

SENATE BILL No. 282

By Committee on Ways and Means

4-3

AN ACT concerning adult care homes; transferring certain licensure and other powers, duties and functions from the department of health and environment to the department on aging; amending K.S.A. 39-924, 39-925, 39-926, 39-930, 39-938, 39-940, 39-944, 39-945, 39-946, 39-947, 39-948, 39-950, 39-951, 39-952, 39-953a, 39-954, 39-958, 39-961, 39-963, 39-965, 39-969, 39-1404, 39-1405, 39-1406, 39-1409 and 39-1411 and K.S.A. 2002 Supp. 32-906, 39-923, 39-936 and 39-1402 and repealing the existing sections.

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

Section 1. K.S.A. 2002 Supp. 32-906 is hereby amended to read as follows: 32-906. (a) Except as otherwise provided by law or rules and regulations of the secretary, a valid Kansas fishing license is required to fish or to take any bullfrog in this state.

(b) The provisions of subsection (a) do not apply to fishing by:

(1) A person, or a member of a person's immediate family domiciled with such person, on land owned by such person or on land leased or rented by such person for agricultural purposes;

(2) a resident of this state who is less than 16 years of age or who is 65 or more years of age;

(3) a nonresident who is less than 16 years of age;

(4) a person fishing in a private water fishing impoundment unless waived pursuant to K.S.A. 32-975 and amendments thereto;

(5) a resident of an adult care home, as defined by K.S.A. 39-923 and amendments thereto, licensed by the secretary of ~~health and environment~~ *aging*;

(6) an inmate in an honor camp operated by the secretary of corrections, pursuant to an agreement between the secretary of corrections and the secretary of wildlife and parks;

(7) a person on dates designated pursuant to subsection (f);

(8) a person fishing under a valid institutional group fishing license issued pursuant to subsection (g); or

(9) a participant in a fishing clinic sponsored or cosponsored by the department, during the period of time that the fishing clinic is being conducted.

1 (c) The fee for a fishing license shall be the amount prescribed pur-
2 suant to K.S.A. 32-988 and amendments thereto.

3 (d) Unless otherwise provided by law or rules and regulations of the
4 secretary, a fishing license is valid throughout the state.

5 (e) Unless otherwise provided by law or rules and regulations of the
6 secretary, a fishing license is valid from the date of issuance and expires
7 on December 31 following its issuance, except that the secretary may
8 issue a:

9 (1) Permanent license pursuant to K.S.A. 32-929 and amendments
10 thereto;

11 (2) lifetime license pursuant to K.S.A. 32-930 and amendments
12 thereto;

13 (3) nonresident fishing license valid for a period of five days; and

14 (4) resident or nonresident fishing license valid for a period of 24
15 hours.

16 (f) The secretary may designate by resolution two days each calendar
17 year during which persons may fish by legal means without having a valid
18 fishing license.

19 (g) The secretary shall issue an annual institutional group fishing li-
20 cense to each facility operating under the jurisdiction of or licensed by
21 the secretary of social and rehabilitation services and to any veterans ad-
22 ministration medical center in the state of Kansas upon application by
23 such facility or center to the secretary of wildlife and parks for such
24 license.

25 All applications for facilities under the jurisdiction of the secretary of
26 social and rehabilitation services shall be made with the approval of the
27 secretary of social and rehabilitation services and shall provide such in-
28 formation as the secretary of wildlife and parks requires. All applications
29 for any veterans administration medical center shall be made with the
30 approval of the director of such facility and shall provide such information
31 as the secretary of wildlife and parks requires. Persons who have been
32 admitted to and are currently residing at the facility or center, not to
33 exceed 20 at any one time, may fish under an institutional group fishing
34 license within the state while on a group trip, group outing or other group
35 activity which is supervised by the facility or center. Persons fishing under
36 an institutional group fishing license shall not be required to obtain a
37 fishing license but shall be subject to all other laws and to all rules and
38 regulations relating to fishing.

39 The staff personnel of the facility or center supervising the group trip,
40 group outing or other group activity shall have in their possession the
41 institutional license when engaged in supervising any activity requiring
42 the license. Such staff personnel may assist group members in all aspects
43 of their fishing activity.

1 (h) The secretary may issue a special nonprofit group fishing license
2 to any community, civic or charitable organization which is organized as
3 a not-for-profit corporation, for use by such community, civic or chari-
4 table organization for the sole purpose of conducting group fishing activ-
5 ities for handicapped or developmentally disabled individuals. All appli-
6 cations for a special nonprofit group fishing license shall be made to the
7 secretary or the secretary's designee and shall provide such information
8 as required by the secretary.

9 Handicapped or developmentally disabled individuals, not to exceed
10 20 at any one time, may fish under a special nonprofit group fishing
11 license while on a group trip, outing or activity which is supervised by the
12 community, civic or charitable organization. Individuals fishing under a
13 special nonprofit group fishing license shall not be required to obtain a
14 fishing license but shall be subject to all other laws and rules and regu-
15 lations relating to fishing.

16 The staff personnel of the community, civic or charitable organization
17 supervising the group trip, outing or activity shall have in their possession
18 the special nonprofit group fishing license when engaged in supervising
19 any activity requiring the special nonprofit group fishing license. Such
20 staff personnel may assist group members in all aspects of their fishing
21 activity.

22 Sec. 2. K.S.A. 2002 Supp. 39-923 is hereby amended to read as fol-
23 lows: 39-923. (a) As used in this act:

24 (1) "Adult care home" means any nursing facility, nursing facility for
25 mental health, intermediate care facility for the mentally retarded, as-
26 sisted living facility, residential health care facility, home plus, boarding
27 care home and adult day care facility, all of which classifications of adult
28 care homes are required to be licensed by the secretary of ~~health and~~
29 ~~environment~~ *aging*.

30 (2) "Nursing facility" means any place or facility operating 24 hours
31 a day, seven days a week, caring for six or more individuals not related
32 within the third degree of relationship to the administrator or owner by
33 blood or marriage and who, due to functional impairments, need skilled
34 nursing care to compensate for activities of daily living limitations.

35 (3) "Nursing facility for mental health" means any place or facility
36 operating 24 hours a day, seven days a week caring for six or more indi-
37 viduals not related within the third degree of relationship to the admin-
38 istrator or owner by blood or marriage and who, due to functional im-
39 pairments, need skilled nursing care and special mental health services
40 to compensate for activities of daily living limitations.

41 (4) "Intermediate care facility for the mentally retarded" means any
42 place or facility operating 24 hours a day, seven days a week caring for
43 six or more individuals not related within the third degree of relationship

1 to the administrator or owner by blood or marriage and who, due to
2 functional impairments caused by mental retardation or related condi-
3 tions need services to compensate for activities of daily living limitations.

4 (5) "Assisted living facility" means any place or facility caring for six
5 or more individuals not related within the third degree of relationship to
6 the administrator, operator or owner by blood or marriage and who, by
7 choice or due to functional impairments, may need personal care and
8 may need supervised nursing care to compensate for activities of daily
9 living limitations and in which the place or facility includes apartments
10 for residents and provides or coordinates a range of services including
11 personal care or supervised nursing care available 24 hours a day, seven
12 days a week for the support of resident independence. The provision of
13 skilled nursing procedures to a resident in an assisted living facility is not
14 prohibited by this act. Generally, the skilled services provided in an as-
15 sisted living facility shall be provided on an intermittent or limited term
16 basis, or if limited in scope, a regular basis.

17 (6) "Residential health care facility" means any place or facility, or a
18 contiguous portion of a place or facility, caring for six or more individuals
19 not related within the third degree or relationship to the administrator,
20 operator or owner by blood or marriage and who, by choice or due to
21 functional impairments, may need personal care and may need supervised
22 nursing care to compensate for activities of daily living limitations and in
23 which the place or facility includes individual living units and provides or
24 coordinates personal care or supervised nursing care available on a 24-
25 hour, seven-day-a-week basis for the support of resident independence.
26 The provision of skilled nursing procedures to a resident in a residential
27 health care facility is not prohibited by this act. Generally, the skilled
28 services provided in a residential health care facility shall be provided on
29 an intermittent or limited term basis, or if limited in scope, a regular
30 basis.

31 (7) "Home plus" means any residence or facility caring for not more
32 than eight individuals not related within the third degree of relationship
33 to the operator or owner by blood or marriage unless the resident in need
34 of care is approved for placement by the secretary of the department of
35 social and rehabilitation services, and who, due to functional impairment,
36 needs personal care and may need supervised nursing care to compensate
37 for activities of daily living limitations. The level of care provided residents
38 shall be determined by preparation of the staff and rules and regulations
39 developed by the department of health and environment *on aging*. An
40 adult care home may convert a portion of one wing of the facility to a not
41 less than five-bed and not more than eight-bed home plus facility pro-
42 vided that the home plus facility remains separate from the adult care
43 home, and each facility must remain contiguous.

1 (8) "Boarding care home" means any place or facility operating 24
2 hours a day, seven days a week, caring for not more than 10 individuals
3 not related within the third degree of relationship to the operator or
4 owner by blood or marriage and who, due to functional impairment, need
5 supervision of activities of daily living but who are ambulatory and essen-
6 tially capable of managing their own care and affairs.

7 (9) "Adult day care" means any place or facility operating less than
8 24 hours a day caring for individuals not related within the third degree
9 of relationship to the operator or owner by blood or marriage and who,
10 due to functional impairment need supervision of or assistance with ac-
11 tivities of daily living.

12 (10) "Place or facility" means a building or any one or more complete
13 floors of a building, or any one or more complete wings of a building, or
14 any one or more complete wings and one or more complete floors of a
15 building, and the term "place or facility" may include multiple buildings.

16 (11) "Skilled nursing care" means services performed by or under the
17 immediate supervision of a registered professional nurse and additional
18 licensed nursing personnel. Skilled nursing includes administration of
19 medications and treatments as prescribed by a licensed physician or den-
20 tist; and other nursing functions which require substantial nursing judg-
21 ment and skill based on the knowledge and application of scientific
22 principles.

23 (12) "Supervised nursing care" means services provided by or under
24 the guidance of a licensed nurse with initial direction for nursing proce-
25 dures and periodic inspection of the actual act of accomplishing the pro-
26 cedures; administration of medications and treatments as prescribed by
27 a licensed physician or dentist and assistance of residents with the per-
28 formance of activities of daily living.

29 (13) "Resident" means all individuals kept, cared for, treated,
30 boarded or otherwise accommodated in any adult care home.

31 (14) "Person" means any individual, firm, partnership, corporation,
32 company, association or joint-stock association, and the legal successor
33 thereof.

34 (15) "Operate an adult care home" means to own, lease, establish,
35 maintain, conduct the affairs of or manage an adult care home, except
36 that for the purposes of this definition the word "own" and the word
37 "lease" shall not include hospital districts, cities and counties which hold
38 title to an adult care home purchased or constructed through the sale of
39 bonds.

40 (16) "Licensing agency" means the secretary of ~~health and environ-~~
41 ~~ment~~ *aging*.

42 (17) "Skilled nursing home" means a nursing facility.

43 (18) "Intermediate nursing care home" means a nursing facility.

1 (19) “Apartment” means a private unit which includes, but is not
2 limited to, a toilet room with bathing facilities, a kitchen, sleeping, living
3 and storage area and a lockable door.

4 (20) “Individual living unit” means a private unit which includes, but
5 is not limited to, a toilet room with bathing facilities, sleeping, living and
6 storage area and a lockable door.

7 (21) “Operator” means an individual who operates an assisted living
8 facility or residential health care facility with fewer than 61 residents, a
9 home plus or adult day care facility and has completed a course approved
10 by the secretary of health and environment on principles of assisted living
11 and has successfully passed an examination approved by the ~~licensing~~
12 ~~agency~~ *secretary of health and environment* on principles of assisted living
13 and such other requirements as may be established by the ~~licensing~~
14 ~~agency~~ *secretary of health and environment* by rules and regulations.

15 (22) “Activities of daily living” means those personal, functional ac-
16 tivities required by an individual for continued well-being, including but
17 not limited to eating, nutrition, dressing, personal hygiene, mobility,
18 toileting.

19 (23) “Personal care” means care provided by staff to assist an indi-
20 vidual with, or to perform activities of daily living.

21 (24) “Functional impairment” means an individual has experienced
22 a decline in physical, mental and psychosocial well-being and as a result,
23 is unable to compensate for the effects of the decline.

24 (25) “Kitchen” means a food preparation area that includes a sink,
25 refrigerator and a microwave oven or stove.

26 (26) The term “intermediate personal care home” for purposes of
27 those individuals applying for or receiving veterans’ benefits means resi-
28 dential health care facility.

29 (b) The term “adult care home” shall not include institutions oper-
30 ated by federal or state governments, except institutions operated by the
31 Kansas commission on veterans affairs, hospitals or institutions for the
32 treatment and care of psychiatric patients, child care facilities, maternity
33 centers, hotels, offices of physicians or hospices which are certified to
34 participate in the medicare program under 42 code of federal regulations,
35 chapter IV, section 418.1 *et seq.* and amendments thereto and which
36 provide services only to hospice patients.

37 ~~(c) Facilities licensed under K.S.A. 39-1501 et seq. and amendments~~
38 ~~thereto or K.S.A. 75-3307b and amendments thereto or under this section~~
39 ~~as an intermediate personal care home or with license applications on file~~
40 ~~with the licensing agency as intermediate personal care homes on or be-~~
41 ~~fore January 1, 1995, shall have the option of becoming licensed as either~~
42 ~~an assisted living facility or a residential health care facility without being~~
43 ~~required to add kitchens or private baths.~~

1 ~~(d)~~ (c) Nursing facilities in existence on the effective date of this act
2 changing licensure categories to become residential health care facilities
3 shall be required to provide private bathing facilities in a minimum of
4 20% of the individual living units.

5 ~~(e)~~ (d) Facilities licensed under the adult care home licensure act on
6 the day immediately preceding the effective date of this act shall continue
7 to be licensed facilities until the annual renewal date of such license and
8 may renew such license in the appropriate licensure category under the
9 adult care home licensure act subject to the payment of fees and other
10 conditions and limitations of such act.

11 ~~(f)~~ (e) Nursing facilities with less than 60 beds converting a portion
12 of the facility to residential health care shall have the option of licensing
13 for residential health care for less than six individuals but not less than
14 10% of the total bed count within a contiguous portion of the facility.

15 ~~(g)~~ (f) The licensing agency may by rule and regulation change the
16 name of the different classes of homes when necessary to avoid confusion
17 in terminology and the agency may further amend, substitute, change and
18 in a manner consistent with the definitions established in this section,
19 further define and identify the specific acts and services which shall fall
20 within the respective categories of facilities so long as the above categories
21 for adult care homes are used as guidelines to define and identify the
22 specific acts.

23 Sec. 3. K.S.A. 39-924 is hereby amended to read as follows: 39-924.
24 The purpose of this act is the development, establishment, and enforce-
25 ment of standards (1) for the care, treatment, health, safety, welfare and
26 comfort of individuals in adult care homes licensed by the secretary of
27 ~~health and environment~~ aging and (2) for the construction, general hy-
28 giene, maintenance and operation of said adult care homes, which, in the
29 light of advancing knowledge, will promote safe and adequate accom-
30 modation, care and treatment of such individuals in adult care homes.

31 Sec. 4. K.S.A. 39-925 is hereby amended to read as follows: 39-925.
32 (a) The administration of ~~this the adult care home licensure act shall be~~
33 ~~under the secretary of health and environment~~ is hereby transferred from
34 the secretary of health and environment to the secretary of aging, except
35 as otherwise provided by this act. On the effective date of this act, the
36 administration of the adult care home licensure act shall be under au-
37 thority of the secretary of aging as the licensing agency in conjunction
38 with the state fire marshal, and shall have the assistance of the county,
39 city-county or multicounty health departments, local fire and safety au-
40 thorities and other agencies of government in this state.

41 (b) *The secretary of aging shall be a continuation of the secretary of*
42 *health and environment as to the programs transferred and shall be the*
43 *successor in every way to the powers, duties and functions of the secretary*

1 of health and environment for such programs, except as otherwise pro-
2 vided by this act. On and after the effective date of this act, for each of
3 the programs transferred, every act performed in the exercise of such
4 powers, duties and functions by or under the authority of the secretary
5 of aging shall be deemed to have the same force and effect as if performed
6 by the secretary of health and environment in whom such powers were
7 vested prior to the effective date of this act.

8 (c) (1) No suit, action or other proceeding, judicial or administrative,
9 which pertains to any of the transferred adult care home survey, certifi-
10 cation and licensing programs, and reporting of abuse, neglect or exploi-
11 tation of adult care home residents, which is lawfully commenced, or could
12 have been commenced, by or against the secretary of health and environ-
13 ment in such secretary's official capacity or in relation to the discharge
14 of such secretary's official duties, shall abate by reason of the transfer of
15 such programs. The secretary of aging shall be named or substituted as
16 the defendant in place of the secretary of health and environment in any
17 suit, action or other proceeding involving claims arising from facts or
18 events first occurring either on or before the effective date of this act or
19 thereafter.

20 (2) No suit, action or other proceeding, judicial or administrative,
21 pertaining to the adult care home survey, certification and licensing pro-
22 grams or to the reporting of abuse, neglect or exploitation of adult care
23 home residents which otherwise would have been dismissed or concluded
24 shall continue to exist by reason of any transfer under this act.

25 (3) No criminal action commenced or which could have been com-
26 menced by the state shall abate by the taking effect of this act.

27 (4) Any final appeal decision of the department of health and envi-
28 ronment entered pursuant to K.S.A. 39-923 *et seq.*, and amendments
29 thereto, K.S.A. 39-1401 *et seq.*, and amendments thereto, or the act for
30 judicial review and civil enforcement of agency actions, K.S.A. 77-601 *et*
31 *seq.*, and amendments thereto, currently pertaining to adult care home
32 certification, survey and licensing or reporting of abuse, neglect or ex-
33 ploitation of adult care home residents, transferred pursuant to this act
34 shall be binding upon and applicable to the secretary of aging and the
35 department on aging.

36 (5) All orders and directives under the adult care home licensure act
37 by the secretary of health and environment in existence immediately prior
38 to the effective date of the transfer of powers, duties and functions by
39 this act, shall continue in force and effect and shall be deemed to be duly
40 issued orders, and directives of the secretary of aging, until reissued,
41 amended or nullified pursuant to law.

42 (d) (1) All rules and regulations of the department of health and en-
43 vironment adopted pursuant to K.S.A. 39-923 *et seq.*, and amendments

1 thereto, and in effect on the effective date of this act, which promote the
2 safe, proper and adequate treatment and care of individuals in adult care
3 homes, except those specified in subsection (d)(2) of this section, shall
4 continue to be effective and shall be deemed to be rules and regulations
5 of the secretary of aging, until revised, amended, revoked or nullified by
6 the secretary of aging, or otherwise, pursuant to law.

7 (2) The following rules and regulations of the department of health
8 and environment adopted pursuant to K.S.A. 39-923 *et seq.*, and amend-
9 ments thereto, and in effect on the effective date of this act, shall remain
10 the rules and regulations of the secretary of health and environment:
11 K.A.R. 28-39-164 through 28-39-174.

12 (e) All contracts shall be made in the name of “secretary of aging”
13 and in that name the secretary of aging may sue and be sued on such
14 contracts. The grant of authority under this subsection shall not be con-
15 strued to be a waiver of any rights retained by the state under the 11th
16 amendment to the United States constitution and shall be subject to and
17 shall not supersede the provisions of any appropriation act of this state.

18 Sec. 5. K.S.A. 39-926 is hereby amended to read as follows: 39-926.
19 It shall be unlawful for any person or persons acting jointly or severally
20 to operate an adult care home within this state except upon license first
21 had and obtained for that purpose from the secretary of ~~health and en-
22 vironment~~ *aging* as the licensing agency upon application made therefor
23 as provided in this act, and compliance with the requirements, standards,
24 rules and regulations, promulgated under its provisions.

25 Sec. 6. K.S.A. 39-930 is hereby amended to read as follows: 39-930.
26 The fee for license to operate an adult care home shall be a base amount
27 plus an additional amount for each bed of such home which shall be paid
28 to the secretary of ~~health and environment~~ *aging* before the license is
29 issued. The fee shall be fixed by rules and regulations of the secretary of
30 ~~health and environment~~ *aging*. The fee shall be deposited in the state
31 treasury and credited to the state general fund unless the evaluation and
32 inspection was made by a county, city-county or multicounty health de-
33 partment at the direction of the secretary of health and environment and
34 the papers required are completed and filed with the secretary, then 40%
35 of the fee collected shall be forwarded to such county, city-county or
36 multicounty health department. If a facility has a change of administrator
37 after the commencement of the licensing period, the fee shall be \$15 and
38 shall be deposited in the state treasury and credited to the state general
39 fund.

40 Sec. 7. K.S.A. 2002 Supp. 39-936 is hereby amended to read as fol-
41 lows: 39-936. (a) The presence of each resident in an adult care home
42 shall be covered by a statement provided at the time of admission, or
43 prior thereto, setting forth the general responsibilities and services and

1 daily or monthly charges for such responsibilities and services. Each res-
2 ident shall be provided with a copy of such statement, with a copy going
3 to any individual responsible for payment of such services and the adult
4 care home shall keep a copy of such statement in the resident's file. No
5 such statement shall be construed to relieve any adult care home of any
6 requirement or obligation imposed upon it by law or by any requirement,
7 standard or rule and regulation adopted pursuant thereto.

8 (b) A qualified person or persons shall be in attendance at all times
9 upon residents receiving accommodation, board, care, training or treat-
10 ment in adult care homes. The licensing agency may establish necessary
11 standards and rules and regulations prescribing the number, qualifica-
12 tions, training, standards of conduct and integrity for such qualified per-
13 son or persons attendant upon the residents.

14 (c) (1) The licensing agency shall require unlicensed employees of
15 an adult care home, except an adult care home licensed for the provision
16 of services to the mentally retarded which has been granted an exception
17 by the ~~licensing agency~~ *secretary of health and environment* upon a find-
18 ing by the licensing agency that an appropriate training program for un-
19 licensed employees is in place for such adult care home, employed on
20 and after the effective date of this act who provide direct, individual care
21 to residents and who do not administer medications to residents and who
22 have not completed a course of education and training relating to resident
23 care and treatment approved by the ~~licensing agency~~ *secretary of health*
24 *and environment* or are not participating in such a course on the effective
25 date of this act to complete successfully 40 hours of training in basic
26 resident care skills. Any unlicensed person who has not completed 40
27 hours of training relating to resident care and treatment approved by the
28 ~~licensing agency~~ *secretary of health and environment* shall not provide
29 direct, individual care to residents. The 40 hours of training shall be su-
30 pervised by a registered professional nurse and the content and admin-
31 istration thereof shall comply with rules and regulations adopted by the
32 ~~licensing agency~~ *secretary of health and environment*. The 40 hours of
33 training may be prepared and administered by an adult care home or by
34 any other qualified person and may be conducted on the premises of the
35 adult care home. The 40 hours of training required in this section shall
36 be a part of any course of education and training required by the ~~licensing~~
37 ~~agency~~ *secretary of health and environment* under subsection (c)(2).

38 (2) The licensing agency may require unlicensed employees of an
39 adult care home, except an adult care home licensed for the provision of
40 services to the mentally retarded which has been granted an exception
41 by the ~~licensing agency~~ *secretary of health and environment* upon a find-
42 ing by the licensing agency that an appropriate training program for un-
43 licensed employees is in place for such adult care home, who provide

1 direct, individual care to residents and who do not administer medications
2 to residents after 90 days of employment to successfully complete an
3 approved course of instruction and an examination relating to resident
4 care and treatment as a condition to continued employment by an adult
5 care home. A course of instruction may be prepared and administered by
6 any adult care home or by any other qualified person. A course of instruc-
7 tion prepared and administered by an adult care home may be conducted
8 on the premises of the adult care home which prepared and which will
9 administer the course of instruction. The licensing agency shall not re-
10 quire unlicensed employees of an adult care home who provide direct,
11 individual care to residents and who do not administer medications to
12 residents to enroll in any particular approved course of instruction as a
13 condition to the taking of an examination, but the ~~licensing agency~~ *sec-*
14 *retary of health and environment* shall prepare guidelines for the prep-
15 aration and administration of courses of instruction and shall approve or
16 disapprove courses of instruction. Unlicensed employees of adult care
17 homes who provide direct, individual care to residents and who do not
18 administer medications to residents may enroll in any approved course of
19 instruction and upon completion of the approved course of instruction
20 shall be eligible to take an examination. The examination shall be pre-
21 scribed by the ~~licensing agency~~ *secretary of health and environment*, shall
22 be reasonably related to the duties performed by unlicensed employees
23 of adult care homes who provide direct, individual care to residents and
24 who do not administer medications to residents and shall be the same
25 examination given by the ~~licensing agency~~ *secretary of health and envi-*
26 *ronment* to all unlicensed employees of adult care homes who provide
27 direct, individual care to residents and who do not administer
28 medications.

29 (3) The ~~licensing agency~~ *secretary of health and environment* shall
30 fix, charge and collect a fee to cover all or any part of the costs of the
31 licensing agency under this subsection (c). The fee shall be fixed by rules
32 and regulations of the ~~licensing agency~~ *secretary of health and environ-*
33 *ment*. The fee shall be remitted to the state treasurer in accordance with
34 the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt
35 of each such remittance, the state treasurer shall deposit the entire
36 amount in the state treasury to the credit of the state general fund.

37 (4) The ~~licensing agency~~ *secretary of health and environment* shall
38 establish a state registry containing information about unlicensed em-
39 ployees of adult care homes who provide direct, individual care to resi-
40 dents and who do not administer medications in compliance with the
41 requirements pursuant to PL 100-203, Subtitle C, as amended November
42 5, 1990.

43 (5) No adult care home shall use an individual as an unlicensed em-

1 ployee of the adult care home who provides direct, individual care to
2 residents and who does not administer medications unless the facility has
3 inquired of the state registry as to information contained in the registry
4 concerning the individual.

5 (6) Beginning July 1, 1993, the adult care home must require any
6 unlicensed employee of the adult care home who provides direct, indi-
7 vidual care to residents and who does not administer medications and
8 who since passing the examination required under paragraph (2) of this
9 subsection has had a continuous period of 24 consecutive months during
10 none of which the unlicensed employee provided direct, individual care
11 to residents to complete an approved refresher course. The ~~licensing~~
12 ~~agency~~ *secretary of health and environment* shall prepare guidelines for
13 the preparation and administration of refresher courses and shall approve
14 or disapprove courses.

15 (d) Any person who has been employed as an unlicensed employee
16 of an adult care home in another state may be so employed in this state
17 without an examination if the secretary of health and environment deter-
18 mines that such other state requires training or examination, or both, for
19 such employees at least equal to that required by this state.

20 (e) All medical care and treatment shall be given under the direction
21 of a physician authorized to practice under the laws of this state and shall
22 be provided promptly as needed.

23 (f) No adult care home shall require as a condition of admission to
24 or as a condition to continued residence in the adult care home that a
25 person change from a supplier of medication needs of their choice to a
26 supplier of medication selected by the adult care home. Nothing in this
27 subsection (f) shall be construed to abrogate or affect any agreements
28 entered into prior to the effective date of this act between the adult care
29 home and any person seeking admission to or resident of the adult care
30 home.

31 (g) Except in emergencies as defined by rules and regulations of the
32 licensing agency and except as otherwise authorized under federal law,
33 no resident may be transferred from or discharged from an adult care
34 home involuntarily unless the resident or legal guardian of the resident
35 has been notified in writing at least 30 days in advance of a transfer or
36 discharge of the resident.

37 (h) No resident who relies in good faith upon spiritual means or
38 prayer for healing shall, if such resident objects thereto, be required to
39 undergo medical care or treatment.

40 Sec. 8. K.S.A. 39-938 is hereby amended to read as follows: 39-938.
41 Adult care homes shall comply with all the lawfully established require-
42 ments and rules and regulations of the secretary of ~~health and environ-~~
43 ~~ment~~ *aging* and the state fire marshal, and any other agency of govern-

1 ment so far as pertinent and applicable to adult care homes, their
2 buildings, operators, staffs, facilities, maintenance, operation, conduct,
3 and the care and treatment of residents. The administrative rules and
4 regulations of the state board of cosmetology and of the Kansas board of
5 barbering shall not apply to adult care homes.

6 Sec. 9. K.S.A. 39-940 is hereby amended to read as follows: 39-940.

7 (a) The secretary of ~~health and environment~~ *aging* may prescribe and
8 supply necessary forms for applications, reports, records and inspections
9 for adult care homes. All prescribed records shall be open to inspection
10 by the designated agents of the agencies administering this act.

11 (b) It shall be unlawful to:

12 (1) Make false entries in such records;

13 (2) omit any information required or make any false report concern-
14 ing any adult care home; or

15 (3) file or cause to be filed such false or incomplete records or reports
16 with the department of ~~health and environment~~ *on aging* or with any
17 agency administering this act, knowing that such records or reports are
18 false or incomplete.

19 Sec. 10. K.S.A. 39-944 is hereby amended to read as follows: 39-944.

20 Notwithstanding the existence or pursuit of any other remedy, the sec-
21 retary of ~~health and environment~~ *aging*, as the licensing agency, in the
22 manner provided by the act for judicial review and civil enforcement of
23 agency actions, may maintain an action in the name of the state of Kansas
24 for injunction or other process against any person or agency to restrain
25 or prevent the operation of an adult care home without a license under
26 this act.

27 Sec. 11. K.S.A. 39-945 is hereby amended to read as follows: 39-945.

28 A correction order may be issued by the secretary of ~~health and environ-~~
29 ~~ment~~ *aging* or the secretary's designee to a person licensed to operate an
30 adult care home whenever the state fire marshal or the marshal's repre-
31 sentative or a duly authorized representative of the secretary of ~~health~~
32 ~~and environment~~ *aging* inspects or investigates an adult care home and
33 determines that the adult care home is not in compliance with the pro-
34 visions of article 9 of chapter 39 of the Kansas Statutes Annotated or rules
35 and regulations promulgated thereunder which individually or jointly af-
36 fects significantly and adversely the health, safety, nutrition or sanitation
37 of the adult care home residents. The correction order shall be served
38 upon the licensee either personally or by certified mail, return receipt
39 requested. The correction order shall be in writing, shall state the specific
40 deficiency, cite the specific statutory provision or rule and regulation al-
41 leged to have been violated, and shall specify the time allowed for
42 correction.

43 Sec. 12. K.S.A. 39-946 is hereby amended to read as follows: 39-946.

1 (a) If upon reinspection by the state fire marshal or the marshal's rep-
2 representative or a duly authorized representative of the secretary of ~~health~~
3 ~~and environment~~ *aging*, which reinspection shall be conducted within 14
4 days from the day the correction order is served upon the licensee, it is
5 found that the licensee of the adult care home which was issued a cor-
6 rection order has not corrected the deficiency or deficiencies specified in
7 the order, the secretary of ~~health and environment~~ *aging* may assess a
8 civil penalty in an amount not to exceed \$500 per day per deficiency
9 against the licensee of an adult care home for each day subsequent to the
10 day following the time allowed for correction of the deficiency as specified
11 in the correction order that the adult care home has not corrected the
12 deficiency or deficiencies listed in the correction order, but the maximum
13 assessment shall not exceed \$2,500. ~~Prior to the assessment of a civil~~
14 ~~penalty, the case shall be reviewed by a person licensed to practice med-~~
15 ~~icine and surgery.~~ A written notice of assessment shall be served upon
16 the licensee of an adult care home either personally or by certified mail,
17 return receipt requested.

18 (b) Before the assessment of a civil penalty, the secretary of *aging*
19 shall consider the following factors in determining the amount of the civil
20 penalty to be assessed: (1) The severity of the violation; (2) the good faith
21 effort exercised by the adult care home to correct the violation; and (3)
22 the history of compliance of the ownership of the adult care home with
23 the rules and regulations. If the secretary of ~~health and environment~~ *aging*
24 finds that some or all deficiencies cited in the correction order have also
25 been cited against the adult care home as a result of any inspection or
26 investigation which occurred within 18 months prior to the inspection or
27 investigation which resulted in such correction order, the secretary of
28 ~~health and environment~~ *aging* may double the civil penalty assessed
29 against the licensee of the adult care home, the maximum not to exceed
30 \$5,000.

31 (c) All civil penalties assessed shall be due and payable within 10 days
32 after written notice of assessment is served on the licensee, unless a longer
33 period of time is granted by the secretary. If a civil penalty is not paid
34 within the applicable time period, the secretary of ~~health and environ-~~
35 ~~ment~~ *aging* may file a certified copy of the notice of assessment with the
36 clerk of the district court in the county where the adult care home is
37 located. The notice of assessment shall be enforced in the same manner
38 as a judgment of the district court.

39 Sec. 13. K.S.A. 39-947 is hereby amended to read as follows: 39-947.
40 Any licensee against whom a civil penalty has been assessed under K.S.A.
41 39-946, and amendments thereto, may appeal such assessment within 10
42 days after receiving a written notice of assessment by filing with the sec-
43 retary of ~~health and environment~~ *aging* written notice of appeal specifying

1 why such civil penalty should not be assessed. Such appeal shall not op-
2 erate to stay the payment of the civil penalty. Upon receipt of the notice
3 of appeal, the secretary of ~~health and environment~~ *aging* shall conduct a
4 hearing in accordance with the provisions of the Kansas administrative
5 procedure act. If the secretary *of aging* sustains the appeal, any civil pen-
6 alties collected shall be refunded forthwith to the appellant licensee with
7 interest at the rate established by K.S.A. 16-204, and amendments
8 thereto, from the date of payment of the civil penalties to the secretary
9 *of aging*. If the secretary *of aging* denies the appeal and no appeal from
10 the secretary is taken to the district court in accordance with the provi-
11 sions of the act for judicial review and civil enforcement of agency actions,
12 the secretary *of aging* shall dispose of any civil penalties collected as pro-
13 vided in K.S.A. 39-949, and amendments thereto.

14 Sec. 14. K.S.A. 39-948 is hereby amended to read as follows: 39-948.

15 (a) A licensee may appeal to the district court from a decision of the
16 secretary *of aging* under K.S.A. 39-947, and amendments thereto. The
17 appeal shall be tried in accordance with the provisions of the act for
18 judicial review and civil enforcement of agency actions.

19 (b) An appeal to the district court or to an appellate court shall not
20 stay the payment of the civil penalty. If the court sustains the appeal, the
21 secretary of ~~health and environment~~ *aging* shall refund forthwith the pay-
22 ment of any civil penalties to the licensee with interest at the rate estab-
23 lished by K.S.A. 16-204, and amendments thereto, from the date of pay-
24 ment of the civil penalties to the secretary. If the court denies the appeal,
25 the secretary of ~~health and environment~~ *aging* shall dispose of any civil
26 penalties collected as provided in K.S.A. 39-949, and amendments
27 thereto.

28 Sec. 15. K.S.A. 39-950 is hereby amended to read as follows: 39-950.

29 The secretary of ~~health and environment~~ *aging* may adopt rules and reg-
30 ulations necessary to carry out the provisions of this act.

31 Sec. 16. K.S.A. 39-951 is hereby amended to read as follows: 39-951.

32 The authority granted to the secretary of ~~health and environment~~ *aging*
33 under this act is in addition to other statutory authority the secretary *of*
34 *aging* has to require the licensing and operation of adult care homes and
35 is not to be construed to limit any of the powers and duties of the secretary
36 *of aging* under article 9 of chapter 39 of the Kansas Statutes Annotated.

37 Sec. 17. K.S.A. 39-952 is hereby amended to read as follows: 39-952.

38 The secretary of ~~health and environment~~ *aging* or the secretary's designee
39 shall not issue a correction order to a person licensed to operate an adult
40 care home because of a violation of a provision of article 9 of chapter 39
41 of the Kansas Statutes Annotated or a rule and regulation adopted there-
42 under which was caused by any person licensed by the state board of
43 healing arts to practice a branch of the healing arts if such person licensed

1 by the state board of healing arts is not an owner, operator or employee
2 of the adult care home and if the person licensed to operate the adult
3 care home shows that such person has exercised reasonable diligence in
4 notifying the person licensed by the state board of healing arts to practice
5 a branch of the healing arts of such person's duty to the residents of the
6 adult care home.

7 Sec. 18. K.S.A. 39-953a is hereby amended to read as follows: 39-
8 953a. (a) At any time the secretary of ~~health and environment~~ *aging* ini-
9 tiates any action concerning an adult care home in which it is alleged that
10 there has been a substantial failure to comply with the requirements,
11 standards or rules and regulations established under the adult care home
12 licensure act, that conditions exist in the adult care home which are life
13 threatening or endangering to the residents of the adult care home, that
14 the adult care home is insolvent, or that the adult care home has defi-
15 ciencies which significantly and adversely affect the health, safety, nutri-
16 tion or sanitation of the adult care home residents, the secretary of *aging*
17 may issue an order, pursuant to the emergency proceedings provided for
18 under the Kansas administrative procedure act, prohibiting any new ad-
19 missions into the adult care home until further determination by the se-
20 cretary of *aging*. This remedy granted to the secretary of *aging* is in ad-
21 dition to any other statutory authority the secretary of *aging* has relating
22 to the licensure and operation of adult care homes and is not be construed
23 to limit any of the powers and duties of the secretary of *aging* under the
24 adult care home licensure act.

25 (b) This section shall be part of and supplemental to the adult care
26 home licensure act.

27 Sec. 19. K.S.A. 39-954 is hereby amended to read as follows: 39-954.
28 (a) The secretary of ~~health and environment~~ *aging*, the owner of an adult
29 care home, or the person licensed to operate an adult care home may file
30 an application with the district court for an order appointing the secretary
31 of ~~health and environment~~ *aging* or the designee of the secretary as re-
32 ceiver to operate an adult care home whenever: (1) Conditions exist in
33 the adult care home that are life threatening or endangering to the resi-
34 dents of the adult care home; (2) the adult care home is insolvent; or (3)
35 the secretary of ~~health and environment~~ *aging* has issued an order revok-
36 ing the license of the adult care home.

37 (b) The secretary of ~~health and environment~~ *aging* may adopt rules
38 and regulations setting forth the necessary qualifications of persons to be
39 designated receivers and a method for selecting designees.

40 Sec. 20. K.S.A. 39-958 is hereby amended to read as follows: 39-958.
41 (a) The application for receivership shall be given priority by the district
42 court and shall be heard no later than the seventh (~~7th~~) day following the
43 filing of the application. A continuance of no more than ~~ten (10)~~ 10 days

1 may be granted by the district court for good cause. The district court
2 shall give all parties who have filed an answer the opportunity to present
3 evidence pertaining to the application. If the district court finds that the
4 facts warrant the granting of the application, the court shall appoint the
5 secretary of ~~health and environment~~ *aging* or the designee of the secretary
6 as receiver to operate the home.

7 (b) Upon the appointment of a receiver under this section, the re-
8 ceiver shall be granted a license by the licensing agency to operate an
9 adult care home as provided under the provisions of article 9 of chapter
10 39 of the Kansas Statutes Annotated, and acts amending the provisions
11 thereof or acts supplemental thereto. The provisions of article 9 of chapter
12 39 of the Kansas Statutes Annotated, and acts amending the provisions
13 thereof and acts supplemental thereto, relating to inspection prior to
14 granting a license to operate an adult care home and relating to payment
15 of license fees shall not apply to a license granted to a receiver under this
16 section, and such license shall remain in effect during the existence of
17 the receivership and shall expire on the termination of the receivership.
18 The receiver shall make application for the license on forms provided for
19 this purpose by the licensing agency.

20 Sec. 21. K.S.A. 39-961 is hereby amended to read as follows: 39-961.

21 (a) The personnel and facilities of the department of ~~health and environ-~~
22 ~~ment~~ *on aging* shall be available to the receiver for the purposes of carry-
23 ing out the receiver's duties as receiver as authorized by the secretary
24 of ~~health and environment~~ *aging*.

25 (b) The department of ~~health and environment~~ *on aging* shall itemize
26 and keep a ledger showing costs of personnel and other expenses estab-
27 lishing the receivership and assisting the receiver and such amount shall
28 be owed by the owner or licensee to the department of ~~health and en-~~
29 ~~vironment~~ *on aging*. Such department shall submit a bill for such expenses
30 to the receiver for inclusion in the receiver's final accounting. Any amount
31 so billed and until repaid shall constitute a lien against all non-exempt
32 personal and real property of the owner or licensee.

33 Sec. 22. K.S.A. 39-963 is hereby amended to read as follows: 39-963.

34 (a) The court shall terminate the receivership only under any of the fol-
35 lowing circumstances:

36 (1) Twenty-four months after the date on which the receivership was
37 ordered;

38 (2) a new license, other than the license granted to the receiver under
39 K.S.A. 39-958 and amendments thereto, has been granted to operate the
40 adult care home; or

41 (3) at such time as all of the residents in the adult care home have
42 been provided alternative modes of health care, either in another adult
43 care home or otherwise.

1 (b) (1) At the time of termination of the receivership, the receiver
2 shall render a full and complete accounting to the district court and shall
3 make disposition of surplus money at the direction of the district court.

4 (2) The court may make such additional orders as are appropriate to
5 recover the expenses and costs to the department of ~~health and environ-~~
6 ~~ment on aging~~ and the secretary of social and rehabilitation services in-
7 curred pursuant to K.S.A. 39-960 or 39-961 and amendments thereto.

8 Sec. 23. K.S.A. 39-965 is hereby amended to read as follows: 39-965.

9 (a) If the secretary of ~~health and environment~~ *aging* determines that an
10 adult care home is in violation of or has violated any requirements, stan-
11 dards or rules and regulations established under the adult care home
12 licensure act which violation can reasonably be determined to have re-
13 sulted in, caused or posed serious physical harm to a resident, the sec-
14 retary of *aging* in accordance with proceedings under the Kansas admin-
15 istrative procedure act, may assess a civil penalty against the licensee of
16 such adult care home in an amount of not to exceed \$1,000 per day per
17 violation for each day the secretary finds that the adult care home was
18 not in compliance with such requirements, standards or rules and regu-
19 lations but the maximum assessment shall not exceed \$10,000.

20 (b) All civil penalties assessed shall be due and payable in accordance
21 with subsection (c) of K.S.A. 39-946 and K.S.A. 39-947 and amendments
22 thereto.

23 (c) The secretary of ~~health and environment~~ *aging* may adopt rules
24 and regulations which shall include due process procedures for the issu-
25 ance of civil penalties relating to nursing facilities.

26 (d) The authority to assess civil penalties granted to the secretary of
27 ~~health and environment~~ *aging* under this section is in addition to any
28 other statutory authority of the secretary relating to the licensure and
29 operation of adult care homes and is not to be construed to limit any of
30 the powers and duties of the secretary of *aging* under the adult care home
31 licensure act.

32 (e) This section shall be part of and supplemental to the adult care
33 home licensure act.

34 Sec. 24. K.S.A. 39-969 is hereby amended to read as follows: 39-969.

35 (a) The ~~licensing agency~~ *secretary of health and environment* shall upon
36 request receive from the Kansas bureau of investigation, without charge,
37 such criminal history record information relating to criminal convictions
38 as necessary for the purpose of determining initial and continuing qual-
39 ifications of an operator.

40 (b) This section shall be part of and supplemental to the adult care
41 home licensure act.

42 New Sec. 25. (a) On July 1, 2003, certain powers, duties and func-
43 tions of the secretary of health and environment under K.S.A.39-1401

1 through 39-1411, and amendments thereto, are hereby transferred from
2 the secretary of health and environment to the secretary of aging, as
3 provided by this act.

4 (b) No suit, action or other proceeding, judicial or administrative,
5 which pertains to any of the transferred reporting of abuse, neglect or
6 exploitation of adult care home residents, which is lawfully commenced,
7 or could have been commenced, by or against the secretary of health and
8 environment in such secretary's official capacity or in relation to the dis-
9 charge of such secretary's official duties, shall abate by reason of the
10 transfer of such program. The secretary of aging shall be named or sub-
11 stituted as the defendant in place of the secretary of health and environ-
12 ment in any suit, action or other proceeding involving claims arising from
13 facts or events first occurring either on or before the date the pertinent
14 program is transferred or on any date thereafter.

15 (c) No suit, action or other proceeding, judicial or administrative,
16 pertaining to the reporting of abuse, neglect or exploitation of adult care
17 home residents which otherwise would have been dismissed or concluded
18 shall continue to exist by reason of any transfer under this act.

19 (d) Any final appeal decision of the department of health and envi-
20 ronment entered pursuant to K.S.A. 39-1401 *et seq.*, and amendments
21 thereto, or the act for judicial review and civil enforcement of agency
22 actions, K.S.A. 77-601 *et seq.*, and amendments thereto, currently per-
23 taining to reporting of abuse, neglect or exploitation of adult care home
24 residents, transferred pursuant to this act shall be binding upon and ap-
25 plicable to the secretary of aging and the department on aging.

26 Sec. 26. K.S.A. 2002 Supp. 39-1402 is hereby amended to read as
27 follows: 39-1402. (a) Any person who is licensed to practice any branch
28 of the healing arts, a licensed psychologist, a licensed master level psy-
29 chologist, a licensed clinical psychotherapist, a chief administrative officer
30 of a medical care facility, an adult care home administrator or operator,
31 a licensed social worker, a licensed professional nurse, a licensed practical
32 nurse, a licensed marriage and family therapist, a licensed clinical mar-
33 riage and family therapist, licensed professional counselor, licensed clinical
34 professional counselor, registered alcohol and drug abuse counselor,
35 a teacher, a bank trust officer, a guardian or a conservator who has reason-
36 able cause to believe that a resident is being or has been abused,
37 neglected or exploited, or is in a condition which is the result of such
38 abuse, neglect or exploitation or is in need of protective services, shall
39 report immediately such information or cause a report of such informa-
40 tion to be made in any reasonable manner to the department of ~~health~~
41 ~~and environment~~ *aging* with respect to residents defined under (a)(1) ~~and~~
42 ~~(a)(2)~~ of K.S.A. 39-1401 and amendments thereto and to the *department*
43 *of health and environment with respect to residents defined under (a)(2)*

1 of K.S.A. 39-1401, and amendments thereto, and to the department of
2 social and rehabilitation services with respect to all other residents. Re-
3 ports made to one department which are required by this subsection to
4 be made to the other department shall be referred by the department to
5 which the report is made to the appropriate department for that report,
6 and any such report shall constitute compliance with this subsection. Re-
7 ports shall be made during the normal working week days and hours of
8 operation of such departments. Reports shall be made to law enforcement
9 agencies during the time the departments are not open for business. Law
10 enforcement agencies shall submit the report and appropriate informa-
11 tion to the appropriate department on the first working day that such
12 department is open for business. A report made pursuant to K.S.A. 65-
13 4923 or 65-4924 and amendments thereto shall be deemed a report under
14 this section.

15 (b) The report made pursuant to subsection (a) shall contain the
16 name and address of the person making the report and of the caretaker
17 caring for the resident, the name and address of the involved resident,
18 information regarding the nature and extent of the abuse, neglect or ex-
19 ploitation, the name of the next of kin of the resident, if known, and any
20 other information which the person making the report believes might be
21 helpful in an investigation of the case and the protection of the resident.

22 (c) Any other person having reasonable cause to suspect or believe
23 that a resident is being or has been abused, neglected or exploited, or is
24 in a condition which is the result of such abuse, neglect or exploitation
25 or is in need of protective services may report such information to the
26 department of ~~health and environment~~ *aging* with respect to residents
27 defined under (a)(1) ~~and (a)(2)~~ of K.S.A. 39-1401 and amendments
28 thereto, *to the department of health and environment with respect to*
29 *residents defined under (a)(2) of K.S.A. 39-1401, and amendments*
30 *thereto*, and to the department of social and rehabilitation services with
31 respect to all other residents. Reports made to one department which are
32 to be made to the other department under this section shall be referred
33 by the department to which the report is made to the appropriate de-
34 partment for that report.

35 (d) Notice of the requirements of this act and the department to
36 which a report is to be made under this act shall be posted in a conspic-
37 uous place in every adult care home and medical care facility in this state.

38 (e) Any person required to report information or cause a report of
39 information to be made under subsection (a) who knowingly fails to make
40 such report or cause such report to be made shall be guilty of a class B
41 misdemeanor.

42 Sec. 27. K.S.A. 39-1404 is hereby amended to read as follows: 39-
43 1404. (a) The department of health and environment or the department

1 of social and rehabilitation services upon receiving a report that a resident
2 is being, or has been, abused, neglected or exploited, or is in a condition
3 which is the result of such abuse, neglect or exploitation or is in need of
4 protective services shall:

5 (1) When a criminal act has occurred or has appeared to have oc-
6 curred, immediately notify the appropriate law enforcement agency;

7 (2) make a personal visit with the involved resident:

8 (A) Within 24 hours when the information from the reporter indi-
9 cates imminent danger to the health or welfare of the involved resident;

10 (B) within three working days for all reports of suspected abuse, when
11 the information from the reporter indicates no imminent danger; or

12 (C) within five working days for all reports of neglect or exploitation
13 when the information from the reporter indicates no imminent danger.

14 (3) Complete, within 30 working days of receiving a report, a thor-
15 ough investigation and evaluation to determine the situation relative to
16 the condition of the involved resident and what action and services, if
17 any, are required. The investigation shall include, but not be limited to,
18 consultation with those individuals having knowledge of the facts of the
19 particular case; and

20 (4) prepare, upon a completion of the evaluation of each case, a writ-
21 ten assessment which shall include an analysis of whether there is or has
22 been abuse, neglect or exploitation; recommended action; a determina-
23 tion of whether protective services are needed; and any follow up.

24 (b) The department which investigates the report shall inform the
25 complainant, upon request of the complainant, that an investigation has
26 been made and, if the allegations of abuse, neglect or exploitation have
27 been substantiated, that corrective measures will be taken if required.

28 (c) The department of ~~health and environment~~ *on aging* may inform
29 the chief administrative officer of a facility as defined by K.S.A. 39-923
30 and amendments thereto of confirmed findings of resident abuse, neglect
31 or exploitation.

32 Sec. 28. K.S.A. 39-1405 is hereby amended to read as follows: 39-
33 1405. (a) The secretary of ~~health and environment~~ *aging* shall forward to
34 the secretary of social and rehabilitation services any finding ~~that a resi-~~
35 ~~dent may be in need of protective services with respect to residents de-~~
36 ~~defined under (a)(1) of K.S.A. 39-1401, and amendments thereto, who may~~
37 ~~be in need of protective services. The secretary of health and environment~~
38 ~~shall forward to the secretary of social and rehabilitation services any~~
39 ~~finding with respect to residents defined under (a)(2) of K.S.A. 39-1401,~~
40 ~~and amendments thereto, who may be in need of protective services. If~~
41 the secretary of social and rehabilitation services determines that a resi-
42 dent is in need of protective services, the secretary of social and rehabil-
43 itation services shall provide the necessary protective services, if a resident

1 consents. If a resident fails to consent and the secretary of social and
2 rehabilitation services has reason to believe that such a resident lacks
3 capacity to consent, the secretary of social and rehabilitation services shall
4 determine pursuant to K.S.A. 39-1408 and amendments thereto whether
5 a petition for appointment of a guardian or conservator, or both, should
6 be filed.

7 (b) If the caretaker of a resident who has consented to the receipt of
8 reasonable and necessary protective services refuses to allow the provision
9 of such services to such resident, the secretary of social and rehabilitation
10 services may seek to obtain an injunction enjoining the caretaker from
11 interfering with the provision of protective services to the resident. The
12 petition in such action shall allege specific facts sufficient to show that
13 the resident is in need of protective services and consents to their pro-
14 vision and that the caretaker refuses to allow the provision of such serv-
15 ices. If the judge finds that the resident is in need of protective services
16 and has been prevented by the caretaker from receiving such services,
17 the judge shall issue an order enjoining the caretaker from interfering
18 with the provision of protective services to the resident.

19 Sec. 29. K.S.A. 39-1406 is hereby amended to read as follows: 39-
20 1406. Any person, department or agency authorized to carry out the du-
21 ties enumerated in this act and the long-term care ombudsman shall have
22 access to all relevant records. The authority of the secretary of social and
23 rehabilitation services ~~and~~ the secretary of health and environment *and*
24 *the secretary of aging* under this act shall include, but not be limited to,
25 the right to initiate or otherwise take those actions necessary to assure
26 the health, safety and welfare of any resident, subject to any specific
27 requirement for individual consent of the resident.

28 Sec. 30. K.S.A. 39-1409 is hereby amended to read as follows: 39-
29 1409. In performing the duties set forth in this act, the secretary of social
30 and rehabilitation services ~~or~~, the secretary of health and environment *or*
31 *the secretary of aging* may request the assistance of the staffs and re-
32 sources of all appropriate state departments, agencies and commissions
33 and local health departments and may utilize any other public or private
34 agency, group or individual who is appropriate and who may be available
35 to assist such department in the investigation and determination of
36 whether a resident is being, or has been, abused, neglected or exploited
37 or is in a condition which is a result of such abuse, neglect or exploitation,
38 except that any internal investigation conducted by any caretaker under
39 investigation shall be limited to the least serious category of report as
40 specified by the secretary of health and environment, *the secretary of*
41 *aging* or the secretary of social and rehabilitation services, as applicable.

42 Sec. 31. K.S.A. 39-1411 is hereby amended to read as follows: 39-
43 1411. (a) The secretary of ~~health and environment~~ *aging* shall maintain a

1 register of the reports received and investigated by the department of
2 ~~health and environment~~ on aging under K.S.A. 39-1402 and 39-1403, and
3 amendments to such sections, and the findings, evaluations and actions
4 recommended by the department on aging with respect to such reports.
5 *The secretary of health and environment shall maintain a register of the*
6 *reports received and investigated by the department of health and envi-*
7 *ronment under K.S.A. 39-1402 and 39-1403, and amendments thereto,*
8 *and the findings, evaluations and actions recommended by the depart-*
9 *ment of health and environment with respect to such reports.* The find-
10 ings, evaluations and actions shall be subject to the Kansas administrative
11 procedure act and any requirements of state or federal law relating
12 thereto except that the secretary shall not be required to conduct a hear-
13 ing in cases forwarded to the appropriate state authority under subsection
14 (b). The register shall be available for inspection by personnel of the
15 department of health and environment *or the department on aging* as
16 specified by the secretary of health and environment *or the secretary of*
17 *aging* and to such other persons as may be required by federal law and
18 designated by the secretary of health and environment *or the secretary*
19 *of aging* by rules and regulations. Information from the register shall be
20 provided as specified in K.S.A. ~~2002-Supp.~~ 65-6205 and amendments
21 thereto. ~~The secretary of health and environment shall forward a copy of~~
22 ~~any report of abuse, neglect or exploitation of a resident of an adult care~~
23 ~~home to the secretary of aging.~~

24 (b) The secretary of ~~health and environment~~ *aging* shall forward any
25 finding of abuse, neglect or exploitation alleged to be committed by a
26 provider of services licensed, registered or otherwise authorized to pro-
27 vide services in this state to the appropriate state authority which regu-
28 lates such provider. *The secretary of health and environment shall for-*
29 *ward any finding of abuse, neglect or exploitation alleged to be committed*
30 *by a provider of services licensed, registered or otherwise authorized to*
31 *provide services in this state to the appropriate state authority which*
32 *regulates such provider.* The appropriate state regulatory authority, after
33 notice to the alleged perpetrator and a hearing on such matter if re-
34 quested by the alleged perpetrator, may consider the finding in any dis-
35 ciplinary action taken with respect to the provider of services under the
36 jurisdiction of such authority. The secretary of ~~health and environment~~
37 *aging* may consider the finding of abuse, neglect or exploitation in any
38 licensing action taken with respect to any adult care home or medical care
39 facility under the jurisdiction of the secretary of *aging*. *The secretary of*
40 *health and environment may consider the finding of abuse, neglect or*
41 *exploitation in any licensing action taken with respect to any medical care*
42 *facility under the jurisdiction of the secretary of health and environment.*

43 (c) If the investigation of the department of health and environment

1 *or the department on aging* indicates reason to believe that the resident
2 is in need of protective services, that finding and all information relating
3 to that finding shall be forwarded by the secretary of health and environ-
4 ment *or the secretary of aging* to the secretary of social and rehabilitation
5 services.

6 (d) Except as otherwise provided in this section, the report received
7 by the department of health and environment *or the department on aging*
8 and the written findings, evaluations and actions recommended shall be
9 confidential and shall not be subject to the open records act. Except as
10 otherwise provided in this section, the name of the person making the
11 original report to the department of health and environment *or the de-*
12 *partment on aging* or any person mentioned in such report shall not be
13 disclosed unless such person specifically requests or agrees in writing to
14 such disclosure or unless a judicial or administrative proceeding results
15 therefrom. In the event that an administrative or judicial action arises, no
16 use of the information shall be made until the judge or presiding officer
17 makes a specific finding, in writing, after a hearing, that under all the
18 circumstances the need for the information outweighs the need for con-
19 fidentiality. Except as otherwise provided in this section, no information
20 contained in the register shall be made available to the public in such a
21 manner as to identify individuals.

22 Sec. 32. K.S.A. 39-924, 39-925, 39-926, 39-930, 39-938, 39-940, 39-
23 944, 39-945, 39-946, 39-947, 39-948, 39-950, 39-951, 39-952, 39-953a,
24 39-954, 39-958, 39-961, 39-963, 39-965, 39-969, 39-1404, 39-1405, 39-
25 1406, 39-1409 and 39-1411 and K.S.A. 2002 Supp. 32-906, 39-923, 39-
26 936 and 39-1402 are hereby repealed.

27 Sec. 33. This act shall take effect and be in force from and after its
28 publication in the statute book.

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43