

Substitute for SENATE BILL No. 447

By Committee on Public Health and Welfare

3-8

10 AN ACT concerning child care; relating to supervision of children in
11 child care facilities and licensing and inspection of family child care
12 homes; amending K.S.A. 39-7,129, 65-504, 65-506, 65-512, 65-523, 65-
13 524, 65-530 and 65-531 and K.S.A. 2009 Supp. 59-29a11, 65-503, 65-
14 516, 65-525 and 65-526 and repealing the existing sections; also re-
15 pealing K.S.A. 65-517, 65-518, 65-519, 65-520, 65-521 and 65-522.
16

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

18 New Section 1. (a) Children in child care homes or day care homes,
19 as defined and regulated by the secretary of health and environment, must
20 be competently supervised.

21 (b) For each child less than five years of age who is awake, the child's
22 care provider shall be in proximity to the child watching and directing
23 activities of the children, respond immediately to emergencies and the
24 needs of children, and provide direct visual supervision unless otherwise
25 provided in subsection (d). An exception to this requirement is allowed
26 when the care provider is temporarily unable to provide direct visual
27 supervision in order to attend to personal hygiene needs or to engage in
28 other care provider duties. In those circumstances, the following condi-
29 tions shall be met:

30 (1) The child care provider has first ensured the safety of each child;
31 and

32 (2) the child care provider is able to respond immediately to any child
33 in distress.

34 (c) Each applicant who holds a temporary permit or each licensee
35 shall ensure that supervision is provided for each child who is napping or
36 sleeping. Each child who is napping or sleeping shall be under direct
37 visual supervision or within hearing distance of the child's care provider
38 and shall be visually checked by the care provider at least once every 15
39 minutes, unless otherwise provided in subsection (d).

40 (d) Nothing in this section shall be construed as preventing a person
41 who is blind or visually impaired, or who is deaf or hearing impaired,
42 when otherwise qualified, from being a licensed day care provider, or an
43 employee of such a provider.

1 ***[(e) This section shall be known and may be cited as Lexie's***
2 ***law.]***

3 Sec. 2. K.S.A. 39-7,129 is hereby amended to read as follows: 39-
4 7,129. The secretary of social and rehabilitation services shall adjust, by
5 rules and regulations, the program requirements for aid to families with
6 dependent children provided through the department of social and re-
7 habilitation services to include requirements that, as a condition for con-
8 tinued eligibility for aid to families with dependent children, the family
9 comply with laws providing for immunization and vaccination of children
10 attending school; ~~or a child care facility or a family day care home~~. The
11 secretary of health and environment shall provide to the secretary of social
12 and rehabilitation services current information on the requirements of
13 these laws which relate to the immunization and vaccination of children.

14 Sec. 3. K.S.A. 2009 Supp. 59-29a11 is hereby amended to read as
15 follows: 59-29a11. (a) Nothing in this act shall prohibit a person from
16 filing a petition for transitional release, conditional release or final dis-
17 charge pursuant to this act. However, if a person has previously filed a
18 petition for transitional release, conditional release or final discharge
19 without the secretary of the department of social and rehabilitation serv-
20 ices approval and the court determined either upon review of the petition
21 or following a hearing, that the petitioner's petition was frivolous or that
22 the petitioner's condition had not so changed that the person was safe to
23 be at large, then the court shall deny the subsequent petition unless the
24 petition contains facts upon which a court could find the condition of the
25 petitioner had so changed that a hearing was warranted. Upon receipt of
26 a first or subsequent petition from committed persons without the sec-
27 retary's approval, the court shall endeavor whenever possible to review
28 the petition and determine if the petition is based upon frivolous grounds
29 and if so shall deny the petition without a hearing.

30 (b) No transitional release or conditional release facility or building
31 shall be located within 2,000 feet of a licensed child care facility, ~~regis-~~
32 ~~tered family day care home~~, an established place of worship, any residence
33 in which a child under 18 years of age resides, or the real property of any
34 school upon which is located a structure used by a unified school district
35 or an accredited nonpublic school for student instruction or attendance
36 or extracurricular activities of pupils enrolled in kindergarten or any
37 grades one through 12. This subsection shall not apply to any state insti-
38 tution or facility.

39 (c) Transitional release or conditional release facilities or buildings
40 shall be subject to all regulations applicable to other property and build-
41 ings located in the zone or area that are imposed by any municipality
42 through zoning ordinance, resolution or regulation, such municipality's
43 building regulatory codes, subdivision regulations or other nondiscrimi-

1 natory regulations.

2 (d) On and after January 1, 2009, the secretary of social and rehabil-
3 itation services shall place no more than eight sexually violent predators
4 in any one county on transitional release or conditional release.

5 (e) The secretary of social and rehabilitation services shall submit an
6 annual report to the governor and the legislature during the first week of
7 the regular legislative session detailing activities related to the transitional
8 release and conditional release of sexually violent predators. The report
9 shall include the status of such predators who have been placed in tran-
10 sitional release or conditional release including the number of any such
11 predators and their locations; information regarding the number of pred-
12 ators who have been returned to the sexually violent predator treatment
13 program at Larned state hospital along with the reasons for such return;
14 and any plans for the development of additional transitional release or
15 conditional release facilities.

16 Sec. 4. K.S.A. 2009 Supp. 65-503 is hereby amended to read as fol-
17 lows: 65-503. As used in this act:

18 (a) “Child placement agency” means a business or service conducted,
19 maintained or operated by a person engaged in finding homes for children
20 by placing or arranging for the placement of such children for adoption
21 or foster care.

22 (b) “Child care resource and referral agency” means a business or
23 service conducted, maintained or operated by a person engaged in pro-
24 viding resource and referral services, including information of specific
25 services provided by child care facilities, to assist parents to find child
26 care.

27 (c) *“Family child care home” means a place maintained for the pur-
28 pose of providing children with food or lodging, or both, away from such
29 children’s home or homes, for less than 24 hours a day. A maximum of
30 six children under 16 years of age with not more than three children under
31 18 months of age may be cared for in a family child care home. Children
32 under 12 years of age related to the person maintaining the family child
33 care home shall be included in the total number of children permitted to
34 be in care.*

35 ~~(c)~~ ~~(1)~~ (d) “Child care facility” means:

36 ~~(A)~~ (1) A facility maintained by a person who has control or custody
37 of one or more children under 16 years of age, unattended by parent or
38 guardian, for the purpose of providing the children with food or lodging,
39 or both, except children in the custody of the secretary of social and
40 rehabilitation services who are placed with a prospective adoptive family
41 pursuant to the provisions of an adoptive placement agreement or who
42 are related to the person by blood, marriage or legal adoption;

43 ~~(B)~~ (2) a children’s home, orphanage, maternity home, day care fa-

1 cility or other facility of a type determined by the secretary to require
2 regulation under the provisions of this act;

3 ~~(C)~~ (3) a child placement agency or child care resource and referral
4 agency, or a facility maintained by such an agency for the purpose of
5 caring for children under 16 years of age; ~~or~~

6 ~~(D)~~ (4) any receiving or detention home for children under 16 years
7 of age provided or maintained by, or receiving aid from, any city or county
8 or the state; or

9 (5) *a family child care home.*

10 ~~(2) “Child care facility” shall not include a family day care home de-~~
11 ~~defined in K.S.A. 65-517 and amendments thereto.~~

12 ~~(d)~~ (e) “Person” means any individual, association, partnership, cor-
13 poration, government, governmental subdivision or other entity.

14 ~~(e)~~ (f) “Boarding school” means a facility which provides 24-hour care
15 to school age children, provides education as its primary function, and is
16 accredited by an accrediting agency acceptable to the secretary of health
17 and environment.

18 Sec. 5. K.S.A. 65-504 is hereby amended to read as follows: 65-504.

19 (a) The secretary of health and environment shall have the power to grant
20 a license to a person to maintain a maternity center or child care facility
21 for children under 16 years of age. The license shall state the name of
22 the licensee, describe the particular premises in or at which the business
23 shall be carried on, whether it shall receive and care for women or chil-
24 dren, and the number of women or children that may be treated, main-
25 tained, boarded or cared for at any one time. No greater number of
26 women or children than is authorized in the license shall be kept on those
27 premises and the business shall not be carried on in a building or place
28 not designated in the license. The license shall be kept posted in a con-
29 spicuous place on the premises where the business is conducted. The
30 secretary of health and environment shall grant no license in any case
31 until careful inspection of the maternity center or child care facility shall
32 have been made according to the terms of this act and until such mater-
33 nity center or child care facility has complied with all the requirements
34 of this act. Except as provided by this subsection, no license shall be
35 granted without the approval of the secretary of social and rehabilitation
36 services. The secretary of health and environment may issue, without the
37 approval of the secretary of social and rehabilitation services, a temporary
38 permit to operate for a period not to exceed 90 days upon receipt of an
39 initial application for license. The secretary of health and environment
40 may extend, without the approval of the secretary of social and rehabili-
41 tation services, the temporary permit to operate for an additional period
42 not to exceed 90 days if an applicant is not in full compliance with the
43 requirements of this act but has made efforts towards full compliance.

1 (b) (1) In all cases where the secretary of social and rehabilitation
2 services deems it necessary, an investigation of the maternity center or
3 child care facility shall be made under the supervision of the secretary of
4 social and rehabilitation services or other designated qualified agents. For
5 that purpose and for any subsequent investigations they shall have the
6 right of entry and access to the premises of the center or facility and to
7 any information deemed necessary to the completion of the investigation.
8 In all cases where an investigation is made, a report of the investigation
9 of such center or facility shall be filed with the secretary of health and
10 environment.

11 (2) In cases where neither approval or disapproval can be given within
12 a period of 30 days following formal request for such a study, the secretary
13 of health and environment may issue a temporary license without fee
14 pending final approval or disapproval of the center or facility.

15 (c) Whenever the secretary of health and environment refuses to
16 grant a license to an applicant, the secretary shall issue an order to that
17 effect stating the reasons for such denial and within five days after the
18 issuance of such order shall notify the applicant of the refusal. Upon
19 application not more than 15 days after the date of its issuance a hearing
20 on the order shall be held in accordance with the provisions of the Kansas
21 administrative procedure act.

22 (d) When the secretary of health and environment finds upon inves-
23 tigation or is advised by the secretary of social and rehabilitation services
24 that any of the provisions of this act or the provisions of K.S.A. 59-2123,
25 and amendments thereto, are being violated, or that the maternity center
26 or child care facility is maintained without due regard to the health, com-
27 fort or welfare of the residents, the secretary of health and environment,
28 after giving notice and conducting a hearing in accordance with the pro-
29 visions of the Kansas administrative procedure act, shall issue an order
30 revoking such license. The order shall clearly state the reason for the
31 revocation.

32 (e) If the secretary revokes or refuses to renew a license, the licensee
33 who had a license revoked or not renewed shall not be eligible to apply
34 for a license ~~or for a certificate of registration to maintain a family day~~
35 ~~care home under K.S.A. 65-518 and amendments thereto~~ for a period of
36 one year subsequent to the date such revocation or refusal to renew be-
37 comes final. *If the secretary revokes or refuses to renew a license of a*
38 *child care provider who is a repeat, three or more times, violator of stat-*
39 *utory requirements or rules and regulations or is found to have contrib-*
40 *uted to the death or serious bodily harm of the child under such provider's*
41 *care, such child care provider shall be prohibited to apply for a new*
42 *license to provide child care or to seek employment under another child*
43 *care provider.*

1 (f) Any applicant or licensee aggrieved by a final order of the secretary
2 of health and environment denying or revoking a license under this act
3 may appeal the order in accordance with the act for judicial review and
4 civil enforcement of agency actions.

5 Sec. 6. K.S.A. 65-506 is hereby amended to read as follows: 65-506.

6 The secretary of health and environment shall serve notice of the issu-
7 ance, suspension or revocation of a license to conduct a maternity center
8 or child care facility ~~or the issuance, suspension or revocation of a certifi-~~
9 ~~cate of registration for a family day care home~~ to the secretary of social
10 and rehabilitation services, juvenile justice authority, department of ed-
11 ucation, office of the state fire marshal, county, city-county or multi-
12 county department of health, and to any licensed child placement agency
13 or licensed child care resource and referral agency serving the area where
14 the center or facility is located. A maternity center or child care facility
15 that has had a license suspended, revoked or denied by the secretary of
16 health and environment ~~or a family day care home that has had a certifi-~~
17 ~~cate of registration suspended, revoked or denied by the secretary of~~
18 ~~health and environment~~ shall notify in writing the parents or guardians
19 of the enrollees of the suspension, revocation or denial. Neither the sec-
20 retary of social and rehabilitation services nor any other person shall place
21 or cause to be placed any maternity patient or child under 16 years of
22 age in any maternity center or child care facility not licensed by the sec-
23 retary of health and environment ~~or family day care home not holding a~~
24 ~~certificate of registration from the secretary of health and environment.~~

25 Sec. 7. K.S.A. 65-512 is hereby amended to read as follows: 65-512.

26 (a) It is hereby made the duty of the secretary of health and environment
27 to inspect or cause to be inspected at least once every ~~12~~ 15 months every
28 maternity center or child care facility, ~~and for that purpose it unless oth-~~
29 ~~erwise provided in subsections (b) and (c). For the purpose of inspection~~
30 ~~the secretary or the secretary's authorized agent~~ shall have the right of
31 entry and access thereto in every department and to every place in the
32 premises, shall call for and examine the records which are required to be
33 kept by the provisions of this act and shall make and preserve a record
34 of every inspection. The licensee shall give all reasonable information to
35 the authorized agent of the secretary of health and environment and shall
36 afford every reasonable facility for viewing the premises and seeing the
37 patients or children therein. No such patient or child without the consent
38 of the patient or child shall be required to be interviewed by any agent
39 unless the agent is an authorized person or a licensed physician.

40 (b) (1) *On or before January 1, 2011, the secretary shall start the*
41 *inspection of family child care homes pursuant to subsection (a).*

42 (2) *On or before July 1, 2013, the secretary of health and environment*
43 *shall develop and implement a risk-based system for use in determining*

1 *the frequency of inspections by adopting rules and regulations the sec-*
2 *retary deems necessary to carry out this subsection. Risk criteria shall*
3 *include the ages of children authorized under care, hours of operation,*
4 *complaint history, compliance history, and other factors the secretary*
5 *deems necessary to assess risk in all child care facilities.*

6 (3) *The secretary of health and environment shall conduct an inspec-*
7 *tion of any child care facility upon receiving a complaint. Any new child*
8 *care facility shall be inspected prior to issuance of a license. The secretary*
9 *may conduct an inspection of any child care facility that has a record of*
10 *repeated complaints or serious violations at any time. The secretary shall*
11 *inspect any child care facility that provides services to military families*
12 *receiving military assistance for child care every 12 months.*

13 (c) (1) *Any child care facility included in the following categories that*
14 *was in compliance on the effective date of this act shall submit a self-*
15 *evaluation report annually to the secretary of health and environment*
16 *based on a check list provided by the secretary. The categories of child*
17 *care facilities subject to this requirement are: Day care homes, as defined*
18 *in K.A.R. 28-4-113; group day care homes, as defined in K.A.R. 28-4-113;*
19 *child care centers, as defined in K.A.R. 28-4-420; preschools, as defined*
20 *in K.A.R. 28-4-420; school-age programs, as defined in K.A.R. 28-4-576;*
21 *and drop-in programs, as defined in K.A.R. 28-4-700.*

22 (2) *The secretary of health and environment shall be directed to utilize*
23 *the fund savings as a result of implementation of subparagraph (1) for*
24 *expenditures for inspection of family child care homes in subsection (b)(1).*

25 (3) *The provisions of this subsection shall expire on July 1, 2013.*

26 Sec. 8. K.S.A. 2009 Supp. 65-516 is hereby amended to read as fol-
27 lows: 65-516. (a) No person shall knowingly maintain a child care facility
28 ~~or maintain a family day care home if, in the child care facility or family~~
29 ~~day care home, there resides, works or regularly volunteers any person~~
30 ~~who in this state or in other states or the federal government:~~

31 (1) (A) Has a felony conviction for a crime against persons, (B) has
32 a felony conviction under K.S.A. 2009 Supp. 21-36a01 through 21-36a17,
33 and amendments thereto, (C) has a conviction of any act which is de-
34 scribed in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes An-
35 notated, and amendments thereto, or a conviction of an attempt under
36 K.S.A. 21-3301, and amendments thereto, to commit any such act or a
37 conviction of conspiracy under K.S.A. 21-3302, and amendments thereto,
38 to commit such act, or similar statutes of other states or the federal gov-
39 ernment, or (D) has been convicted of any act which is described in K.S.A.
40 21-4301 or 21-4301a, and amendments thereto, or similar statutes of
41 other states or the federal government;

42 (2) has been adjudicated a juvenile offender because of having com-
43 mitted an act which if done by an adult would constitute the commission

1 of a felony and which is a crime against persons, is any act described in
2 articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and
3 amendments thereto, or similar statutes of other states or the federal
4 government, or is any act described in K.S.A. 21-4301 or 21-4301a, and
5 amendments thereto, or similar statutes of other states or the federal
6 government;

7 (3) has committed an act of physical, mental or emotional abuse or
8 neglect or sexual abuse and who is listed in the child abuse and neglect
9 registry maintained by the department of social and rehabilitation services
10 pursuant to K.S.A. 2009 Supp. 38-2226, and amendments thereto, and
11 (A) the person has failed to successfully complete a corrective action plan
12 which had been deemed appropriate and approved by the department of
13 social and rehabilitation services, or (B) the record has not been expunged
14 pursuant to rules and regulations adopted by the secretary of social and
15 rehabilitation services;

16 (4) has had a child removed from home based on a court order pur-
17 suant to K.S.A. 2009 Supp. 38-2251, and amendments thereto, in this
18 state, or a court order in any other state based upon a similar statute that
19 finds the child to be deprived or a child in need of care based on a finding
20 of physical, mental or emotional abuse or neglect or sexual abuse and the
21 child has not been returned to the home or the child reaches majority
22 before being returned to the home and the person has failed to satisfac-
23 torily complete a corrective action plan approved by the department of
24 health and environment;

25 (5) has had parental rights terminated pursuant to the Kansas juvenile
26 code or K.S.A. 2009 Supp. 38-2266 through 38-2270, and amendments
27 thereto, or a similar statute of other states;

28 (6) has signed a diversion agreement pursuant to K.S.A. 22-2906 et
29 seq., and amendments thereto, or an immediate intervention agreement
30 pursuant to K.S.A. 2009 Supp. 38-2346, and amendments thereto, in-
31 volving a charge of child abuse or a sexual offense; or

32 (7) has an infectious or contagious disease.

33 (b) No person shall maintain a child care facility ~~or a family day care~~
34 ~~home~~ if such person has been found to be a person in need of a guardian
35 or a conservator, or both, as provided in K.S.A. 59-3050 through 59-3095,
36 and amendments thereto.

37 (c) Any person who resides in a child care facility ~~or family day care~~
38 ~~home~~ and who has been found to be in need of a guardian or a conser-
39 vator, or both, shall be counted in the total number of children allowed
40 in care.

41 (d) In accordance with the provisions of this subsection, the secretary
42 of health and environment shall have access to any court orders or ad-
43 judications of any court of record, any records of such orders or adjudi-

1 cations, criminal history record information including, but not limited to,
2 diversion agreements, in the possession of the Kansas bureau of investi-
3 gation and any report of investigations as authorized by K.S.A. 2009 Supp.
4 38-2226, and amendments thereto, in the possession of the department
5 of social and rehabilitation services or court of this state concerning per-
6 sons working, regularly volunteering or residing in a child care facility ~~or~~
7 ~~a family day care home~~. The secretary shall have access to these records
8 for the purpose of determining whether or not the home meets the
9 requirements of K.S.A. 59-2132, 65-503, 65-508, 65-516 and 65-519, and
10 amendments thereto.

11 (e) In accordance with the provisions of this subsection, the secretary
12 is authorized to conduct national criminal history record checks to deter-
13 mine criminal history on persons residing, working or regularly volun-
14 teering in a child care facility ~~or family day care home~~. In order to conduct
15 a national criminal history check the secretary shall require fingerprinting
16 for identification and determination of criminal history. The secretary
17 shall submit the fingerprints to the Kansas bureau of investigation and to
18 the federal bureau of investigation and receive a reply to enable the sec-
19 retary to verify the identity of such person and whether such person has
20 been convicted of any crime that would prohibit such person from resid-
21 ing, working or regularly volunteering in a child care facility ~~or family day~~
22 ~~care home~~. The secretary is authorized to use information obtained from
23 the national criminal history record check to determine such person's
24 fitness to reside, work or regularly volunteer in a child care facility ~~or~~
25 ~~family day care home~~.

26 (f) The secretary shall notify the child care applicant, ~~or licensee or~~
27 ~~registrant~~, within seven days by certified mail with return receipt re-
28 quested, when the result of the national criminal history record check or
29 other appropriate review reveals unfitness specified in subsection (a)(1)
30 through (7) with regard to the person who is the subject of the review.

31 (g) No child care facility ~~or family day care home~~ or the employees
32 thereof, shall be liable for civil damages to any person refused employ-
33 ment or discharged from employment by reason of such facility's or
34 home's compliance with the provisions of this section if such home acts
35 in good faith to comply with this section.

36 (h) For the purpose of subsection (a)(3), a person listed in the child
37 abuse and neglect central registry shall not be prohibited from residing,
38 working or volunteering in a child care facility ~~or family day care home~~
39 unless such person has: (1) Had an opportunity to be interviewed and
40 present information during the investigation of the alleged act of abuse
41 or neglect; and (2) been given notice of the agency decision and an op-
42 portunity to appeal such decision to the secretary and to the courts pur-
43 suant to the act for judicial review and civil enforcement of agency actions.

1 (i) In regard to Kansas issued criminal history records:

2 (1) The secretary of health and environment shall provide in writing
3 information available to the secretary to each child placement agency
4 requesting information under this section, including the information pro-
5 vided by the Kansas bureau of investigation pursuant to this section, for
6 the purpose of assessing the fitness of persons living, working or regularly
7 volunteering in a family foster home under the child placement agency's
8 sponsorship.

9 (2) The child placement agency is considered to be a governmental
10 entity and the designee of the secretary of health and environment for
11 the purposes of obtaining, using and disseminating information obtained
12 under this section.

13 (3) The information shall be provided to the child placement agency
14 regardless of whether the information discloses that the subject of the
15 request has been convicted of any offense.

16 (4) Whenever the information available to the secretary reveals that
17 the subject of the request has no criminal history on record, the secretary
18 shall provide notice thereof in writing to each child placement agency
19 requesting information under this section.

20 (5) Any staff person of a child placement agency who receives infor-
21 mation under this subsection shall keep such information confidential,
22 except that the staff person may disclose such information on a need-to-
23 know basis to: (A) The person who is the subject of the request for in-
24 formation, (B) the applicant or operator of the family foster home in
25 which the person lives, works or regularly volunteers, (C) the department
26 of health and environment, (D) the department of social and rehabilita-
27 tion services, (E) the juvenile justice authority, and (F) the courts.

28 (6) A violation of the provisions of subsection (i)(5) shall be an un-
29 classified misdemeanor punishable by a fine of \$100 for each violation.

30 Sec. 9. K.S.A. 65-523 is hereby amended to read as follows: 65-523.
31 The secretary may suspend any license, ~~certificate of registration~~ or tem-
32 porary permit issued under the provisions of K.S.A. 65-501 through ~~65-~~
33 ~~522~~ 65-516, and amendments thereto, upon any of the following grounds
34 and in the manner provided in this act:

35 (a) Violation by the licensee, ~~registrant~~ or holder of a temporary per-
36 mit of any provision of this act or of the rules and regulations promulgated
37 under this act;

38 (b) aiding, abetting or permitting the violating of any provision of this
39 act or of the rules and regulations promulgated under this act;

40 (c) conduct in the operation or maintenance, or both the operation
41 and maintenance, of a child care facility ~~or family day care home~~ which
42 is inimical to health, welfare or safety of either an individual in or receiv-
43 ing services from the facility or home or the people of this state;

1 (d) the conviction of a licensee, ~~registrant~~ or holder of a temporary
2 permit, at any time during licensure or registration or during the time
3 the temporary permit is in effect, of crimes as defined in K.S.A. 65-516,
4 and amendments thereto; and

5 (e) a third or subsequent violation by the licensee, ~~registrant~~ or holder
6 of a temporary permit of subsection (b) of K.S.A. 65-530, and amend-
7 ments thereto.

8 Sec. 10. K.S.A. 65-524 is hereby amended to read as follows: 65-524.
9 The secretary may suspend any license, ~~certificate of registration~~ or tem-
10 porary permit issued under the provisions of K.S.A. 65-501 through ~~65-~~
11 ~~522~~ 65-516, and amendments thereto, prior to any hearing when, in the
12 opinion of the secretary, the action is necessary to protect any child in
13 the child care facility ~~or family day care home~~ from physical or mental
14 abuse, abandonment or any other substantial threat to health or safety.
15 Administrative proceedings under this section shall be conducted in ac-
16 cordance with the emergency adjudicative proceedings of the Kansas ad-
17 ministrative procedure act and in accordance with other relevant provi-
18 sions of the Kansas administrative procedure act.

19 Sec. 11. K.S.A. 2009 Supp. 65-525 is hereby amended to read as
20 follows: 65-525. (a) Records in the possession of the department of health
21 and environment or its agents regarding child care facilities, ~~or~~ maternity
22 centers ~~or family day care homes~~ shall not be released publicly in a man-
23 ner that would identify individuals, ~~unless~~ *except individual names of li-*
24 *cencees, applicants, facilities and maternity centers may be released. Noth-*
25 *ing in this section prohibits release of any information as required by law.*

26 (b) ~~Records containing the name, address and telephone number of~~
27 ~~a child care facility, maternity center or family day care home in the~~
28 ~~possession of the department of health and environment or its agents~~
29 ~~shall not be released publicly unless required by law.~~

30 ~~—(c) Records that cannot be released by subsection (a) or (b) in the~~
31 ~~possession of the department of health and environment or its agents~~
32 ~~regarding child care facilities or maternity centers may be released to: (1)~~
33 ~~An agency or organization authorized to receive notice under K.S.A. 65-~~
34 ~~506, and amendments thereto; (2) a criminal justice agency; (3) any local,~~
35 ~~state or federal agency that provides child care services, funding for child~~
36 ~~care or child protective services; (4) any federal agency for the purposes~~
37 ~~of compliance with federal funding requirements; (5) any local fire de-~~
38 ~~partment; (6) governmental entity or subdivision thereof; (3) any child~~
39 ~~and adult care food program sponsoring agency; or (7) any local disaster~~
40 ~~agency (4) any disaster or emergency entity.~~

41 ~~(d) Any state or federal agency or any person receiving records under~~
42 ~~subsection (a) or (b) shall not disseminate the records without the consent~~
43 ~~of the person whose records will be disseminated unless required by law.~~

1 ~~Any state or federal agency or any person receiving records under sub-~~
2 ~~section (c) may disseminate the information contained in the records~~
3 ~~without the consent of the person whose records will be disseminated.~~

4 (c) *On or before September 1, 2010, the secretary shall establish or*
5 *cause to be established an online information dissemination system that*
6 *is accessible to the public, including names of licensees, applicants and*
7 *history of citations and complaints thereof.*

8 ~~(c)(d)~~ (d) The secretary of health and environment may ~~release~~ *prohibit*
9 *the release of the name, address and telephone number of a maternity*
10 *center; or child care facility or family day care home* when the secretary
11 determines that *prohibition of the release of the information is necessary*
12 *to protect the health, safety or welfare of the public or the patients or*
13 *children enrolled in the maternity center; or child care facility or family*
14 *day care home.*

15 ~~(f)~~ (f) ~~Any records under subsection (a) or (b) shall be available to any~~
16 ~~member of the standing committee on appropriations of the house of~~
17 ~~representatives or the standing committee on ways and means of the~~
18 ~~senate carrying out such member's or committee's official functions in~~
19 ~~accordance with K.S.A. 75-4319, and amendments thereto, in a closed or~~
20 ~~executive meeting. Except in limited conditions established by 2/3 of the~~
21 ~~members of such committee, records received by the committee shall not~~
22 ~~be further disclosed. Unauthorized disclosure may subject such member~~
23 ~~to discipline or censure from the house of representatives or senate. Such~~
24 ~~records shall not identify individuals but shall include data and contract~~
25 ~~information concerning specific facilities.~~

26 ~~(g)~~ (e) In any hearings conducted under the licensing or regulation
27 provisions of K.S.A. 65-501 et seq., and amendments thereto, the presid-
28 ing officer may close the hearing to the public to prevent public disclosure
29 of matters relating to persons restricted by other laws.

30 Sec. 12. K.S.A. 2009 Supp. 65-526 is hereby amended to read as
31 follows: 65-526. (a) The secretary of health and environment, in addition
32 to any other penalty prescribed under article 5 of chapter 65 of the Kansas
33 Statutes Annotated, and amendments thereto, may assess a civil fine, after
34 proper notice and an opportunity to be heard in accordance with the
35 Kansas administrative procedure act, against a licensee ~~or registrant~~ for
36 each violation of such provisions or rules and regulations adopted pur-
37 suant thereto which affect significantly and adversely the health, safety
38 or sanitation of children in a child care facility ~~or family day care home~~.
39 Each civil fine assessed under this section shall not exceed \$500. In the
40 case of a continuing violation, every day such violation continues shall be
41 deemed a separate violation.

42 (b) All fines assessed and collected under this section shall be remit-
43 ted to the state treasurer in accordance with the provisions of K.S.A. 75-

1 4215, and amendments thereto. Upon receipt of each such remittance,
2 the state treasurer shall deposit the entire amount in the state treasury
3 to the credit of the state general fund.

4 Sec. 13. K.S.A. 65-530 is hereby amended to read as follows: 65-530.

5 (a) As used in this section:

6 (1) “Day care home” means a day care home as defined under Kansas
7 administrative regulation 28-4-113, a group day care home as defined
8 under Kansas administrative regulation 28-4-113 and a family ~~day~~ *child*
9 care home as defined under K.S.A. ~~65-517~~ 65-503, and amendments
10 thereto.

11 (2) “Smoking” means possession of a lighted cigarette, cigar, pipe or
12 burning tobacco in any other form or device designed for the use of
13 tobacco.

14 (b) Smoking within any room, enclosed area or other enclosed space
15 of a facility or facilities of a day care home during a time when children
16 who are not related by blood, marriage or legal adoption to the person
17 who maintains the home are being cared for, as part of the operation of
18 the day care home, within the facility or facilities is hereby prohibited.
19 Nothing in this subsection shall be construed to prohibit smoking on the
20 premises of the day care home outside the facility or facilities of a day
21 care home, including but not limited to porches, yards or garages.

22 (c) Each ~~day care home registration certificate or~~ *child care* license
23 shall contain a statement in bold print that smoking is prohibited within
24 a room, enclosed area or other enclosed space of the facility or facilities
25 of the day care home under the conditions specified in subsection (b).
26 The statement shall be phrased in substantially the same language as
27 subsection (b). The ~~registration certificate or~~ license shall be posted in a
28 conspicuous place in the facility or facilities.

29 ***[(d) Each day care home shall be equipped with a fire extin-***
30 ***guisher which shall be maintained in an operable condition in a***
31 ***readily accessible location.]***

32 ~~(d)~~ ***[(e)]*** The secretary of health and environment may levy a civil
33 fine under K.S.A. 65-526, and amendments thereto, against any day care
34 home for a first or second violation of this section. A third or subsequent
35 violation shall be subject to the provisions of K.S.A. 65-523, and amend-
36 ments thereto.

37 Sec. 14. K.S.A. 65-531 is hereby amended to read as follows: 65-531.
38 On and after July 1, 1996: (a) Except as provided further, information
39 and records which pertain to the immunization status of persons against
40 childhood diseases as required by K.S.A. 65-508 and ~~65-519~~, and amend-
41 ments thereto, may be disclosed and exchanged without a parent or
42 guardian’s written release authorizing such disclosure, to the following,
43 who need to know such information to assure compliance with state stat-

1 utes or to achieve age appropriate immunization status for children:

2 (1) Employees of public agencies or departments;

3 (2) health records staff of child care facilities ~~and family day care~~
4 ~~homes~~, including, but not limited to, facilities licensed by the secretary
5 of health and environment;

6 (3) persons other than public employees who are entrusted with the
7 regular care of those under the care and custody of a state agency in-
8 cluding, but not limited to, operators of day care facilities, group homes,
9 residential care facilities and adoptive or foster homes; and

10 (4) health care professionals.

11 (b) Notwithstanding K.S.A. 60-427, and amendments thereto, or any
12 other Kansas statute which provides for privileged information between
13 a patient and a health care provider, there shall be no privilege preventing
14 the furnishing of information and records as authorized by this section
15 by any health care provider.

16 (c) Information and records which pertain to the immunization status
17 of persons against childhood diseases as required by K.S.A. 65-508 ~~and~~
18 ~~65-519~~, and amendments thereto, whose parent or guardian has submit-
19 ted a written statement of religious objection to immunization as provided
20 in K.S.A. 65-508 ~~or 65-519~~, and amendments thereto, may not be dis-
21 closed or exchanged without a parent or guardian's written release au-
22 thORIZING such disclosure.

23 New Sec. 15. On the effective date of this act, any family day care
24 home that has been issued a valid certificate of registration shall be con-
25 strued to be licensed as a family child care home for all purposes under
26 law until such time that an inspection has been conducted and a license
27 is duly issued by the secretary of health and environment.

28 Sec. 16. K.S.A. 39-7,129, 65-504, 65-506, 65-512, 65-517, 65-518,
29 65-519, 65-520, 65-521, 65-522, 65-523, 65-524, 65-530 and 65-531 and
30 K.S.A. 2009 Supp. 59-29a11, 65-503, 65-516, 65-525 and 65-526 are
31 hereby repealed.

32 Sec. 17. This act shall take effect and be in force from and after its
33 publication in the Kansas register.