

65-5117. Operation of home health agency precluded, when; access of secretary of health and environment to certain records; background check of employees, civil liability, fee for information request; provision of criminal history record information by secretary; licensed or registered professional service providers, volunteers and certain employees exempt; report of convictions and adjudications by the Kansas bureau of investigation. (a) (1) No person shall knowingly operate a home health agency if, for the home health agency, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439, prior to its repeal, or K.S.A. 2016 Supp. 21-5401, and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401, prior to its repeal, or K.S.A. 2016 Supp. 21-5402, and amendments thereto, second degree murder, pursuant to K.S.A. 21-3402(a), prior to its repeal, or K.S.A. 2016 Supp. 21-5403(a), and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403, prior to its repeal, or K.S.A. 2016 Supp. 21-5404, and amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406, prior to its repeal, or K.S.A. 2016 Supp. 21-5407, and amendments thereto, mistreatment of a dependent adult or mistreatment of an elder person, pursuant to K.S.A. 21-3437, prior to its repeal, or K.S.A. 2016 Supp. 21-5417, and amendments thereto, human trafficking, pursuant to K.S.A. 21-3446, prior to its repeal, or K.S.A. 2016 Supp. 21-5426(a), and amendments thereto, aggravated human trafficking, pursuant to K.S.A. 21-3447, prior to its repeal, or K.S.A. 2016 Supp. 21-5426(b), and amendments thereto, rape, pursuant to K.S.A. 21-3502, prior to its repeal, or K.S.A. 2016 Supp. 21-5503, and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503, prior to its repeal, or K.S.A. 2016 Supp. 21-5506(a), and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504, prior to its repeal, or K.S.A. 2016 Supp. 21-5506(b), and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506, prior to its repeal, or K.S.A. 2016 Supp. 21-5504(b), and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(a), and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(b), and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516, prior to its repeal, or K.S.A. 2016 Supp. 21-5510, and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior to its repeal, or K.S.A. 2016 Supp. 21-5505(a), and amendments thereto, aggravated sexual battery, pursuant to K.S.A. 21-3518, prior to its repeal, or K.S.A. 2016 Supp. 21-5505(b), and amendments thereto, commercial sexual exploitation of a child, pursuant to K.S.A. 2016 Supp. 21-6422, and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 2016 Supp. 21-5301, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2016 Supp. 21-5302, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a) (1), pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 2016 Supp. 21-5303, and amendments thereto, or similar statutes of other states or the federal government. The provisions of subsection (a)(2)(C) shall not apply to any person who is employed by a home health agency on July 1, 2010, and while continuously employed by the same home health agency.

(2) A person operating a home health agency may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: (A) Article 34 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2016 Supp. 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto, except those crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2016 Supp. 21-6419 through 21-6421, and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605, prior to its repeal, or K.S.A. 2016 Supp. 21-5606, and amendments thereto; (C) K.S.A. 21-3701, prior to its repeal, or K.S.A. 2016 Supp. 21-5801, and amendments thereto; (D) an attempt to commit any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 2016 Supp. 21-5301, and amendments thereto; (E) a conspiracy to commit any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2016 Supp. 21-5302, and amendments thereto; (F) criminal solicitation of any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 2016 Supp. 21-5303, and amendments thereto; or (G) similar statutes of other states or the federal government.

(b) No person shall operate a home health agency if such person has been found to be a person in need of a guardian or a conservator, or both, as provided in K.S.A. 59-3050 through 59-3095, and amendments thereto. The provisions of this subsection shall not apply to a minor found to be in need of a guardian or conservator for reasons other than impairment.

(c) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation regarding any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2016 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2016 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto, concerning persons working for a home health agency. The secretary shall have access to these records for the purpose of determining whether or not the home health agency meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.

(d) For the purpose of complying with this section, the operator of a home health agency shall request from the department of health and environment information regarding any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2016 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2016 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto, and which relates to a person who works for the home health agency or is being considered for employment by the home health agency, for the purpose of determining whether such person is subject to the provisions of this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, the operator of a home health agency shall receive from any employment agency which provides employees to work for the home health agency written certification that such employees are not prohibited from working for the home health agency under this section. For the purpose of complying with this section, a person who operates a home health agency may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No home health agency, the operator or employees of a home health agency or an employment agency, or the operator or employees of an employment agency, which provides employees to work for the home health agency shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such home health agency's compliance with the provisions of this section if such home health agency or employment agency acts in good faith to comply with this section.

(e) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted under this section.

(f) (1) The secretary of health and environment shall provide each operator requesting information under this section with the criminal history record information concerning any criminal history information and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2016 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).

(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.

(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.

(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile

criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 2016 Supp. 38-2326, and amendments thereto, except for adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, prior to its repeal, or K.S.A. 2016 Supp. 21-5801, and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information and whether such information contains adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, prior to its repeal, or K.S.A. 2016 Supp. 21-5801, and amendments thereto.

(5) An operator who receives criminal history record information under this subsection (f) shall keep such information confidential, except that the operator may disclose such information to the person who is the subject of the request for information. A violation of this paragraph (5) shall be an unclassified misdemeanor punishable by a fine of \$100.

(g) No person who works for a home health agency and who is currently licensed or registered by an agency of this state to provide professional services in this state and who provides such services as part of the work which such person performs for the home health agency shall be subject to the provisions of this section.

(h) A person who volunteers to assist a home health agency shall not be subject to the provisions of this section because of such volunteer activity.

(i) An operator may request from the department of health and environment criminal history information on persons employed under subsections (g) and (h).

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

(k) The operator of a home health agency shall not be required under this section to conduct a background check on an applicant for employment with the home health agency if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the home health agency. The operator of a home health agency where the applicant was the subject of such background check may release a copy of such background check to the operator of a home health agency where the applicant is currently applying.

(l) For purposes of this section, the Kansas bureau of investigation shall only report felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2016 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2016 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments thereto, to the secretary of health and environment when a background check is requested.

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

History: L. 1997, ch. 161, § 2; L. 1998, ch. 144, § 2; L. 2001, ch. 197, § 2; L. 2002, ch. 114, § 75; L. 2003, ch. 98, § 2; L. 2006, ch. 169, § 118; L. 2010, ch. 16, § 2; L. 2011, ch. 30, § 246; L. 2015, ch. 94, § 22; July 1.