

CHAPTER 161

SENATE Substitute for HOUSE BILL No. 2356

AN ACT concerning child care; relating to supervision of children in child care facilities; amending K.S.A. 39-7,129, 65-504, 65-505, 65-506, 65-508, 65-512, 65-523, 65-524, 65-530 and 65-531 and K.S.A. 2009 Supp. 59-29a11, 65-503, 65-516, 65-525 and 65-526 and repealing the existing sections; also repealing K.S.A. 65-517, 65-518, 65-519, 65-520, 65-521 and 65-522.

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

New Section 1. The changes to law in this act shall be known as Lexie's law.

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

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

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

(c) Transitional release or conditional release facilities or buildings shall be subject to all regulations applicable to other property and buildings located in the zone or area that are imposed by any municipality through zoning ordinance, resolution or regulation, such municipality's building regulatory codes, subdivision regulations or other nondiscriminatory regulations.

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

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

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

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

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

(c) ~~(H)~~ “Child care facility” means:

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

~~(B)~~ (2) a children’s home, orphanage, maternity home, day care facility or other facility of a type determined by the secretary to require regulation under the provisions of this act;

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

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

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

(d) “Person” means any individual, association, partnership, corporation, government, governmental subdivision or other entity.

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

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

(a) The secretary of health and environment shall have the power to grant a license to a person to maintain a maternity center or child care facility for children under 16 years of age. The license shall state the name of the licensee, describe the particular premises in or at which the business shall be carried on, whether it shall receive and care for women or children, and the number of women or children that may be treated, maintained, boarded or cared for at any one time. No greater number of women or children than is authorized in the license shall be kept on those premises and the business shall not be carried on in a building or place not designated in the license. The license shall be kept posted in a conspicuous place on the premises where the business is conducted. *The license shall have on its face an expiration sticker stating the date of expiration of the license.* The secretary of health and environment shall grant no license in any case until careful inspection of the maternity center or child care facility shall have been made according to the terms of this act and until such maternity center or child care facility has complied with all the requirements of this act. Except as provided by this subsection, no license shall be granted without the approval of the secretary of social and rehabilitation services. The secretary of health and environment may issue, without the approval of the secretary of social and rehabilitation services, a temporary permit to operate for a period not to exceed 90 days upon receipt of an initial application for license. The secretary of health and environment may extend, without the approval of the secretary of social and rehabilitation services, the temporary permit to operate for an additional period not to exceed 90 days if an applicant is not in full compliance with the requirements of this act but has made efforts towards full compliance.

(b) (1) In all cases where the secretary of social and rehabilitation services deems it necessary, an investigation of the maternity center or child care facility shall be made under the supervision of the secretary of social and rehabilitation services or other designated qualified agents. For that purpose and for any subsequent investigations they shall have the

right of entry and access to the premises of the center or facility and to any information deemed necessary to the completion of the investigation. In all cases where an investigation is made, a report of the investigation of such center or facility shall be filed with the secretary of health and environment.

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

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

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

(e) If the secretary revokes or refuses to renew a license, the licensee who had a license revoked or not renewed shall not be eligible to apply for a license ~~or for a certificate of registration to maintain a family day care home under K.S.A. 65-518 and amendments thereto~~ for a period of one year subsequent to the date such revocation or refusal to renew becomes final. *If the secretary revokes or refuses to renew a license of a licensee who is a repeat, three or more times, violator of statutory requirements or rules and regulations or is found to have contributed to the death or serious bodily harm of a child under such licensee's care, such licensee shall be permanently prohibited from applying for a new license to provide child care or from seeking employment under another licensee.*

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

Sec. 6. K.S.A. 65-505 is hereby amended to read as follows: 65-505.

(a) The annual fee for a license to conduct a maternity center or child care facility shall be fixed by the secretary of health and environment by rules and regulations in an amount not exceeding the following:

- (1) For a maternity center, ~~\$75~~ \$150;
- (2) for a child placement agency, ~~\$75~~ \$150;
- (3) for a child care resource and referral agency, ~~\$75~~ \$150; and
- (4) for any other child care facility, ~~\$35~~ \$75 plus \$1 times the maximum number of children authorized under the license to be on the premises at any one time.

The license fee shall be paid to the secretary of health and environment when the license is applied for and annually thereafter. The fee shall not be refundable. No fee shall be charged for a license to conduct a home for children which is a family foster home as defined in K.A.R. 28-4-311, and amendments thereto. Fees in effect under this subsection (a) immediately prior to the effective date of this act shall continue in effect on and after the effective date of this act until a different fee is established by the secretary of health and environment by rules and regulations under this subsection.

(b) Any ~~person licensee~~ who fails to renew ~~the person's such~~ license within ~~the time required by rules and regulations of the secretary~~ 30 days after the expiration of the license shall pay to the secretary the renewal fee plus a late renewal fee of \$10 in an amount equal to the fee for the renewal of a license.

(c) Any licensee applying for an amended license shall pay to the secretary of health and environment a fee established by rules and regulations of the secretary in an amount not exceeding \$35.

(d) The secretary of health and environment shall remit all moneys

received by the secretary from fees under the provisions of this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer, *notwithstanding any other law to the contrary*, shall deposit the entire amount in the state treasury to the credit of the ~~state general~~ *maternity centers and child care licensing fee fund*. *All expenditures from the maternity centers and child care licensing fee fund shall be made only for the purposes of article 5 of chapter 65 of the Kansas Statutes Annotated in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of health and environment or by a person or persons designated by the secretary. Notwithstanding any other law to the contrary, no moneys shall be transferred or otherwise revert from this fund to the state general fund by appropriation act or other act of the legislature. Moneys available under this section by the creation of the maternity centers and child care licensing fee fund shall not be substituted for or used to reduce or eliminate moneys available to the department of health and environment to administer the provisions of article 5 of chapter 65 of the Kansas Statutes Annotated. Nothing in this act shall be construed to authorize a reduction or elimination of moneys made available by the state to local units of government for the purposes of article 5 of chapter 65 of the Kansas Statutes Annotated.*

Sec. 7. K.S.A. 65-506 is hereby amended to read as follows: 65-506. The secretary of health and environment shall serve notice of the issuance, suspension or revocation of a license to conduct a maternity center or child care facility ~~or the issuance, suspension or revocation of a certificate of registration for a family day care home~~ to the secretary of social and rehabilitation services, juvenile justice authority, department of education, office of the state fire marshal, county, city-county or multi-county department of health, and to any licensed child placement agency or licensed child care resource and referral agency serving the area where the center or facility is located. A maternity center or child care facility that has had a license suspended, revoked or denied by the secretary of health and environment ~~or a family day care home that has had a certificate of registration suspended, revoked or denied by the secretary of health and environment~~ shall notify in writing the parents or guardians of the enrollees of the suspension, revocation or denial. Neither the secretary of social and rehabilitation services nor any other person shall place or cause to be placed any maternity patient or child under 16 years of age in any maternity center or child care facility not licensed by the secretary of health and environment ~~or family day care home not holding a certificate of registration from the secretary of health and environment~~.

Sec. 8. K.S.A. 65-508 is hereby amended to read as follows: 65-508. (a) Any maternity center or child care facility subject to the provisions of this act shall: (1) Be properly heated, plumbed, lighted and ventilated; (2) have plumbing, water and sewerage systems which conform to all applicable state and local laws; and (3) be operated with strict regard to the health, comfort, safety and social welfare of the residents.

(b) Every maternity center or child care facility shall furnish or cause to be furnished for the use of each resident and employee individual towel, wash cloth, comb and individual drinking cup or sanitary bubbling fountain, and toothbrushes for all other than infants, and shall keep or require such articles to be kept at all times in a clean and sanitary condition. Every maternity center or child care facility shall comply with all applicable fire codes and rules and regulations of the state fire marshal.

(c) (1) The secretary of health and environment with the cooperation of the secretary of social and rehabilitation services shall develop and adopt rules and regulations for the operation and maintenance of maternity centers and child care facilities. The rules and regulations for operating and maintaining maternity centers and child care facilities shall be designed to promote the health, safety and welfare of the residents who are to be served in such facilities by ensuring safe and adequate physical surroundings, healthful food, *adequate handwashing, safe storage of toxic substances and hazardous chemicals, sanitary diapering and toileting, home sanitation*, supervision and care of the residents by capable, qualified persons of sufficient number, *after hour care*, an adequate program of activities and services, *sudden infant death syndrome and safe sleep practices training, prohibition on corporal punishment, crib safety, protection from electrical hazards, protection from swimming pools and other*

water sources, fire drills, emergency plans, safety of outdoor playground surfaces, door locks, safety gates and transportation and such appropriate parental participation as may be feasible under the circumstances. Boarding schools are excluded from requirements regarding the number of qualified persons who must supervise and provide care to residents. The notice of hearing on initial rules and regulations proposed to be adopted to carry out the amendments to this subsection (c)(1) by this act shall be published in the Kansas register after February 14, 2011, but prior to March 11, 2011.

(2) Rules and regulations developed under this subsection shall include provisions for the competent supervision and care of children in child care facilities. For purposes of such rules and regulations, competent supervision as this term relates to children less than five years of age includes, but is not limited to, direction of activities, adequate oversight including sight or sound monitoring, or both, physical proximity to children, diapering and toileting practices; and for all children, competent supervision includes, but is not limited to, planning and supervision of daily activities, safe sleep practices, including, but not limited to, visual or sound monitoring, periodic checking, emergency response procedures and drills, illness and injury response procedures, food service preparation and sanitation, playground supervision, pool and water safety practices. The notice of hearing on initial rules and regulations proposed to be adopted under this subsection (c)(2) shall be published in the Kansas register after February 14, 2011, but prior to March 11, 2011.

(d) Each child cared for in a child care facility, including children of the person maintaining the facility, shall be required to have current such immunizations as the secretary of health and environment considers necessary. The person maintaining a child care facility shall maintain a record of each child's immunizations and shall provide to the secretary of health and environment such information relating thereto, in accordance with rules and regulations of the secretary, but the person maintaining a child care facility shall not have such person's license revoked solely for the failure to have or to maintain the immunization records required by this subsection.

(e) The immunization requirement of subsection (d) shall not apply if one of the following is obtained:

(1) Certification from a licensed physician stating that the physical condition of the child is such that immunization would endanger the child's life or health; or

(2) a written statement signed by a parent or guardian that the parent or guardian is an adherent of a religious denomination whose teachings are opposed to immunizations.

Sec. 9. K.S.A. 65-512 is hereby amended to read as follows: 65-512.

(a) It is hereby made the duty of the secretary of health and environment to inspect or cause to be inspected at least once every ~~12~~ 15 months prior to July 1, 2012, and once every 12 months thereafter, every maternity center or child care facility, and for that purpose it unless otherwise provided in subsections (b) and (c). For the purpose of inspection the secretary or the secretary's authorized agent shall have the right of entry and access thereto in every department and to every place in the premises, shall call for and examine the records which are required to be kept by the provisions of this act and shall make and preserve a record of every inspection. The licensee shall give all reasonable information to the authorized agent of the secretary of health and environment and shall afford every reasonable facility for viewing the premises and seeing the patients or children therein. No such patient or child without the consent of the patient or child shall be required to be interviewed by any agent unless the agent is an authorized person or a licensed physician.

(b) (1) On or after the effective date of this act, the secretary of health and environment shall commence the inspection of registered family day care homes pursuant to section 17 and amendments thereto.

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

(c) (1) Except as provided in subsection (b)(2), the following cate-

gories of child care facilities which were in compliance on the effective date of this act are not required to be inspected until July 1, 2011: Day care homes, as defined in K.A.R. 28-4-113; group day care homes, as defined in K.A.R. 28-4-113; child care centers, as defined in K.A.R. 28-4-420; preschools, as defined in K.A.R. 28-4-420; school-age programs, as defined in K.A.R. 28-4-576; and drop-in programs, as defined in K.A.R. 28-4-700.

(2) The provisions of this subsection shall expire on July 1, 2011.

Sec. 10. K.S.A. 2009 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 K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, (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 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. 2009 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 removed from home based on a court order pursuant to K.S.A. 2009 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 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. 2009 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. 2009 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, 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

cations, 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 K.S.A. 2009 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; ~~and 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; ~~or 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) For the purpose of subsection (a)(3), 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 *Kansas judicial review 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.

(j) *Except as provided in this subsection, no person shall maintain a child care facility unless such person is a high school graduate or the equivalent thereof. The provisions of this subsection shall not apply to any person who was maintaining a child care facility on the day immediately prior to the effective date of this act or who has an application for an initial license or the renewal of an existing license pending on the effective date of this act.*

Sec. 11. K.S.A. 65-523 is hereby amended to read as follows: 65-523. The secretary may suspend any license, ~~certificate of registration~~ or temporary permit issued under the provisions of K.S.A. 65-501 through ~~65-522~~ 65-516, and amendments thereto, upon any of the following grounds and in the manner provided in this act:

(a) Violation by the licensee, ~~registrant~~ or holder of a temporary permit of any provision of this act or of the rules and regulations promulgated under this act;

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

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

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

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

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

Sec. 13. On and after May 1, 2011, K.S.A. 2009 Supp. 65-525 is hereby amended to read as follows: 65-525. (a) Records in the possession of the department of health and environment or its agents regarding child care facilities; ~~or maternity centers or family day care homes~~ shall not be released publicly in a manner that would identify individuals, ~~unless except individual names of licensees, applicants, facilities and maternity centers may be released. Nothing in this section prohibits release of any information as required by law.~~

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

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

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

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

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

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

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

Sec. 14. K.S.A. 2009 Supp. 65-526 is hereby amended to read as follows: 65-526. (a) The secretary of health and environment, in addition to any other penalty prescribed under article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, may assess a civil fine, after proper notice and an opportunity to be heard in accordance with the Kansas administrative procedure act, against a licensee or registrant for each violation of such provisions or rules and regulations adopted pursuant thereto which affect significantly and adversely the health, safety or sanitation of children in a child care facility or family day care home. Each civil fine assessed under this section shall not exceed \$500. In the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) All fines assessed and collected under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

Sec. 15. K.S.A. 65-530 is hereby amended to read as follows: 65-530. (a) As used in this section:

(1) "Day care home" means a day care home as defined under Kansas administrative regulation 28-4-113; and a group day care home as defined under Kansas administrative regulation 28-4-113 and a family day care home as defined under K.S.A. 65-517 and amendments thereto.

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

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

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

(d) Each day care home shall be equipped with a fire extinguisher which shall be maintained in an operable condition in a readily accessible location.

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

Sec. 16. K.S.A. 65-531 is hereby amended to read as follows: 65-531. On and after July 1, 1996: (a) Except as provided further, information and records which pertain to the immunization status of persons against childhood diseases as required by K.S.A. 65-508 and ~~65-519~~, and amendments thereto, may be disclosed and exchanged without a parent or guardian's written release authorizing such disclosure, to the following, who need to know such information to assure compliance with state statutes or to achieve age appropriate immunization status for children:

- (1) Employees of public agencies or departments;
- (2) health records staff of child care facilities ~~and family day care homes~~, including, but not limited to, facilities licensed by the secretary of health and environment;
- (3) persons other than public employees who are entrusted with the regular care of those under the care and custody of a state agency including, but not limited to, operators of day care facilities, group homes, residential care facilities and adoptive or foster homes; and
- (4) health care professionals.

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

(c) Information and records which pertain to the immunization status of persons against childhood diseases as required by K.S.A. 65-508 and ~~65-519~~, and amendments thereto, whose parent or guardian has submitted a written statement of religious objection to immunization as provided in K.S.A. 65-508 ~~or 65-519~~, and amendments thereto, may not be disclosed or exchanged without a parent or guardian's written release authorizing such disclosure.

New Sec. 17. (a) Except as otherwise provided in this section, a family day care home which holds a valid certificate of registration on the effective date of this act shall be deemed to have applied for a license as a day care home but shall continue to operate as a family day care home under the statutes and rules and regulations amended or repealed by this act which were applicable to family day care homes as such statutes were in effect immediately prior to the effective date of this act until such time that an inspection has been conducted, the home has qualified for licensure as a day care home, all applicable fees have been paid and an initial license as a day care home is duly issued by the secretary of health and environment, at which time the home shall be a licensed day care home and shall be governed by statutes and rules and regulations relating to day care homes.

(b) Notwithstanding the provisions of subsection (a):

(1) On and after the effective date of this act, all family day care homes, in addition to the statutes as provided in subsection (a), shall be subject to the following: The provisions of subsection (e) of K.S.A. 65-504, and amendment thereto, as amended by section 5 of this act; any rules and regulations adopted on and after the effective date of this act based on new authority granted by the amendments to K.S.A. 65-508 as amended by section 8 of this act; the provisions of subsection (j) of K.S.A. 65-516, and amendments thereto, as amended by section 10 of this act; inspections under the provisions of K.S.A. 65-512, as amended in section 9 of this act; K.S.A. 65-525, and amendments thereto, as amended by section 13 of this act; and K.S.A. 65-530, and amendments thereto, as amended by section 15 of this act; this section; and in addition to these statutes any other statutes or rules and regulations applicable to family day care homes; and

(2) a family day care home which has not yet been inspected and issued a license under this act shall pay the fee established by K.S.A. 65-505, and amendments thereto, for any other child care facility for renewal of a certificate of registration and not the fee specified in K.S.A. 65-519, and amendments thereto.

(c) The secretary of health and environment shall adopt such rules and regulations as may be necessary to administer the provisions of this

section. Such rules and regulations shall include, but not be limited to, a time line subsequent to inspection of registered family day care homes for the transition of registered family day care homes to licensed day care homes and such other matters as may be necessary for the transition of registered family day care homes to licensed day care homes. Such rules and regulations shall be adopted within 60 days following the effective date of this act.

(d) The registration category of family day care homes shall cease to exist on June 30, 2011. The provisions of this section shall expire July 1, 2011.

New Sec. 18. On or before July 1, 2011, the secretary of health and environment shall establish or cause to be established an online information dissemination system that is accessible to the public, including names of licensees, applicants and history of citations and substantiated findings. The secretary of health and environment shall adopt rules and regulations which are consistent with the requirements for the receipt of child care ARRA funds and which provide for the establishment of an online information dissemination system in accordance with the provisions of this subsection. The notice of hearing on the initial rules and regulations proposed to be adopted under this subsection shall be published in the Kansas register after February 14, 2011, but prior to March 11, 2011.

Sec. 19. On May 1, 2011, K.S.A. 2009 Supp. 65-525 is hereby repealed.

Sec. 20. K.S.A. 39-7,129, 65-504, 65-505, 65-506, 65-508, 65-512, 65-517, 65-518, 65-519, 65-520, 65-521, 65-522, 65-523, 65-524, 65-530 and 65-531 and K.S.A. 2009 Supp. 59-29a11, 65-503, 65-516 and 65-526 are hereby repealed.

Sec. 21. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 27, 2010.
