prior to its repeal, or K.S.A. 2019 Supp. 21-  
12 5417, and amendments thereto, human trafficking, pursuant to K.S.A. 21-  
13 3446, prior to its repeal, or K.S.A. 2019 Supp. 21-5426(a), and  
14 amendments thereto, aggravated human trafficking, pursuant to K.S.A. 21-  
15 3447, prior to its repeal, or K.S.A. 2019 Supp. 21-5426(b), and  
16 amendments thereto, rape, pursuant to K.S.A. 21-3502, prior to its repeal,  
17 or K.S.A. 2019 Supp. 21-5503, and amendments thereto, indecent liberties  
18 with a child, pursuant to K.S.A. 21-3503, prior to its repeal, or K.S.A.  
19 2019 Supp. 21-5506(a), and amendments thereto, aggravated indecent  
20 liberties with a child, pursuant to K.S.A. 21-3504, prior to its repeal, or  
21 K.S.A. 2019 Supp. 21-5506(b), and amendments thereto, aggravated  
22 criminal sodomy, pursuant to K.S.A. 21-3506, prior to its repeal, or K.S.A.  
23 2019 Supp. 21-5504(b), and amendments thereto, indecent solicitation of  
24 a child, pursuant to K.S.A. 21-3510, prior to its repeal, or K.S.A. 2019 Supp.  
25 21-5508(a), and amendments thereto, aggravated indecent solicitation of a  
26 child, pursuant to K.S.A. 21-3511, prior to its repeal, or K.S.A. 2019 Supp.  
27 21-5508(b), and amendments thereto, sexual exploitation of a child,  
28 pursuant to K.S.A. 21-3516, prior to its repeal, or K.S.A. 2019 Supp. 21-  
29 5510, and amendments thereto, sexual battery, pursuant to K.S.A. 21-  
30 3517, prior to its repeal, or K.S.A. 2019 Supp. 21-5505(a), and  
31 amendments thereto, aggravated sexual battery, pursuant to K.S.A. 21-  
32 3518, prior to its repeal, or K.S.A. 2019 Supp. 21-5505(b), and  
33 amendments thereto, commercial sexual exploitation of a child, pursuant  
34 to K.S.A. 2019 Supp. 21-6422, and amendments thereto, an attempt to  
35 commit any of the crimes listed in this paragraph, pursuant to K.S.A. 21-  
36 3301, prior to its repeal, or K.S.A. 2019 Supp. 21-5301, and amendments  
37 thereto, a conspiracy to commit any of the crimes listed in this paragraph,  
38 pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2019 Supp. 21-  
39 5302, and amendments thereto, or criminal solicitation of any of the  
40 crimes listed in this paragraph, pursuant to K.S.A. 21-3303, prior to its  
41 repeal, or K.S.A. 2019 Supp. 21-5303, and amendments thereto, or ~~similar~~  
42 ~~statutes of other states or the federal government~~ *a violation under the*  
43 *laws of another state or other jurisdiction that is in substantial conformity*



1 *with the crimes specified in this subsection.* The provisions of subsection  
2 (b)(2)(C)(A)(iii) shall not apply to any person who is employed by a home  
3 health agency on or before July 1, 2010, and while continuously employed  
4 by the same home health agency or to any person during or upon  
5 successful completion of a diversion agreement.

6 (2)(A) A person operating a home health agency may employ an  
7 applicant who has been convicted of any of the following, if six or more  
8 years have elapsed since completion of the sentence imposed ~~or the~~  
9 ~~applicant was discharged from probation, a community correctional~~  
10 ~~services program, parole, postrelease supervision, conditional release or a~~  
11 ~~suspended sentence; if six or more years have elapsed since the applicant~~  
12 ~~has been finally discharged from the custody of the commissioner of~~  
13 ~~juvenile justice or from probation or has been adjudicated a juvenile~~  
14 ~~offender, whichever time is longer; or if the applicant has been granted a~~  
15 ~~waiver of such six-year disqualification: A felony conviction for a crime~~  
16 ~~that is described in: (A) (i) Article 34 of chapter 21 of the Kansas Statutes~~  
17 ~~Annotated, prior to their repeal, or article 54 of chapter 21 of the Kansas~~  
18 ~~Statutes Annotated, and amendments thereto, except those crimes listed in~~  
19 ~~subsection (b)(1); (B) (ii) article 35 or 36 of chapter 21 of the Kansas~~  
20 ~~Statutes Annotated, prior to their repeal, or article 55 or 56 of chapter 21 of~~  
21 ~~the Kansas Statutes Annotated, or K.S.A. 2019 Supp. 21-6420, and~~  
22 ~~amendments thereto, except those crimes listed in subsection (b)(1) and~~  
23 ~~K.S.A. 21-3605, prior to its repeal, or K.S.A. 2019 Supp. 21-5606, and~~  
24 ~~amendments thereto; (C) (iii) K.S.A. 21-3701, prior to its repeal, or K.S.A.~~  
25 ~~2019 Supp. 21-5801, and amendments thereto; (D) (iv) an attempt to~~  
26 ~~commit any of the crimes listed in this paragraph pursuant to K.S.A. 21-~~  
27 ~~3301, prior to its repeal, or K.S.A. 2019 Supp. 21-5301, and amendments~~  
28 ~~thereto; (E) (v) a conspiracy to commit any of the crimes listed in this~~  
29 ~~paragraph pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2019~~  
30 ~~Supp. 21-5302, and amendments thereto; (F) (vi) criminal solicitation of~~  
31 ~~any of the crimes listed in this paragraph pursuant to K.S.A. 21-3303, prior~~  
32 ~~to its repeal, or K.S.A. 2019 Supp. 21-5303, and amendments thereto; or~~  
33 ~~(G) similar statutes of other states or the federal government (vii) the laws~~  
34 ~~of another state or other jurisdiction that is in substantial conformity with~~  
35 ~~the crimes specified in this paragraph.~~

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

43 (3)(A) A person operating a home health agency may employ an

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

10 (i) Interference with custody of a committed person pursuant to  
11 K.S.A. 21-3423, prior to its repeal, or K.S.A. 2019 Supp. 21-5410, and  
12 amendments thereto; mistreatment of a confined person pursuant to K.S.A.  
13 21-3425, prior to its repeal, or K.S.A. 2019 Supp. 21-5416, and  
14 amendments thereto; unlawful administration of a substance pursuant to  
15 K.S.A. 21-3445, prior to its repeal, or K.S.A. 2019 Supp. 21-5425, and  
16 amendments thereto; violation of a protective order pursuant to K.S.A. 21-  
17 3843, prior to its repeal, or K.S.A. 2019 Supp. 21-5924; promoting  
18 obscenity or promoting obscenity to minors pursuant to K.S.A. 21-4301 or  
19 21-4301a, prior to their repeal, or K.S.A. 2019 Supp. 21-6401, and  
20 amendments thereto; or cruelty to animals pursuant to K.S.A. 21-3727, 21-  
21 4310 or 21-4311, prior to their repeal, or K.S.A. 2019 Supp. 21-6412, and  
22 amendments thereto; or

23 (ii) any felony conviction of: Unlawful manufacture of a controlled  
24 substance pursuant to K.S.A. 2010 Supp. 21-36a03, prior to its repeal, or  
25 K.S.A. 2019 Supp. 21-5703, and amendments thereto; unlawful cultivation  
26 or distribution of a controlled substance pursuant to K.S.A. 2010 Supp. 21-  
27 36a05, prior to its repeal, or K.S.A. 2019 Supp. 21-5705, and amendments  
28 thereto; unlawful manufacture, distribution, cultivation or possession of a  
29 controlled substance using a communication facility pursuant to K.S.A.  
30 2010 Supp. 21-36a07, prior to its repeal, or K.S.A. 2019 Supp. 21-5707,  
31 and amendments thereto; unlawful obtainment or sale of a prescription-  
32 only drug pursuant to K.S.A. 2010 Supp. 21-36a08, prior to its repeal, or  
33 K.S.A. 2019 Supp. 21-5708, and amendments thereto; unlawful  
34 distribution of drug precursors or drug paraphernalia pursuant to K.S.A.  
35 2010 Supp. 21-36a10, prior to its repeal, or K.S.A. 2019 Supp. 21-5710,  
36 and amendments thereto; unlawful distribution or possession of a  
37 simulated controlled substance pursuant to K.S.A. 2010 Supp. 21-36a13,  
38 prior to its repeal, or K.S.A. 2019 Supp. 21-5713, and amendments  
39 thereto; forgery pursuant to K.S.A. 21-3710, prior to its repeal, or K.S.A.  
40 2019 Supp. 21-5823, and amendments thereto; criminal use of a financial  
41 card pursuant to K.S.A. 21-3729, prior to its repeal, or K.S.A. 2019 Supp.  
42 21-5828, and amendments thereto; any violation of the Kansas medicaid  
43 fraud control act pursuant to K.S.A. 21-3844 et seq., prior to their repeal,

1 or K.S.A. 2019 Supp. 21-5925 et seq., and amendments thereto; making a  
2 false claim, statement or representation to the medicaid program pursuant  
3 to K.S.A. 21-3846, prior to its repeal, or K.S.A. 2019 Supp. 21-5927, and  
4 amendments thereto; unlawful acts relating to the medicaid program  
5 pursuant to K.S.A. 21-3847, prior to its repeal, or K.S.A. 2019 Supp. 21-  
6 5928, and amendments thereto; obstruction of a medicaid fraud  
7 investigation pursuant to K.S.A. 21-3856, prior to its repeal, or K.S.A.  
8 2019 Supp. 21-5929, and amendments thereto; identity theft or identity  
9 fraud pursuant to K.S.A. 21-4018, prior to its repeal, or K.S.A. 2019 Supp.  
10 21-6107, and amendments thereto; or social welfare fraud pursuant to  
11 K.S.A. 39-720, and amendments thereto. The provisions of this paragraph  
12 shall not apply to any person who is employed by a home health agency on  
13 or before July 1, 2018, and is continuously employed by the same home  
14 health agency or to any person during or upon successful completion of a  
15 diversion agreement.

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

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

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

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

1 the information obtained from fingerprinting and the criminal history  
2 record check for purposes of verifying the identification of the person and  
3 for making an official determination of the qualifications and fitness of the  
4 person to work in the home health agency.

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

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

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

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

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

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

31 (e) For the purpose of complying with this section, the operator of a  
32 home health agency shall request from the Kansas department for aging  
33 and disability services an eligibility determination regarding adult ~~and~~  
34 ~~juvenile~~ convictions and *juvenile* adjudications. ~~For the purpose of~~  
35 ~~complying with this section, a person who operates a home health agency~~  
36 ~~may hire an applicant for provisional employment on a one-time basis of~~  
37 ~~60 calendar days pending the results from the Kansas department for aging~~  
38 ~~and disability services of a request for information under this subsection. A~~  
39 ~~provisional employee may only be supervised by an employee who has~~  
40 ~~completed all training required by federal regulations, rules and~~  
41 ~~regulations of the department and the home health agency's policies and~~  
42 ~~procedures. No home health agency, the operator or employees of a home~~  
43 ~~health agency or an employment agency or an independent contractor shall~~

1 be liable for civil damages resulting from any decision to employ, to refuse  
2 to employ or to discharge from employment any person based on such  
3 home health agency's compliance with the provisions of this section if  
4 such home health agency or employment agency acts in good faith to  
5 comply with this section.

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

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

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

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

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

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

30 (2) All moneys collected and remitted to the department for fees  
31 charged for criminal history record checks conducted pursuant to this  
32 section shall be remitted to the state treasurer in accordance with K.S.A.  
33 65-5113, and amendments thereto. Upon receipt of each such remittance,  
34 the state treasurer shall deposit the entire amount into the state treasury to  
35 the credit of the state licensure fee fund created by K.S.A. 39-930, and  
36 amendments thereto.

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

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

4 Sec. 4. K.S.A. 65-5117 and K.S.A. 2019 Supp. 39-970 and 39-2009  
5 are hereby repealed.

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