

SESSION OF 2018

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2427**

As Recommended by House Committee on
Federal and State Affairs

Brief*

Sub. for HB 2427 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.

Conviction of Crimes Subject to a Complete Prohibition

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

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

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.

Waiver by the Secretary of Six-year Prohibition

The bill would 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.

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 also 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.

Fingerprinting Fees

The bill would 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

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

Waiver

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 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.

Background

The bill 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 of 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 the bill, 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 the substitute bill was not immediately available.