

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2017 REGULAR SESSION
Unofficial Document

Amend printed copy of **SB 4/SCS 1**

On page 15, after line 15 by inserting the following:

"➔SECTION 30. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO READ AS FOLLOWS:

(1) The cabinet shall design and implement a substance abuse screening program for employees of long term care facilities with the screening program including periodic testing of the employee's blood or urine for the presence of controlled substances as set out in this section.

(2) An adult person shall be terminated within five (5) days if the person tests positive in a substance abuse test administered by the program for the presence of:

(a) A Schedule I controlled substance; or

(b) A Schedule II - V controlled substance not prescribed for that person.

(3) The substance abuse testing component of the screening program shall be designed so as to require that testing occurs as an initial condition precedent prior to employment, and twice for each subsequent year of employment, with the employee being randomly assigned a month within that year to submit to testing upon receipt of reasonable notice from the cabinet.

(4) The secretary shall by administrative regulation prescribe the design, operation, and standards for the implementation of this section.

Amendment No. SFA 19

Rep. Sen. Ray S. Jones II

Committee Amendment _____

Signed: _____

Floor Amendment _____

LRC Drafter: Trebelhorn, Matt

Adopted: _____

Date: _____

Rejected: _____

Doc. ID: XXXX

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→ Section 31. KRS 216.785 is amended to read as follows:

As used in KRS 216.785 to 216.793, unless the context otherwise requires:

- (1) "Applicant" means an individual applying to be an employee at a long-term-care facility or provider, as defined in this section;
- (2) "Cabinet" means the Cabinet for Health and Family Services;
- (3) "Civil applicant fingerprints" means fingerprints submitted to the Department of Kentucky State Police for a criminal background check pursuant to Section 34 of this Act;
- (4) "Continuous employment assessment" means a process for ongoing criminal background and registry checks after an initial background check is performed;
- (5) "Criminal background check" means a national and state fingerprint-supported criminal history background check performed by the Department of Kentucky State Police and the Federal Bureau of Investigation;
- (6) "Disqualifying offense" means:
 - (a) A conviction of, or a plea of guilty, an Alford plea, or a plea of nolo contendere to:
 1. A misdemeanor offense related to abuse, neglect, or exploitation of an adult or child, or a sexual offense;
 2. A criminal offense against a victim who is a minor, as defined in KRS 17.500;
 3. A felony conviction involving a child victim;
 4. A felony offense under:
 - a. KRS Chapter 209;
 - b. KRS Chapter 218A;
 - c. KRS 507.020;
 - d. KRS 507.030;
 - e. KRS 507.040;

- f. KRS Chapter 508;
 - g. KRS Chapter 509;
 - h. KRS Chapter 510;
 - i. KRS Chapter 511;
 - j. KRS Chapter 513;
 - k. KRS 514.030;
 - l. KRS Chapter 515;
 - m. KRS 529.100;
 - n. KRS 529.110;
 - o. KRS Chapter 530; and
 - p. KRS Chapter 531;
5. An offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph; or
6. Any crime described in 42 U.S.C. sec. 1320a-7;
- (b) A substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 U.S.C. sec. 1395i-3 or 1396r;
- (c) Registration as a sex offender under federal law or under the law of any state; or
- (d) Being listed on a registry as defined in this section;
- (7) (a) "Employee" means any individual who is hired by a long-term-care facility or provider through employment or through a contract with the facility or provider, including but not limited to nurses; housekeepers; maintenance personnel; dietitians; pharmacists; administrative staff; any staff person who has access to the personal belongings or funds of a patient, resident, or client; and any volunteer who has duties that are equivalent to the duties of an employee providing direct

- services and those duties involve or may involve one-on-one contact with a patient or resident of a long-term-care facility or provider, without line-of-sight supervision by facility or provider staff.
- (b) "Employee" does not include an individual who independently contracts with the long-term-care facility or provider to provide utility, construction, communications, or other services if the contracted services are not directly related to the provision of services to a resident, patient, or client of the facility or provider;
- (8) "Inspector general" means the Office of Inspector General of the Cabinet for Health and Family Services;
- (9) "Long-term-care facility or provider" means:
- (a) A long-term-care facility as defined in KRS 216.510, excluding family-care homes and personal-care homes;
- (b) A nursing pool as defined in this section providing staff to a long-term-care facility or provider;
- (c) An adult day health care program as defined in KRS 216B.0441;
- (d) An assisted-living community as defined in KRS 194A.700;
- (e) A home health agency as defined in KRS 216.935;
- (f) A provider of hospice care as defined in 42 U.S.C. sec. 1395x(dd)(1) and licensed pursuant to KRS Chapter 216B;
- (g) A personal services agency as defined in KRS 216.710;
- (h) Providers of home and community-based services authorized under KRS Chapter 205; or
- (i) Any other provider as specified by the cabinet by administrative regulation promulgated pursuant to Section 32 of this Act;
- (10) "Nursing pool" means any person, firm, corporation, partnership, or association

engaged for hire in the business of providing or procuring temporary employment in or with a long-term-care facility or provider for medical personnel, including but not limited to nurses, nursing assistants, nursing aides, and orderlies;

(11) "Registry" means the nurse aide abuse registry and any other registry useful for the administration of the National and State Background Check Program as specified by administrative regulation; and

(12) "Senior citizen" means a person sixty (60) years of age or older.

["Assisted-living community" shall have the same meaning as in KRS 194A.700.

~~(2) "Crime" means a conviction of or a plea of guilty to a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or the commission of a sex crime. Conviction of or a plea of guilty to an offense committed outside the Commonwealth of Kentucky is a crime if the offense would have been a felony in Kentucky if committed in Kentucky.~~

~~(3) "Direct service" means personal or group interaction between the employee and the nursing facility resident or the senior citizen.~~

~~(4) "Nursing pool" means any person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in nursing facilities for medical personnel including, but not limited to, nurses, nursing assistants, nurses' aides, and orderlies.~~

~~(5) "Senior citizen" means a person sixty (60) years of age or older.]~~

➔SECTION 32. A NEW SECTION OF KRS 216.785 TO 216.793 IS CREATED TO READ AS FOLLOWS:

(1) (a) The cabinet shall establish a National and State Background Check Program, within available appropriations or funding, to facilitate the performance of registry and criminal background checks of prospective employees of long-term-care

- facilities and providers, representatives of the cabinet who perform inspections of long-term-care facilities or providers, and other state agency staff who have or may have one-on-one contact with a patient or resident of a long-term care facility or provider, without line-of-sight observation by facility or provider staff.
- (b) A registry check of an applicant shall be required prior to a criminal background check and shall be initiated by a long-term-care facility or provider. The registry check shall be performed by the National and State Background Check Program through a query of the nurse aide abuse registry and any other registry identified in administrative regulations promulgated pursuant to subsection (6) of this section.
- (c) If applicable to the applicant, a query of available information maintained by the Kentucky Board of Medical Licensure, Kentucky Board of Nursing, or Kentucky Board of Physical Therapy shall be conducted prior to a criminal background check to validate that the individual's professional license is in good standing.
- (d) Nothing in this section shall be construed to limit the responsibility or ability of an employer to screen applicants through additional methods.
- (2) (a) The cabinet shall implement the National and State Background Check Program in phases by category of long-term-care facility or provider.
- (b) An implementation schedule shall be incorporated by reference in administrative regulations promulgated pursuant to subsection (6) of this section.
- (c) The cabinet shall provide notification to each long-term-care facility or provider no less than sixty (60) days prior to the date by which the facility or provider is required to participate in the National and State Background Check Program.
- (3) Each nursing facility, nursing pool providing staff to a nursing facility, assisted-living community, long-term-care facility that is owned, managed, or operated by the Department for Behavioral Health, Developmental and Intellectual Disabilities, and

personal services agency shall continue to request all conviction information from the Justice and Public Safety Cabinet for any applicant for employment until the date that the facility or provider is phased into National and State Background Check Program participation.

(4) The fee established for the national and state background check pursuant to subsection (6)(f) of this section shall include:

(a) An amount charged by the cabinet that does not exceed the actual cost of facilitating background checks to be paid into the State Treasury and credited to the National and State Background Check Program fund created in Section 38 of this Act; and

(b) An amount that shall be remitted by the cabinet to the appropriate state or federal law enforcement agency for the actual cost of processing criminal background checks and continuous employment assessments pursuant to subsection (2) of Section 33 of this Act.

(5) To the extent that National and State Background Check Program grant moneys or other funding is available, the cabinet shall use federal grant funds from the Centers for Medicare and Medicaid Services to cover the cabinet's portion of the fee and the federal law enforcement portion of the fee remitted by the cabinet pursuant to subsection (4) of this section on behalf of long-term-care facilities or providers. The cabinet's portion of the fee that is covered with funding under this subsection shall be credited to the National and State Background Check Program fund created in Section 38 of this Act.

(6) The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A to implement the requirements of KRS 216.785 to 216.793 that include but are not limited to the following:

(a) Registries necessary for the administration of the National and State Background

- Check Program, which shall include the abuse and neglect registries of the Commonwealth of Kentucky and may include registries of another state if an applicant previously resided in that state;
- (b) Procedures to provide appropriate privacy and security safeguards in the review of the results from criminal background checks and registry checks;
- (c) A schedule of dates for compliance by each type of long-term-care facility or provider;
- (d) Requirements for monitoring compliance with the National and State Background Check Program by long-term-care facilities or providers, including the imposition of fines for violating Section 34, 35, or 36 of this Act;
- (e) Requirements for processing registry and criminal background checks on representatives of the cabinet who perform inspections of long-term-care facilities or providers; and
- (f) Fees to be collected by the cabinet for national and state background checks that shall be subject to subsections (4) and (5) of this section.

➔SECTION 33. A NEW SECTION OF KRS 216.785 TO 216.793 IS CREATED TO READ AS FOLLOWS:

- (1) (a) The cabinet and the Justice and Public Safety Cabinet shall collaborate on the development and implementation of a mechanism for continuous employment assessment that occurs following an employee's initial criminal background check.
- (b) The cabinet shall collaborate with any federal, state, or local governmental entity on the development and implementation of a mechanism for continuous employment assessment that occurs following an employee's initial registry check.
- (2) The Department of Kentucky State Police and the Federal Bureau of Investigation may charge for the actual cost of processing criminal background checks and continuous

employment assessments, which shall be included in the fee established pursuant to subsections (4) and (6)(f) of Section 32 of this Act, and may charge a fee pursuant to subsection (2) of Section 43 of this Act.

(3) The Department of Kentucky State Police shall:

(a) Promulgate administrative regulations pursuant to KRS Chapter 13A to specify a period of time to retain civil applicant fingerprints;

(b) Furnish all arrest and conviction information regarding each applicant to the inspector general; and

(c) Immediately inform the inspector general if an employee is arrested for or convicted of a crime following his or her initial criminal background check, or if the fingerprints from the arrest or commitment to a correctional or detention facility match the employee's civil applicant fingerprints on file with the Department of Kentucky State Police.

(4) Upon receipt of notice from the Department of Kentucky State Police of a conviction against an employee of a long-term-care facility or provider that occurs subsequent to the employee's initial criminal background check, the inspector general shall immediately inform the facility or provider if it has made a determination that the conviction is a disqualifying offense.

(5) The inspector general shall not include in its disqualifying offense notice to the long-term-care facility or provider, or to the applicant or employee, the specific criminal offenses that constituted the disqualifying offense, or any other information prohibited by state or federal statutes, regulations, or guidelines.

➔SECTION 34. A NEW SECTION OF KRS 216.785 TO 216.793 IS CREATED TO READ AS FOLLOWS:

(1) An applicant seeking employment with a long-term-care facility or provider, or an

- individual seeking employment with the cabinet whose job responsibilities include performing inspections of long-term-care facilities or providers, shall consent to a national and state background check that includes a registry check, a check of information maintained by a professional licensure board as set forth in subsection (1) of Section 32 of this Act, if applicable, and a criminal background check.
- (2) Except as provided in subsection (3) of this section and subsection (2) of Section 35 of this Act, a long-term-care facility or provider, or an agency within the cabinet responsible for conducting inspections of long-term-care facilities or providers, shall not employ, contract with, or otherwise permit to work as an employee an individual required to submit to a registry check and criminal background check if:
- (a) The individual is listed on a registry;
 - (b) The individual's professional license is not in good standing, if applicable; or
 - (c) The facility or provider receives notice from the cabinet that the individual has been determined to have a disqualifying offense, in which case the facility or provider shall notify the applicant of the cabinet's determination within three (3) business days of receipt of the notice.
- (3) If an applicant is not found on a registry and the applicant's license, if applicable, has been validated pursuant to subsection (1) of Section 32 of this Act, a long-term-care facility or provider may hire an applicant for a provisional period of employment pending the completion of the criminal background check. During this time, the applicant shall not have supervisory or disciplinary power or routine contact with patients or residents without the supervision of others on-site and immediately available to the applicant.
- (4) An applicant, or an employee subject to continuous employment assessment, who receives notice of a disqualifying offense may challenge the accuracy of the cabinet's

determination regarding a disqualifying offense by submitting a written request to the cabinet for an informal review of the cabinet's determination or file an appeal under KRS Chapter 13B within five (5) business days of receipt of notice of the disqualifying offense. An applicant or employee may appeal the results of an informal review.

(5) If an applicant or employee wishes to obtain information concerning the disqualifying offense or appeal the accuracy of a criminal background check, the cabinet shall refer the individual to the appropriate state or federal law enforcement agency.

(6) If an applicant or employee challenges the finding that he or she is the true subject of the results from a registry check, the cabinet shall refer the individual to the agency responsible for maintaining the registry.

➔SECTION 35. A NEW SECTION OF KRS 216.785 TO 216.793 IS CREATED TO READ AS FOLLOWS:

(1) Upon notification from the cabinet that an employee has a disqualifying offense, a state-owned or -operated long-term-care facility, or an agency within the cabinet responsible for conducting inspections of long-term-care facilities or providers, shall:

(a) Initiate disciplinary action under KRS 18A.095; and

(b) Provide a written attestation statement to the cabinet affirming the employee's dismissal within three (3) business days if the termination decision is upheld pursuant to KRS 18A.095.

(2) Upon notification from the cabinet that an employee has a disqualifying offense, a long-term-care facility or provider that is not state-owned or operated:

(a) Shall terminate the employee no later than six (6) business days after receipt of notice of the disqualifying offense if the employee has not requested an informal review or an appeal of the finding pursuant to subsections (4) to (6) of Section 34 of this Act. The facility or provider shall submit a written attestation statement to

- the cabinet affirming the individual's dismissal within three (3) business days of termination; or
- (b) May retain the employee pending resolution of an employee's appeal if the employee submitted a request for an informal review or an appeal pursuant to subsections (4) to (6) of Section 34 of this Act, in accordance with the following:
1. The employee shall be subject to direct, on-site supervision, or reassigned to duties that do not involve one-on-one contact with a resident, patient, or client of the facility or provider;
 2. The employee shall be informed that termination shall be immediate if the final order on the employee's appeal upholds the cabinet's determination regarding a disqualifying offense, or the employee does not prevail in an appeal requested pursuant to subsection (4) of Section 34 of this Act; and
- (c) Shall immediately terminate an employee who is retained under paragraph (b) of this subsection if the final order upholds the accuracy of the cabinet's determination regarding a disqualifying offense or the employee does not prevail in an appeal requested pursuant to subsection (4) of Section 34 this Act. The facility or provider shall submit a written attestation statement to the cabinet affirming the individual's dismissal within three (3) business days of termination.
- (3) The cabinet shall issue a fine to a long-term-care facility or provider in the amount of five hundred dollars (\$500) for a violation of subsection (2) of this section. Each day shall constitute a separate offense.
- (4) All fines collected pursuant this section shall be credited to the National and State Background Check Program fund created in Section 38 of this Act.

➔SECTION 36. A NEW SECTION OF KRS 216.785 TO 216.793 IS CREATED TO READ AS FOLLOWS:

- (1) A disqualifying offense shall be eligible for consideration of rehabilitation under an independent review process.
- (2) An applicant may submit a written request for a rehabilitation review to the cabinet no later than fourteen (14) calendar days from the date of the notice of the cabinet's determination regarding a disqualifying offense under subsection (2)(c) of Section 34 of this Act.
- (3) The request for a rehabilitation review shall include the following information:

 - (a) A written explanation of each disqualifying offense, including:

 1. A description of the events related to the offense;
 2. The number of years since the occurrence of the offense;
 3. The identification of individuals involved in the offense;
 4. The age of the offender at the time of the offense; and
 5. Any other circumstances surrounding the offense;
 - (b) Official documentation showing that all fines have been paid or documentation showing adherence to a payment schedule, if applicable;
 - (c) The date probation or parole was satisfactorily completed, if applicable; and
 - (d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently.
- (4) A rehabilitation review shall be conducted by a committee of three (3) employees of the cabinet, each of whom was not responsible for determining that the individual has a disqualifying offense.
- (5) The committee shall consider the information required under subsection (3) of this section, and shall also consider mitigating circumstances that may include but are not limited to:

- (a) The amount of time that has elapsed since committing the disqualifying offense, which shall be no less than seven (7) years from the date of the disqualifying offense;
- (b) The lack of a relationship between the disqualifying offense and the position for which the individual has applied; and
- (c) Evidence that the applicant has pursued or achieved rehabilitation with regard to the disqualifying offense.

The committee shall make a recommendation to the secretary or designee, who shall be responsible for making the final decision.

- (6) The secretary or designee may grant a waiver from the prohibition against employment of an applicant with a disqualifying offense.
- (7) No later than thirty (30) calendar days from receipt of the written request for the rehabilitation review, the secretary or designee shall send a written determination on the rehabilitation waiver to the applicant.
- (8) The decision of the secretary or designee pursuant to subsection (7) of this section shall be subject to appeal under KRS Chapter 13B.
- (9) An individual with a disqualifying offense shall not be employed by a long-term-care facility or provider until the facility or provider receives notification from the cabinet that the individual has been granted a waiver. A long-term-care facility or provider is not obligated to employ or offer employment to an individual who is granted a waiver pursuant to this section.

→SECTION 37. A NEW SECTION OF KRS 216.785 TO 216.793 IS CREATED TO READ AS FOLLOWS:

No person, including the cabinet, the Justice and Public Safety Cabinet, a long-term-care facility or provider, or an individual acting on behalf of any of these entities shall be liable for

civil damages or be subject to any claim, demand, cause of action, or proceeding of any nature as a result of actions taken in good faith to comply with KRS 216.785 to 216.793, including the disqualification of an applicant or employee from employment on the basis of a disqualifying offense.

→SECTION 38. A NEW SECTION OF KRS 216.785 TO 216.793 IS CREATED TO READ AS FOLLOWS:

- (1) A trust and agency fund is created to be known as the National and State Background Check Program fund, and shall be administered by the Finance and Administration Cabinet. The fund shall consist of fees collected for registry checks and national and state background checks as provided in Section 32 of this Act, fines collected for violations of subsection (2) of Section 35 of this Act, and any other proceeds from grants, contributions, appropriations, or other moneys made available for purposes of this fund.
- (2) Moneys in the fund shall be used by the cabinet to facilitate the performance of registry and criminal background checks of prospective employees of long-term-care facilities and providers.
- (3) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used solely for the purposes set forth in subsection (2) of this section.
- (4) Interest earned on any moneys in the fund shall accrue to the fund and shall not lapse.
- (5) Moneys in the fund are hereby appropriated for the purposes set forth in Section 32 of this Act.

→SECTION 39. A NEW SECTION OF KRS 216.785 TO 216.793 IS CREATED TO READ AS FOLLOWS:

- (1) A registry check and criminal background check as defined by Section 31 of this Act shall be provided upon request by a person participating in the Medicaid program who

self-directs his or her own care.

(2) An individual who receives notice from the cabinet of a disqualifying offense after submitting to a registry check and criminal background check in accordance with subsection (1) of this section shall not be eligible to provide a home and community-based service authorized under KRS Chapter 205 to a person who self-directs his or her own care.

(3) An individual may seek an appeal or waiver regarding a disqualifying offense in accordance with Section 34 or 36 of this Act.

➔SECTION 40. A NEW SECTION OF KRS 216.785 TO 216.793 IS CREATED TO READ AS FOLLOWS:

(1) No family-care home or personal-care home shall be owned or operated by a person, or knowingly employ a person in a position which involves providing direct services to a resident or client, if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or a sexual crime.

(2) A family-care home or personal-care home may employ persons convicted of or pleading guilty to an offense classified as a misdemeanor if the crime is not related to abuse, neglect, or exploitation of an adult.

(3) Each family-care home or personal care home shall request all conviction information from the Justice and Public Safety Cabinet for any applicant for employment.

(4) The family-care home or personal-care home may temporarily employ an applicant pending the receipt of the conviction information.

(5) Each application form provided by the family-care home or personal-care home to an applicant for initial employment which involves providing direct services to residents or clients shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT,

STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

(6) Any request for criminal records of an applicant as provided under subsection (5) of this section shall be on a form or through a process approved by the Justice and Public Safety Cabinet in collaboration with the Administrative Office of the Courts. The Justice and Public Safety Cabinet may charge a fee to be paid by the applicant or state agency in an amount no greater than the actual cost of processing the request.

➔Section 41. KRS 216.787 is amended to read as follows:

(1) No agency providing services to senior citizens which are funded by the Department for Community Based Services~~[of the Cabinet for Health and Family Services]~~ or the Department for Aging and Independent Living of the Cabinet for Health and Family Services shall employ **an applicant if the cabinet notifies the agency that:**

(a) The results of the applicant's registry check and criminal background check conducted pursuant to KRS 216.785 to 216.793 reveal a disqualifying offense; and

(b) A waiver has not been granted pursuant to Section 36 of this Act~~[persons in a position which involves providing direct services to a senior citizen if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or the commission of a sex crime].~~

(2) Operators of service provider agencies may employ persons convicted of or pleading guilty to an offense classified as a misdemeanor **if the offense is not a disqualifying offense.**

(3) **An individual who has received a pardon for a disqualifying offense or has had the record of an offense expunged may be employed.**

(4) Each service provider agency providing ~~[direct]~~ services to senior citizens as specified under KRS 216.785 to 216.793;

(a) Shall request a registry check and a criminal background check under KRS 216.785

to 216.793 for each applicant for employment with the agency; and

(b) May employ an applicant provisionally in accordance with Section 35 of this Act~~[all conviction information from the Justice and Public Safety Cabinet for any applicant for employment prior to employing the applicant].~~

➔Section 42. KRS 216.789 is amended to read as follows:

(1) No long-term-care~~[long-term care]~~ facility or provider shall employ an applicant if the cabinet notifies the facility or provider that:

(a) The results of the applicant's registry check and criminal background check under KRS 216.785 to 216.793 reveal a disqualifying offense; and

(b) A waiver has not been granted pursuant to Section 36 of this Act~~[as defined by KRS 216.535(1), nursing pool providing staff to a nursing facility, or assisted living community shall knowingly employ a person in a position which involves providing direct services to a resident or client if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or a sexual crime].~~

(2) A long-term-care facility or provider~~[nursing facility, nursing pool providing staff to a nursing facility, or assisted living community]~~ may employ an individual who has been~~[persons]~~ convicted of or entered a plea of~~[pleading]~~ guilty to an offense classified as a misdemeanor if the crime is not a disqualifying offense~~[related to abuse, neglect, or exploitation of an adult].~~

(3) An individual who has received a pardon for a disqualifying offense or has had the record of an offense expunged may be employed.

(4) Each long-term-care~~[long term care]~~ facility or provider shall request a registry check and criminal background check under KRS 216.785 to 216.793 for each applicant for employment with the facility or provider, and may employ an applicant provisionally

~~*pursuant to subsection (3) of Section 34 of this Act*~~~~[as defined by KRS 216.535(1), nursing pool providing staff to a nursing facility, or assisted living community shall request all conviction information from the Justice and Public Safety Cabinet for any applicant for employment pursuant to KRS 216.793.~~

~~(4) The long term care facility, nursing pool providing staff to a nursing facility, or assisted living community may temporarily employ an applicant pending the receipt of the conviction information].~~

➔Section 43. KRS 216.793 is amended to read as follows:

(1) Each application form provided by the *long-term-care facility or provider*~~[employer]~~, or each application form provided by a facility *or provider* either contracted or operated by the Department for Behavioral Health, Developmental and Intellectual Disabilities of the Cabinet for Health and Family Services, to the applicant for initial employment in *a long-term-care facility or provider*~~[an assisted living community nursing facility, or nursing pool providing staff to a nursing facility]~~, or in a position funded by the Department for Community Based Services of the Cabinet for Health and Family Services or the Department for Aging and Independent Living of the Cabinet for Health and Family Services and which involves providing direct services to senior citizens shall conspicuously state the following: "*FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND STATE BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT. THE DEPARTMENT OF KENTUCKY STATE POLICE WILL RETAIN YOUR FINGERPRINTS AND NOTIFY THE CABINET FOR HEALTH AND FAMILY SERVICES OF SUBSEQUENT ARRESTS AND CONVICTIONS INDICATED IN THE CENTRALIZED CRIMINAL HISTORY RECORD INFORMATION SYSTEM*~~[CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT]~~."

- (2) Any request for **a national and state background check**~~[criminal records]~~ of an applicant as provided under subsection (1) of this section shall be **conducted pursuant to KRS 216.785 to 216.793 and be** on a form or through a process approved by the **Cabinet for Health and Family Services, the Justice and Public Safety Cabinet, and the Federal Bureau of Investigation**~~[or the Administrative Office of the Courts]~~. The Justice and Public Safety Cabinet **and the Federal Bureau of Investigation**~~[or the Administrative Office of the Courts]~~ may charge a fee to be paid by the applicant, **long-term-care facility or provider**, or state agency in an amount no greater than the actual cost of processing the **criminal background check and continuous employment assessment under Section 36 of this Act, unless the Cabinet for Health and Family Services remits the fee as required under subsection (4) of Section 35 of this Act**~~[request]~~.

➔Section 44. KRS 216.533 is amended to read as follows:

- (1) A long-term care facility owned, managed, or operated by the Department for Behavioral Health, Developmental and Intellectual Disabilities shall **require each applicant to submit to a registry check, a check of information maintained by a professional licensure board, and a criminal background check under KRS 216.785 to 216.793**~~[request an in-state criminal background information check from the Justice and Public Safety Cabinet or Administrative Office of the Courts for each applicant recommended for employment. Out-of-state criminal background information checks shall be obtained for any applicant recommended for employment who has resided or been employed outside of the Commonwealth]~~.
- (2) No facility specified in subsection (1) of this section shall **employ an applicant if the cabinet notifies the facility that:**
- (a) The results of the applicant's registry check and criminal background check reveal a disqualifying offense as defined in Section 31 of this Act; and**

- (b) A waiver has not been granted pursuant to Section 36 of this Act** knowingly employ any person who has been convicted of a felony offense under:
- (a) ~~KRS Chapter 209;~~
 - (b) ~~KRS Chapter 218A;~~
 - (c) ~~KRS 507.020, 507.030, and 507.040;~~
 - (d) ~~KRS Chapter 509;~~
 - (e) ~~KRS Chapter 510;~~
 - (f) ~~KRS Chapter 511;~~
 - (g) ~~KRS Chapter 513;~~
 - (h) ~~KRS 514.030;~~
 - (i) ~~KRS Chapter 530;~~
 - (j) ~~KRS Chapter 531;~~
 - (k) ~~KRS 508.010, 508.020, 508.030, and 508.032;~~
 - (l) ~~A criminal statute of the United States or another state similar to paragraphs (a) to (k) of this subsection; or~~
 - (m) ~~A violation of the uniform code of military justice or military regulation similar to paragraphs (a) to (k) of this subsection which has caused the person to be discharged from the Armed Forces of the United States].~~
- (3) **An individual**~~[A person]~~ who has received a pardon for **a disqualifying offense as defined in Section 31 of this Act**~~[an offense specified in subsection (2)]~~ or has had the record of such an offense expunged may be employed.
- ~~[(4) Department for Behavioral Health, Developmental and Intellectual Disabilities facilities specified in subsection (1) of this section shall be exempt from the provisions of KRS 216.789(1).]~~

➔Section 45. KRS 216.712 is amended to read as follows:

- (1) No personal services agency shall be operated, maintained, or advertised without obtaining a certificate as provided in this section. Entities that operate personal services agencies, as defined in KRS 216.710, in Kentucky on June 25, 2009, shall have until December 31, 2009, to file an application for certification pursuant to this section. All other agencies shall be required to obtain certification prior to providing personal services. A parent personal services agency with one (1) or more branch offices in Kentucky shall not be required to obtain separate certificates for each of its branch offices.
- (2) Each personal services agency providing direct services to clients as defined in KRS 216.710 shall request a registry check and~~perform~~ a criminal background check pursuant to KRS 216.785 to 216.793 on any applicant for employment prior to employing the applicant. Each application provided by the personal services agency to the applicant for initial employment shall state in a conspicuous manner on the application "For This Type of Employment, State Law Requires a National and State~~Criminal~~ Background Check as Condition of Employment. The Department of Kentucky State Police will retain your fingerprints and notify the Cabinet for Health and Family Services of subsequent arrests and convictions indicated in the centralized criminal history record information system."
- (3) No personal services agency shall be owned by or employ an individual who provides~~employ a person in a position which involves providing direct~~ services to a client if the cabinet notifies the agency that:
 - (a) The results of the individual's registry check or criminal background check reveal a disqualifying offense as defined in Section 31 of this Act; and
 - (b) A waiver has not been granted pursuant to Section 36 of this Act~~employee has been convicted of a crime as defined by KRS 216.710~~.
- (4) An individual who has received a pardon for a disqualifying offense as defined in

Section 31 of this Act or has had the record of such an offense expunged may own or be employed by a personal services agency.

- (5)** The secretary shall promulgate administrative regulations to implement this section and KRS 216.714 and 216.716. The administrative regulations at a minimum shall establish:
- (a) An initial and annual certification review process for personal services agencies that does not require an on-site visit;
 - (b) Procedures related to applying for, reviewing, approving, denying, and revoking certification;
 - (c) Fees for application and reapplication in an amount sufficient to offset the cost to administer KRS 216.712 and 216.714;
 - (d) Procedures for complaint investigations;
 - (e) Procedures for the imposition and collection of fines as provided by KRS 216.714;
 - (f) Policies and procedures for the personal services agencies;
 - (g) Procedures for **registry checks and** criminal background checks **pursuant to KRS 216.785 to 216.793;**
 - (h) Procedures to ensure the competency of the individuals providing personal services, the requirements of written service agreements between the personal services agencies and clients or designated representatives, and the requirements of personal service plans for the clients;~~and~~
 - (i) Procedures to be utilized in the conduct of hearings upon appeals in accordance with KRS Chapter 13B; **and**
 - (j) Procedures to provide appropriate privacy and security safeguards for use in the review of the results from criminal background checks and registry checks.**
- ~~(6)~~**(5)** Only those personal services agencies meeting the standards prescribed for certification shall be granted a certificate.

Unofficial Document

~~(7)(6)~~ All fees collected under the provisions of this section shall be paid into the State Treasury and credited to the Kentucky personal services agency fund created by KRS 216.716.

~~(8)(7)~~ Each personal services agency providing direct care to clients shall have a policy that addresses the acceptance of personal gifts, gratuities, or loans from a client by the agency and by any employee, agent, or contractor of the personal services agency. The policy shall not be required to apply to personal gifts, gratuities, or loans to the agency made by family members or friends of the client. The policy shall, at a minimum:

- (a) Prohibit the solicitation of personal gifts, gratuities, or loans from a client; and
- (b) Specify the conditions under which gifts, gratuities, or loans from a client may be accepted by the agency and by any employee, agent, or contractor of the personal services agency."