

CHAPTER 147
SENATE BILL No. 201

AN ACT concerning restrictions on persons maintaining or residing, working or volunteering at child care facilities or family day care homes; amending K.S.A. 2006 Supp. 65-516 and repealing the existing section; also repealing K.S.A. 2006 Supp. 65-516a.

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

Section 1. K.S.A. 2006 Supp. 65-516 is hereby amended to read as follows: 65-516. (a) No person shall knowingly maintain a child care facility or maintain a family day care home if, in the child care facility or family day care home, there resides, works or regularly volunteers any person who *in this state or in other states or the federal government:*

(1) (A) Has a felony conviction for a crime against persons, (B) has a felony conviction under the uniform controlled substances act, (C) has a conviction of any act which is described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or a conviction of an attempt under K.S.A. 21-3301, and amendments thereto, to commit any such act *or a conviction of conspiracy under K.S.A. 21-3302, and amendments thereto, to commit such act, or similar statutes of other states or the federal government,* or (D) has been convicted of any act which is described in K.S.A. 21-4301 or 21-4301a, and amendments thereto, or similar statutes of other states or the federal government;

(2) has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of a felony and which is a crime against persons, is any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, *or similar statutes of other states or the federal government,* or is any act described in K.S.A. 21-4301 or 21-4301a, and amendments thereto, or similar statutes of other states or the federal government;

(3) has committed an act of physical, mental or emotional abuse or neglect or sexual abuse ~~as validated~~ *and who is listed in the child abuse and neglect registry maintained by the department of social and rehabilitation services pursuant to K.S.A. ~~38-1523~~ 2006 Supp. 38-2226,* and amendments thereto, and (A) the person has failed to successfully complete a corrective action plan which had been deemed appropriate and approved by the department of social and rehabilitation services, or (B) the record has not been expunged pursuant to rules and regulations adopted by the secretary of social and rehabilitation services;

(4) has had a child ~~declared in~~ *removed from home based on a court order in this or any other state pursuant to K.S.A. 2006 Supp. 38-2251, and amendments thereto, in this state, or a court order in any other state based upon a similar statute that finds the child to be deprived or a child in need of care based on an allegation a finding of physical, mental or emotional abuse or neglect or sexual abuse and the child has not been returned to the home or the child reaches majority before being returned to the home and the person has failed to satisfactorily complete a corrective action plan approved by the department of health and environment;*

(5) has had parental rights terminated pursuant to the Kansas juvenile code or K.S.A. ~~38-1581 through 38-1584~~ *2006 Supp. 38-2266 through 38-2270,* and amendments thereto, or a similar statute of other states;

(6) has signed a diversion agreement pursuant to K.S.A. 22-2906 et seq., and amendments thereto, or an immediate intervention agreement pursuant to K.S.A. 2006 Supp. 38-2346, and amendments thereto, involving a charge of child abuse or a sexual offense; or

(7) has an infectious or contagious disease.

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

(c) Any person who resides in a child care facility or family day care home and who has been found to be in need of a guardian or a conservator, or both, shall be counted in the total number of children allowed in care.

(d) In accordance with the provisions of this subsection ~~(d)~~, the secretary of health and environment shall have access to any court orders or adjudications of any court of record, any records of such orders or adjudications, criminal history record information *including, but not limited*

to, diversion agreements, in the possession of the Kansas bureau of investigation and any report of investigations as authorized by ~~subsection (e) of K.S.A. 38-1523~~ 2006 Supp. 38-2226, and amendments thereto, in the possession of the department of social and rehabilitation services or court of this state concerning persons working, regularly volunteering or residing in a child care facility or a family day care home. The secretary shall have access to these records for the purpose of determining whether or not the home meets the requirements of K.S.A. 59-2132, 65-503, 65-508, 65-516 and 65-519, and amendments thereto.

(e) *In accordance with the provisions of this subsection, the secretary is authorized to conduct national criminal history record checks to determine criminal history on persons residing, working or regularly volunteering in a child care facility or family day care home. In order to conduct a national criminal history check the secretary shall require fingerprinting for identification and determination of criminal history. The secretary shall submit the fingerprints to the Kansas bureau of investigation and to the federal bureau of investigation and receive a reply to enable the secretary to verify the identity of such person and whether such person has been convicted of any crime that would prohibit such person from residing, working or regularly volunteering in a child care facility or family day care home. The secretary is authorized to use information obtained from the national criminal history record check to determine such person's fitness to reside, work or regularly volunteer in a child care facility or family day care home.*

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

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

~~(h)~~ (h) *For the purpose of subsection (a)(3), an act of abuse or neglect shall not be considered to have been validated by the department of social and rehabilitation services unless the alleged perpetrator a person listed in the child abuse and neglect central registry shall not be prohibited from residing, working or volunteering in a child care facility or family day care home unless such person has: (1) Had an opportunity to be interviewed and present information during the investigation of the alleged act of abuse or neglect; and (2) been given notice of the agency decision and an opportunity to appeal such decision to the secretary and to the courts pursuant to the act for judicial review and civil enforcement of agency actions.*

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

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

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

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

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

(5) *Any staff person of a child placement agency who receives information under this subsection shall keep such information confidential, except that the staff person may disclose such information on a need-to-know basis to: (A) The person who is the subject of the request for information, (B) the applicant or operator of the family foster home in which*

the person lives, works or regularly volunteers, (C) the department of health and environment, (D) the department of social and rehabilitation services, (E) the juvenile justice authority, and (F) the courts.

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

Sec. 2. K.S.A. 2006 Supp. 65-516 and 65-516a are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 18, 2007.
