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

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

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

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

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

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

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

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

(g) The secretary shall issue an annual institutional group fishing license to each facility operating under the jurisdiction of or licensed by the secretary of social and rehabilitation services and to any veterans administration medical center in the state of Kansas upon application by such facility or center to the secretary of wildlife and parks for such license.

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

The staff personnel of the facility or center supervising the group trip, group outing or other group activity shall have in their possession the institutional license when engaged in supervising any activity requiring the license. Such staff personnel may assist group members in all aspects of their fishing activity.
(h) The secretary may issue a special nonprofit group fishing license to any community, civic or charitable organization which is organized as a not-for-profit corporation, for use by such community, civic or charitable organization for the sole purpose of conducting group fishing activities for handicapped or developmentally disabled individuals. All applications for a special nonprofit group fishing license shall be made to the secretary or the secretary's designee and shall provide such information as required by the secretary.

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

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

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

(1) “Adult care home” means any nursing facility, nursing facility for mental health, intermediate care facility for the mentally retarded, assisted living facility, residential health care facility, home plus, boarding care home and adult day care facility, all of which classifications of adult care homes are required to be licensed by the secretary of health and aging.

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

(3) “Nursing facility for mental health” means any place or facility operating 24 hours a day, seven days a week caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care and special mental health services to compensate for activities of daily living limitations.

(4) “Intermediate care facility for the mentally retarded” means any place or facility operating 24 hours a day, seven days a week caring for six or more individuals not related within the third degree of relationship
to the administrator or owner by blood or marriage and who, due to
functional impairments caused by mental retardation or related condi-
tions need services to compensate for activities of daily living limitations.

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

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

(7) “Home plus” means any residence or facility caring for not more
than eight individuals not related within the third degree of relationship
to the operator or owner by blood or marriage unless the resident in need
of care is approved for placement by the secretary of the department of
social and rehabilitation services, and who, due to functional impairment,
needs personal care and may need supervised nursing care to compensate
for activities of daily living limitations. The level of care provided residents
shall be determined by preparation of the staff and rules and regulations
developed by the department on aging. An adult care home may convert a portion of one wing of the facility to a not
less than five-bed and not more than eight-bed home plus facility pro-
vided that the home plus facility remains separate from the adult care
home, and each facility must remain contiguous.
“Boarding care home” means any place or facility operating 24 hours a day, seven days a week, caring for not more than 10 individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment, need supervision of activities of daily living but who are ambulatory and essentially capable of managing their own care and affairs.

“Adult day care” means any place or facility operating less than 24 hours a day caring for individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment need supervision of or assistance with activities of daily living.

“Place or facility” means a building or any one or more complete floors of a building, or any one or more complete wings of a building, or any one or more complete wings and one or more complete floors of a building, and the term “place or facility” may include multiple buildings.

“Skilled nursing care” means services performed by or under the immediate supervision of a registered professional nurse and additional licensed nursing personnel. Skilled nursing includes administration of medications and treatments as prescribed by a licensed physician or dentist; and other nursing functions which require substantial nursing judgment and skill based on the knowledge and application of scientific principles.

“Supervised nursing care” means services provided by or under the guidance of a licensed nurse with initial direction for nursing procedures and periodic inspection of the actual act of accomplishing the procedures; administration of medications and treatments as prescribed by a licensed physician or dentist and assistance of residents with the performance of activities of daily living.

“Resident” means all individuals kept, cared for, treated, boarded or otherwise accommodated in any adult care home.

“Person” means any individual, firm, partnership, corporation, company, association or joint-stock association, and the legal successor thereof.

“Operate an adult care home” means to own, lease, establish, maintain, conduct the affairs of or manage an adult care home, except that for the purposes of this definition the word “own” and the word “lease” shall not include hospital districts, cities and counties which hold title to an adult care home purchased or constructed through the sale of bonds.

“Licensing agency” means the secretary of health and aging.

“Skilled nursing home” means a nursing facility.

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

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

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

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

(23) “Personal care” means care provided by staff to assist an individual with, or to perform activities of daily living.

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

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

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

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

(c) Facilities licensed under K.S.A. 39-1501 et seq. and amendments thereto or K.S.A. 75-3307b and amendments thereto or under this section as an intermediate personal care home or with license applications on file with the licensing agency at intermediate personal care homes on or before January 1, 1995, shall have the option of becoming licensed as either an assisted living facility or a residential health care facility without being required to add kitchens or private baths.
Nursing facilities in existence on the effective date of this act changing licensure categories to become residential health care facilities shall be required to provide private bathing facilities in a minimum of 20% of the individual living units.

Facilities licensed under the adult care home licensure act on the day immediately preceding the effective date of this act shall continue to be licensed facilities until the annual renewal date of such license and may renew such license in the appropriate licensure category under the adult care home licensure act subject to the payment of fees and other conditions and limitations of such act.

Nursing facilities with less than 60 beds converting a portion of the facility to residential health care shall have the option of licensing for residential health care for less than six individuals but not less than 10% of the total bed count within a contiguous portion of the facility.

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

Sec. 3. K.S.A. 39-924 is hereby amended to read as follows: 39-924. The purpose of this act is the development, establishment, and enforcement of standards (1) for the care, treatment, health, safety, welfare and comfort of individuals in adult care homes licensed by the secretary of health and environment and (2) for the construction, general hygiene, maintenance and operation of said adult care homes, which, in the light of advancing knowledge, will promote safe and adequate accommodation, care and treatment of such individuals in adult care homes.

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

(b) The secretary of aging shall be a continuation of the secretary of health and environment as to the programs transferred and shall be the successor in every way to the powers, duties and functions of the secretary
of health and environment for such programs, except as otherwise pro-
vided by this act. On and after the effective date of this act, for each of
the programs transferred, every act performed in the exercise of such
powers, duties and functions by or under the authority of the secretary
of aging shall be deemed to have the same force and effect as if performed
by the secretary of health and environment in whom such powers were
vested prior to the effective date of this act.
  (c) (1) No suit, action or other proceeding, judicial or administrative,
which pertains to any of the transferred adult care home survey, certifi-
cation and licensing programs, and reporting of abuse, neglect or exploi-
tation of adult care home residents, which is lawfully commenced, or could
have been commenced, by or against the secretary of health and environ-
ment in such secretary’s official capacity or in relation to the discharge
of such secretary’s official duties, shall abate by reason of the transfer of
such programs. The secretary of aging shall be named or substituted as
the defendant in place of the secretary of health and environment in any
suit, action or other proceeding involving claims arising from facts or
events first occurring either on or before the effective date of this act or
thereafter.
  (2) No suit, action or other proceeding, judicial or administrative,
pertaining to the adult care home survey, certification and licensing pro-
grams or to the reporting of abuse, neglect or exploitation of adult care
home residents which otherwise would have been dismissed or concluded
shall continue to exist by reason of any transfer under this act.
  (3) No criminal action commenced or which could have been com-
menced by the state shall abate by the taking effect of this act.
  (4) Any final appeal decision of the department of health and envi-
ronment entered pursuant to K.S.A. 39-923 et seq., and amendments
thereto, K.S.A. 39-1401 et seq., and amendments thereto, or the act for
judicial review and civil enforcement of agency actions, K.S.A. 77-601 et
seq., and amendments thereto, currently pertaining to adult care home
certification, survey and licensing or reporting of abuse, neglect or ex-
plotation of adult care home residents, transferred pursuant to this act
shall be binding upon and applicable to the secretary of aging and the
department on aging.
  (5) All orders and directives under the adult care home licensure act
by the secretary of health and environment in existence immediately prior
to the effective date of the transfer of powers, duties and functions by this
act, shall continue in force and effect and shall be deemed to be duly issued
orders, and directives of the secretary of aging, until reissued, amended
or nullified pursuant to law.
  (d) (1) All rules and regulations of the department of health and en-
vironment adopted pursuant to K.S.A. 39-923 et seq., and amendments
thereunto, and in effect on the effective date of this act, which promote the
safe, proper and adequate treatment and care of individuals in adult care
homes, except those specified in subsection (d)(2) of this section, shall
continue to be effective and shall be deemed to be rules and regulations
of the secretary of aging, until revised, amended, revoked or nullified by
the secretary of aging, or otherwise, pursuant to law.

(2) The following rules and regulations of the department of health
and environment adopted pursuant to K.S.A. 39-923 et seq., and amend-
ments thereto, and in effect on the effective date of this act, shall remain
the rules and regulations of the secretary of health and environment:

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

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

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

Sec. 7. K.S.A. 2002 Supp. 39-936 is hereby amended to read as fol-
lows: 39-936. (a) The presence of each resident in an adult care home
shall be covered by a statement provided at the time of admission, or
prior thereto, setting forth the general responsibilities and services and
daily or monthly charges for such responsibilities and services. Each res-
ident shall be provided with a copy of such statement, with a copy going
to any individual responsible for payment of such services and the adult
care home shall keep a copy of such statement in the resident’s file. No
such statement shall be construed to relieve any adult care home of any
requirement or obligation imposed upon it by law or by any requirement,
standard or rule and regulation adopted pursuant thereto.

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

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

(2) The licensing agency may require unlicensed employees of an
adult care home, except an adult care home licensed for the provision of
services to the mentally retarded which has been granted an exception
by the licensing agency secretary of health and environment upon a find-
ing by the licensing agency that an appropriate training program for un-
licensed employees is in place for such adult care home, who provide
direct, individual care to residents and who do not administer medications
to residents after 90 days of employment to successfully complete an
approved course of instruction and an examination relating to resident
care and treatment as a condition to continued employment by an adult
care home. A course of instruction may be prepared and administered by
any adult care home or by any other qualified person. A course of instruc-
tion prepared and administered by an adult care home may be conducted
on the premises of the adult care home which prepared and which will
administer the course of instruction. The licensing agency shall not re-
quire unlicensed employees of an adult care home who provide direct,
individual care to residents and who do not administer medications to
residents to enroll in any particular approved course of instruction as a
condition to the taking of an examination, but the licensing agency sec-
retary of health and environment shall prepare guidelines for the prep-
paration and administration of courses of instruction and shall approve or
disapprove courses of instruction. Unlicensed employees of adult care
homes who provide direct, individual care to residents and who do not
administer medications to residents may enroll in any approved course of
instruction and upon completion of the approved course of instruction
shall be eligible to take an examination. The examination shall be pre-
scribed by the licensing agency secretary of health and environment, shall
be reasonably related to the duties performed by unlicensed employees
of adult care homes who provide direct, individual care to residents and
who do not administer medications to residents and shall be the same
examination given by the licensing agency secretary of health and envi-
ronment to all unlicensed employees of adult care homes who provide
direct, individual care to residents and who do not administer
medications.

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

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

(5) No adult care home shall use an individual as an unlicensed em-
employee of the adult care home who provides direct, individual care to residents and who does not administer medications unless the facility has inquired of the state registry as to information contained in the registry concerning the individual.

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

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

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

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

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

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

Sec. 8. K.S.A. 39-938 is hereby amended to read as follows: 39-938. Adult care homes shall comply with all the lawfully established requirements and rules and regulations of the secretary of health and environment aging and the state fire marshal, and any other agency of govern-
ment so far as pertinent and applicable to adult care homes, their
buildings, operators, staffs, facilities, maintenance, operation, conduct,
and the care and treatment of residents. The administrative rules and
regulations of the state board of cosmetology and of the Kansas board of
barbering shall not apply to adult care homes.

Sec. 9. K.S.A. 39-940 is hereby amended to read as follows: 39-940.
(a) The secretary of health and environment aging may prescribe and
supply necessary forms for applications, reports, records and inspections
for adult care homes. All prescribed records shall be open to inspection
by the designated agents of the agencies administering this act.
(b) It shall be unlawful to:
(1) Make false entries in such records;
(2) omit any information required or make any false report concern-
ing any adult care home; or
(3) file or cause to be filed such false or incomplete records or reports
with the department of health and environment aging or with any
agency administering this act, knowing that such records or reports are
false or incomplete.

Sec. 10. K.S.A. 39-944 is hereby amended to read as follows: 39-944.
Notwithstanding the existence or pursuit of any other remedy, the sec-
retary of health and environment aging, as the licensing agency, in the
manner provided by the act for judicial review and civil enforcement of
agency actions, may maintain an action in the name of the state of Kansas
for injunction or other process against any person or agency to restrain
or prevent the operation of an adult care home without a license under
this act.

Sec. 11. K.S.A. 39-945 is hereby amended to read as follows: 39-945.
A correction order may be issued by the secretary of health and environ-
ment aging or the secretary’s designee to a person licensed to operate an
adult care home whenever the state fire marshal or the marshal’s repre-
sentative or a duly authorized representative of the secretary of health
and environment aging inspects or investigates an adult care home and
determines that the adult care home is not in compliance with the pro-
visions of article 9 of chapter 39 of the Kansas Statutes Annotated or rules
and regulations promulgated thereunder which individually or jointly af-
fects significantly and adversely the health, safety, nutrition or sanitation
of the adult care home residents. The correction order shall be served
upon the licensee either personally or by certified mail, return receipt
requested. The correction order shall be in writing, shall state the specific
deficiency, cite the specific statutory provision or rule and regulation al-
leged to have been violated, and shall specify the time allowed for
correction.

Sec. 12. K.S.A. 39-946 is hereby amended to read as follows: 39-946.
(a) If upon reinspection by the state fire marshal or the marshal’s representative or a duly authorized representative of the secretary of health and environment aging, which reinspection shall be conducted within 14 days from the day the correction order is served upon the licensee, it is found that the licensee of the adult care home which was issued a correction order has not corrected the deficiency or deficiencies specified in the order, the secretary of health and environment aging may assess a civil penalty in an amount not to exceed $500 per day per deficiency against the licensee of an adult care home for each day subsequent to the day following the time allowed for correction of the deficiency as specified in the correction order that the adult care home has not corrected the deficiency or deficiencies listed in the correction order, but the maximum assessment shall not exceed $2,500. Prior to the assessment of a civil penalty, the case shall be reviewed by a person licensed to practice medicine and surgery. A written notice of assessment shall be served upon the licensee of an adult care home either personally or by certified mail, return receipt requested.

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

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

Sec. 13. K.S.A. 39-947 is hereby amended to read as follows: 39-947. Any licensee against whom a civil penalty has been assessed under K.S.A. 39-946, and amendments thereto, may appeal such assessment within 10 days after receiving a written notice of assessment by filing with the secretary of health and environment aging written notice of appeal specifying
why such civil penalty should not be assessed. Such appeal shall not operate to stay the payment of the civil penalty. Upon receipt of the notice of appeal, the secretary of health and environment shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. If the secretary of aging sustains the appeal, any civil penalties collected shall be refunded forthwith to the appellant licensee with interest at the rate established by K.S.A. 16-204, and amendments thereto, from the date of payment of the civil penalties to the secretary of aging. If the secretary of aging denies the appeal and no appeal from the secretary is taken to the district court in accordance with the provisions of the act for judicial review and civil enforcement of agency actions, the secretary of aging shall dispose of any civil penalties collected as provided in K.S.A. 39-949, and amendments thereto.

Sec. 14. K.S.A. 39-948 is hereby amended to read as follows: 39-948.
(a) A licensee may appeal to the district court from a decision of the secretary of aging under K.S.A. 39-947, and amendments thereto. The appeal shall be tried in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.
(b) An appeal to the district court or to an appellate court shall not stay the payment of the civil penalty. If the court sustains the appeal, the secretary of health and environment shall refund forthwith the payment of any civil penalties to the licensee with interest at the rate established by K.S.A. 16-204, and amendments thereto, from the date of payment of the civil penalties to the secretary. If the court denies the appeal, the secretary of health and environment shall dispose of any civil penalties collected as provided in K.S.A. 39-949, and amendments thereto.

Sec. 15. K.S.A. 39-950 is hereby amended to read as follows: 39-950.
The secretary of health and environment may adopt rules and regulations necessary to carry out the provisions of this act.

Sec. 16. K.S.A. 39-951 is hereby amended to read as follows: 39-951.
The authority granted to the secretary of health and environment under this act is in addition to other statutory authority the secretary of aging has to require the licensing and operation of adult care homes and is not to be construed to limit any of the powers and duties of the secretary of aging under article 9 of chapter 39 of the Kansas Statutes Annotated.

Sec. 17. K.S.A. 39-952 is hereby amended to read as follows: 39-952.
The secretary of health and environment or the secretary’s designee shall not issue a correction order to a person licensed to operate an adult care home because of a violation of a provision of article 9 of chapter 39 of the Kansas Statutes Annotated or a rule and regulation adopted thereunder which was caused by any person licensed by the state board of healing arts to practice a branch of the healing arts if such person licensed
by the state board of healing arts is not an owner, operator or employee
of the adult care home and if the person licensed to operate the adult
care home shows that such person has exercised reasonable diligence in
notifying the person licensed by the state board of healing arts to practice
a branch of the healing arts of such person's duty to the residents of the
adult care home.

Sec. 18. K.S.A. 39-953a is hereby amended to read as follows: 39-
953a. (a) At any time the secretary of health and environment aging in-
itiates any action concerning an adult care home in which it is alleged that
there has been a substantial failure to comply with the requirements,
standards or rules and regulations established under the adult care home
licensure act, that conditions exist in the adult care home which are life
threatening or endangering to the residents of the adult care home, that
the adult care home is insolvent, or that the adult care home has defi-
ciencies which significantly and adversely affect the health, safety, nutrition
or sanitation of the adult care home residents, the secretary of aging
may issue an order, pursuant to the emergency proceedings provided for
under the Kansas administrative procedure act, prohibiting any new ad-
missions into the adult care home until further determination by the sec-
retary of aging. This remedy granted to the secretary of aging is in ad-
dition to any other statutory authority the secretary of aging has relating
to the licensure and operation of adult care homes and is not be construed
to limit any of the powers and duties of the secretary of aging under the
adult care home licensure act.

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

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

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

Sec. 20. K.S.A. 39-958 is hereby amended to read as follows: 39-958.
(a) The application for receivership shall be given priority by the district
court and shall be heard no later than the seventh (7th) day following the
filing of the application. A continuance of no more than ten (10) 10 days
may be granted by the district court for good cause. The district court shall give all parties who have filed an answer the opportunity to present evidence pertaining to the application. If the district court finds that the facts warrant the granting of the application, the court shall appoint the secretary of health and environment aging or the designee of the secretary as receiver to operate the home.

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

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

(a) The personnel and facilities of the department of health and environment aging shall be available to the receiver for the purposes of carrying out the receiver’s duties as receiver as authorized by the secretary of health and environment aging.

(b) The department of health and environment aging shall itemize and keep a ledger showing costs of personnel and other expenses establishing the receivership and assisting the receiver and such amount shall be owed by the owner or licensee to the department of health and environment aging. Such department shall submit a bill for such expenses to the receiver for inclusion in the receiver’s final accounting. Any amount so billed and until repaid shall constitute a lien against all non-exempt personal and real property of the owner or licensee.

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

(a) The court shall terminate the receivership only under any of the following circumstances:

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

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

(3) at such time as all of the residents in the adult care home have been provided alternative modes of health care, either in another adult care home or otherwise.
(b) (1) At the time of termination of the receivership, the receiver shall render a full and complete accounting to the district court and shall make disposition of surplus money at the direction of the district court.

(2) The court may make such additional orders as are appropriate to recover the expenses and costs to the department of health and environment on aging and the secretary of social and rehabilitation services incurred pursuant to K.S.A. 39-960 or 39-961 and amendments thereto.

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

(a) If the secretary of health and environment determines that an adult care home is in violation of or has violated any requirements, standards or rules and regulations established under the adult care home licensure act which violation can reasonably be determined to have resulted in, caused or posed serious physical harm to a resident, the secretary of aging in accordance with proceedings under the Kansas administrative procedure act, may assess a civil penalty against the licensee of such adult care home in an amount of not to exceed $1,000 per day per violation for each day the secretary finds that the adult care home was not in compliance with such requirements, standards or rules and regulations but the maximum assessment shall not exceed $10,000.

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

(c) The secretary of health and environment may adopt rules and regulations which shall include due process procedures for the issuance of civil penalties relating to nursing facilities.

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

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

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

(a) The licensing agency shall upon request receive from the Kansas bureau of investigation, without charge, such criminal history record information relating to criminal convictions as necessary for the purpose of determining initial and continuing qualifications of an operator.

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

New Sec. 25. (a) On July 1, 2003, certain powers, duties and functions of the secretary of health and environment under K.S.A.39-1401
through 39-1411, and amendments thereto, are hereby transferred from
the secretary of health and environment to the secretary of aging, as
provided by this act.

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

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

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

Sec. 26. K.S.A. 2002 Supp. 39-1402 is hereby amended to read as
follows: 39-1402. (a) Any person who is licensed to practice any branch
of the healing arts, a licensed psychologist, a licensed master level psy-
chologist, a licensed clinical psychotherapist, a chief administrative officer
of a medical care facility, an adult care home administrator or operator,
a licensed social worker, a licensed professional nurse, a licensed practical
nurse, a licensed marriage and family therapist, a licensed clinical mar-
riage and family therapist, licensed professional counselor, licensed clin-
ical professional counselor, registered alcohol and drug abuse counselor,
a teacher, a bank trust officer, a guardian or a conservator who has rea-
sonable cause to believe that a resident is being or has been abused,
neglected or exploited, or is in a condition which is the result of such
abuse, neglect or exploitation or is in need of protective services, shall
report immediately such information or cause a report of such informa-
tion to be made in any reasonable manner to the department of health
and environment aging with respect to residents defined under (a)(1) and
(a)(2) of K.S.A. 39-1401 and amendments thereto and to the department
of health and environment with respect to residents defined under (a)(2)
of K.S.A 39-1401, and amendments thereto, and to the department of
social and rehabilitation services with respect to all other residents. Re-
ports made to one department which are required by this subsection to
be made to the other department shall be referred by the department to
which the report is made to the appropriate department for that report,
and any such report shall constitute compliance with this subsection. Re-
ports shall be made during the normal working week days and hours of
operation of such departments. Reports shall be made to law enforcement
agencies during the time the departments are not open for business. Law
enforcement agencies shall submit the report and appropriate informa-
tion to the appropriate department on the first working day that such
department is open for business. A report made pursuant to K.S.A. 65-
4923 or 65-4924 and amendments thereto shall be deemed a report under
this section.

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

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

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

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

Sec. 27. K.S.A. 39-1404 is hereby amended to read as follows: 39-
1404. (a) The department of health and environment or the department
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of social and rehabilitation services upon receiving a report that a resident is being, or has been, abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services shall:

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

(2) make a personal visit with the involved resident:
   (A) Within 24 hours when the information from the reporter indicates imminent danger to the health or welfare of the involved resident;
   (B) within three working days for all reports of suspected abuse, when the information from the reporter indicates no imminent danger; or
   (C) within five working days for all reports of neglect or exploitation when the information from the reporter indicates no imminent danger.

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

(4) prepare, upon a completion of the evaluation of each case, a written assessment which shall include an analysis of whether there is or has been abuse, neglect or exploitation; recommended action; a determination of whether protective services are needed; and any follow up.

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

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

Sec. 28. K.S.A. 39-1405 is hereby amended to read as follows: 39-1405. (a) The secretary of health and environment on aging shall forward to the secretary of social and rehabilitation services any finding that a resident may be in need of protective services with respect to residents defined under (a)(1) of K.S.A. 39-1401, and amendments thereto, who may be in need of protective services. The secretary of health and environment shall forward to the secretary of social and rehabilitation services any finding with respect to residents defined under (a)(2) of K.S.A. 39-1401, and amendments thereto, who may be in need of protective services. If the secretary of social and rehabilitation services determines that a resident is in need of protective services, the secretary of social and rehabilitation services shall provide the necessary protective services, if a resident
consents. If a resident fails to consent and the secretary of social and rehabilitation services has reason to believe that such a resident lacks capacity to consent, the secretary of social and rehabilitation services shall determine pursuant to K.S.A. 39-1408 and amendments thereto whether a petition for appointment of a guardian or conservator, or both, should be filed.

(b) If the caretaker of a resident who has consented to the receipt of reasonable and necessary protective services refuses to allow the provision of such services to such resident, the secretary of social and rehabilitation services may seek to obtain an injunction enjoining the caretaker from interfering with the provision of protective services to the resident. The petition in such action shall allege specific facts sufficient to show that the resident is in need of protective services and consents to their provision and that the caretaker refuses to allow the provision of such services.

If the judge finds that the resident is in need of protective services and has been prevented by the caretaker from receiving such services, the judge shall issue an order enjoining the caretaker from interfering with the provision of protective services to the resident.

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

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

Sec. 31. K.S.A. 39-1411 is hereby amended to read as follows: 39-1411. (a) The secretary of health and environment and the secretary of aging shall maintain a
register of the reports received and investigated by the department of health and environment on aging under K.S.A. 39-1402 and 39-1403, and amendments to such sections, and the findings, evaluations and actions recommended by the department on aging with respect to such reports. The secretary of health and environment shall maintain a register of the reports received and investigated by the department of health and environment under K.S.A. 39-1402 and 39-1403, and amendments thereto, and the findings, evaluations and actions recommended by the department of health and environment with respect to such reports. The findings, evaluations and actions shall be subject to the Kansas administrative procedure act and any requirements of state or federal law relating thereto except that the secretary shall not be required to conduct a hearing in cases forwarded to the appropriate state authority under subsection (b). The register shall be available for inspection by personnel of the department of health and environment or the department on aging as specified by the secretary of health and environment or the secretary of aging and to such other persons as may be required by federal law and designated by the secretary of health and environment or the secretary of aging by rules and regulations. Information from the register shall be provided as specified in K.S.A. 2002 Supp. 65-6205 and amendments thereto. The secretary of health and environment shall forward a copy of any report of abuse, neglect or exploitation of a resident of an adult care home to the secretary of aging.

(b) The secretary of health and environment aging shall forward any finding of abuse, neglect or exploitation alleged to be committed by a provider of services licensed, registered or otherwise authorized to provide services in this state to the appropriate state authority which regulates such provider. The secretary of health and environment shall forward any finding of abuse, neglect or exploitation alleged to be committed by a provider of services licensed, registered or otherwise authorized to provide services in this state to the appropriate state authority which regulates such provider. The secretary of health and environment aging may consider the finding of abuse, neglect or exploitation in any licensing action taken with respect to any medical care facility under the jurisdiction of the secretary of aging. The secretary of health and environment may consider the finding of abuse, neglect or exploitation in any licensing action taken with respect to any medical care facility under the jurisdiction of the secretary of health and environment.

(c) If the investigation of the department of health and environment
or the department on aging indicates reason to believe that the resident is in need of protective services, that finding and all information relating to that finding shall be forwarded by the secretary of health and environment or the secretary of aging to the secretary of social and rehabilitation services.

(d) Except as otherwise provided in this section, the report received by the department of health and environment or the department on aging and the written findings, evaluations and actions recommended shall be confidential and shall not be subject to the open records act. Except as otherwise provided in this section, the name of the person making the original report to the department of health and environment or the department on aging or any person mentioned in such report shall not be disclosed unless such person specifically requests or agrees in writing to such disclosure or unless a judicial or administrative proceeding results therefrom. In the event that an administrative or judicial action arises, no use of the information shall be made until the judge or presiding officer makes a specific finding, in writing, after a hearing, that under all the circumstances the need for the information outweighs the need for confidentiality. Except as otherwise provided in this section, no information contained in the register shall be made available to the public in such a manner as to identify individuals.


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