

HOUSE BILL No. 2111

By Committee on Children and Families

1-27

1 AN ACT concerning child care; amending K.S.A. 2010 Supp. 39-7,129,
2 59-29a11, 65-503, 65-504, 65-505, 65-506, 65-508, 65-512, 65-516,
3 65-516, as amended by section 15 of this act, 65-523, 65-524, 65-526,
4 65-530 and 65-531 and repealing the existing sections; also repealing
5 K.S.A. 2009 Supp. 65-525 as amended by section 13 of chapter 161 of
6 the 2010 Session Laws of Kansas and K.S.A. 2010 Supp. 65-504a, 65-
7 516b, 65-530a, 65-532, 65-533 and 65-534.

8
9 *Be it enacted by the Legislature of the State of Kansas:*

10 New Section. 1. (a) "Family daycare home" means a place
11 maintained for the purpose of providing children with food or lodging, or
12 both, away from such children's home or homes, for less than 24 hours a
13 day, if:

14 (1) Not more than six of the children cared for at such place are less
15 than 16 years of age; and

16 (2) not more than three of the children cared for at such place are
17 less than 18 months of age.

18 (b) Any child of a person maintaining such a place referred to in
19 subsection (a) shall count toward the limitations of subsection (a) if such
20 child is less than 12 years of age and is cared for at such place.

21 (c) A person shall not be considered to be maintaining a family day
22 care home as defined in subsection (a), if only children who are related
23 by blood, marriage or legal adoption to such person are cared for.

24 New Sec. 2. Any person maintaining a family day care home shall
25 register such home with the secretary of health and environment on forms
26 furnished by the secretary. In lieu of registration, a person maintaining a
27 family day care home may seek licensure for such home as a child care
28 facility under article 5 of chapter 65 of the Kansas Statutes Annotated,
29 and amendments thereto.

30 New Sec. 3. (a) The secretary shall issue a certificate of registration
31 to any person who: (1) Applies for registration on forms furnished by the
32 secretary; (2) attests to the safety of the family day care home for the care
33 of children; (3) submits a fee not to exceed \$15 as established by rules
34 and regulations of the secretary of health and environment payable to the
35 secretary of health and environment; and (4) certifies that no person
36 described in subsection (a)(1), (2), (3), (4), (5) or (6) of K.S.A. 65-516,

1 and amendments thereto, resides, works or volunteers in the family day
2 care home. The fee in effect under this subsection immediately prior to
3 the effective date of this act shall continue in effect on and after the
4 effective date of this act until a different fee is established by the
5 secretary of health and environment by rules and regulations under this
6 subsection.

7 (b) The secretary shall furnish each applicant for registration a
8 family day care home safety evaluation form to be completed by the
9 applicant and submitted with the registration of the application.

10 (c) (1) Each child cared for in a family day care home, including
11 children of the person maintaining the home, shall be required to have
12 current such immunizations as the secretary of health and environment
13 considers necessary. The person maintaining a family day care home
14 shall maintain a record of each child's immunizations, and shall provide
15 to the secretary of health and environment such information relating
16 thereto, in accordance with the rules and regulations of the secretary, but
17 the person maintaining a family day care home shall not have such
18 person's certificate of registration revoked solely for the failure to have or
19 maintain the immunization records required by this subsection.

20 (2) The immunization requirement of subsection (c)(1) shall not
21 apply if one of the following is obtained:

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

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

28 (d) The secretary of health and environment shall provide to each
29 person maintaining a registered family day care home a list of the
30 requirements for registration of family day care homes. The person
31 maintaining a family day care home shall provide a copy of such list to
32 the parent or guardian of each child cared for in such home and shall
33 maintain on the premises a copy of the list which has been signed and
34 dated by the parent or guardian.

35 (e) The certificate of registration shall be renewed annually in the
36 same manner provided for in this section.

37 (f) The secretary of health and environment shall remit all moneys
38 received by the secretary from fees under the provisions of this act to the
39 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
40 amendments thereto. Upon receipt of each such remittance, the state
41 treasurer shall deposit the entire amount in the state treasury to the credit
42 of the state general fund.

43 New Sec. 4. A certificate of registration shall be in force for one

1 year after the date of issuance unless revoked pursuant to section 5, and amendments thereto. The certificate shall specify that the registrant may operate a family day care home for six or fewer children. This section shall not be construed to limit the right of the secretary to enter a registered family day care home for the purpose of assessing compliance with K.S.A. 65-516 and sections 1 through 6, and amendments thereto, after receiving a complaint against the registrant of such home.

8 New Sec. 5. (a) The secretary may deny, revoke or refuse to renew a certificate of registration upon a determination by the secretary that the registrant falsified information on the application or willfully and substantially has violated K.S.A. 65-516 and sections 1 through 6, and amendments thereto. The secretary shall not revoke nor refuse to renew any certificate without first giving notice and conducting a hearing in accordance with the provisions of the Kansas administrative procedure act.

16 (b) If the secretary revokes or refuses to renew a certificate of registration, the registrant who has had a certificate of registration revoked or not renewed shall not be eligible to apply for a certificate of registration nor for a license to maintain a child care facility under K.S.A. 65-504, and amendments thereto, for a period of one year subsequent to the date such revocation or refusal to renew becomes final.

22 New Sec. 6. The secretary shall adopt rules and regulations to implement the registration provisions of K.S.A. 65-516 and sections 1 through 6, and amendments thereto.

25 Sec. 7. K.S.A. 2010 Supp. 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.

37 Sec. 8. K.S.A. 2010 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

1 petition or following a hearing, that the petitioner's petition was frivolous
2 or that the petitioner's condition had not so changed that the person was
3 safe to be at large, then the court shall deny the subsequent petition unless
4 the petition contains facts upon which a court could find the condition of
5 the petitioner had so changed that a hearing was warranted. Upon receipt
6 of a first or subsequent petition from committed persons without the
7 secretary's approval, the court shall endeavor whenever possible to
8 review the petition and determine if the petition is based upon frivolous
9 grounds and if so shall deny the petition without a hearing.

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

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

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

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

39 Sec. 9. K.S.A. 2010 Supp. 65-503 is hereby amended to read as
40 follows: 65-503. As used in this act:

41 (a) "Child placement agency" means a business or service
42 conducted, maintained or operated by a person engaged in finding homes
43 for children by placing or arranging for the placement of such children

1 for adoption or foster care.

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

7 (c) (1) "Child care facility" means:

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

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

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

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

24 (2) *"Child care facility" shall not include a family day care home*
25 *defined in section 1, and amendments thereto.*

26 (d) "Person" means any individual, association, partnership,
27 corporation, government, governmental subdivision or other entity.

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

32 Sec. 10. K.S.A. 2010 Supp. 65-504 is hereby amended to read as
33 follows: 65-504. (a) The secretary of health and environment shall have
34 the power to grant a license to a person to maintain a maternity center or
35 child care facility for children under 16 years of age. The license shall
36 state the name of the licensee, describe the particular premises in or at
37 which the business shall be carried on, whether it shall receive and care
38 for women or children, and the number of women or children that may be
39 treated, maintained, boarded or cared for at any one time. No greater
40 number of women or children than is authorized in the license shall be
41 kept on those premises and the business shall not be carried on in a
42 building or place not designated in the license. The license shall be kept
43 posted in a conspicuous place on the premises where the business is

1 conducted. ~~The license shall have on its face an expiration sticker stating~~
2 ~~the date of expiration of the license.~~ The secretary of health and
3 environment shall grant no license in any case until careful inspection of
4 the maternity center or child care facility shall have been made according
5 to the terms of this act and until such maternity center or child care
6 facility has complied with all the requirements of this act. Except as
7 provided by this subsection, no license shall be granted without the
8 approval of the secretary of social and rehabilitation services. The
9 secretary of health and environment may issue, without the approval of
10 the secretary of social and rehabilitation services, a temporary permit to
11 operate for a period not to exceed 90 days upon receipt of an initial
12 application for license. The secretary of health and environment may
13 extend, without the approval of the secretary of social and rehabilitation
14 services, the temporary permit to operate for an additional period not to
15 exceed 90 days if an applicant is not in full compliance with the
16 requirements of this act but has made efforts towards full compliance.

17 (b) (1) In all cases where the secretary of social and rehabilitation
18 services deems it necessary, an investigation of the maternity center or
19 child care facility shall be made under the supervision of the secretary of
20 social and rehabilitation services or other designated qualified agents. For
21 that purpose and for any subsequent investigations they shall have the
22 right of entry and access to the premises of the center or facility and to
23 any information deemed necessary to the completion of the investigation.
24 In all cases where an investigation is made, a report of the investigation
25 of such center or facility shall be filed with the secretary of health and
26 environment.

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

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

38 (d) When the secretary of health and environment finds upon
39 investigation or is advised by the secretary of social and rehabilitation
40 services that any of the provisions of this act or the provisions of K.S.A.
41 59-2123, and amendments thereto, are being violated, or that the
42 maternity center or child care facility is maintained without due regard to
43 the health, comfort or welfare of the residents, the secretary of health and

1 environment, after giving notice and conducting a hearing in accordance
2 with the provisions of the Kansas administrative procedure act, shall issue
3 an order revoking such license. The order shall clearly state the reason for
4 the revocation.

5 (e) If the secretary revokes or refuses to renew a license, the licensee
6 who had a license revoked or not renewed shall not be eligible to apply
7 for a license *or for a certificate of registration to maintain a family day*
8 *care home under section 2, and amendments thereto*, for a period of one
9 year subsequent to the date such revocation or refusal to renew becomes
10 final. ~~If the secretary revokes or refuses to renew a license of a licensee~~
11 ~~who is a repeat, three or more times, violator of statutory requirements or~~
12 ~~rules and regulations or is found to have contributed to the death or~~
13 ~~serious bodily harm of a child under such licensee's care, such licensee~~
14 ~~shall be permanently prohibited from applying for a new license to~~
15 ~~provide child care or from seeking employment under another licensee.~~

16 (f) Any applicant or licensee aggrieved by a final order of the
17 secretary of health and environment denying or revoking a license under
18 this act may appeal the order in accordance with the Kansas judicial
19 review act.

20 Sec. 11. K.S.A. 2010 Supp. 65-505 is hereby amended to read as
21 follows: 65-505. (a) The annual fee for a license to conduct a maternity
22 center or child care facility shall be fixed by the secretary of health and
23 environment by rules and regulations in an amount not exceeding the
24 following:

25 (1) For a maternity center, ~~\$150~~ \$75;

26 (2) for a child placement agency, ~~\$150~~ \$75;

27 (3) for a child care resource and referral agency, ~~\$150~~ \$75; and

28 (4) for any other child care facility, ~~\$75~~ \$35 plus \$1 times the
29 maximum number of children authorized under the license to be on the
30 premises at any one time.

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

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

1 ~~of a license renewal fee of \$10.~~

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

5 (d) The secretary of health and environment shall remit all moneys
6 received by the secretary from fees under the provisions of this section to
7 the state treasurer in accordance with the provisions of K.S.A. 75-4215,
8 and amendments thereto. Upon receipt of each such remittance, the state
9 treasurer, ~~notwithstanding any other law to the contrary,~~ shall deposit the
10 entire amount in the state treasury to the credit of the ~~maternity centers
11 and child care licensing fee fund. All expenditures from the maternity
12 centers and child care licensing fee fund shall be made only for the
13 purposes of article 5 of chapter 65 of the Kansas Statutes Annotated in
14 accordance with appropriation acts upon warrants of the director of
15 accounts and reports issued pursuant to vouchers approved by the
16 secretary of health and environment or by a person or persons designated
17 by the secretary. Notwithstanding any other law to the contrary, no
18 moneys shall be transferred or otherwise revert from this fund to the state
19 general fund by appropriation act or other act of the legislature. Moneys
20 available under this section by the creation of the maternity centers and
21 child care licensing fee fund shall not be substituted for or used to reduce
22 or eliminate moneys available to the department of health and
23 environment to administer the provisions of article 5 of chapter 65 of the
24 Kansas Statutes Annotated. Nothing in this act shall be construed to
25 authorize a reduction or elimination of moneys made available by the
26 state to local units of government for the purposes of article 5 of chapter
27 65 of the Kansas Statutes Annotated. *state general fund.*~~

28 Sec. 12. K.S.A. 2010 Supp. 65-506 is hereby amended to read as
29 follows: 65-506. The secretary of health and environment shall serve
30 notice of the issuance, suspension or revocation of a license to conduct a
31 maternity center or child care facility *or the issuance, suspension or
32 revocation of a certificate of registration for a family day care home* to
33 the secretary of social and rehabilitation services, juvenile justice
34 authority, department of education, office of the state fire marshal,
35 county, city-county or multi-county department of health, and to any
36 licensed child placement agency or licensed child care resource and
37 referral agency serving the area where the center or facility is located. A
38 maternity center or child care facility that has had a license suspended,
39 revoked or denied by the secretary of health and environment *or a family
40 day care home that has had a certificate of registration suspended,
41 revoked or denied by the secretary of health and environment* shall notify
42 in writing the parents or guardians of the enrollees of the suspension,
43 revocation or denial. Neither the secretary of social and rehabilitation

1 services nor any other person shall place or cause to be placed any
2 maternity patient or child under 16 years of age in any maternity center or
3 child care facility not licensed by the secretary of health and environment
4 *or family day care home not holding a certificate of registration from the*
5 *secretary of health and environment.*

6 Sec. 13. K.S.A. 2010 Supp. 65-508 is hereby amended to read as
7 follows: 65-508. (a) Any maternity center or child care facility subject to
8 the provisions of this act shall: (1) Be properly heated, plumbed, lighted
9 and ventilated; (2) have plumbing, water and sewerage systems which
10 conform to all applicable state and local laws; and (3) be operated with
11 strict regard to the health, comfort, safety and social welfare of the
12 residents.

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

21 (c) ~~(1)~~ The secretary of health and environment with the cooperation
22 of the secretary of social and rehabilitation services shall develop and
23 adopt rules and regulations for the operation and maintenance of
24 maternity centers and child care facilities. The rules and regulations for
25 operating and maintaining maternity centers and child care facilities shall
26 be designed to promote the health, safety and welfare of the residents
27 who are to be served in such facilities by ensuring safe and adequate
28 physical surroundings, healthful food, ~~adequate handwashing, safe~~
29 ~~storage of toxic substances and hazardous chemicals, sanitary diapering~~
30 ~~and toileting, home sanitation,~~ supervision and care of the residents by
31 capable, qualified persons of sufficient number, ~~after hour care,~~ an
32 adequate program of activities and services, ~~sudden infant death~~
33 ~~syndrome and safe sleep practices training, prohibition on corporal~~
34 ~~punishment, crib safety, protection from electrical hazards, protection~~
35 ~~from swimming pools and other water sources, fire drills, emergency~~
36 ~~plans, safety of outdoor playground surfaces, door locks, safety gates and~~
37 ~~transportation~~ and such appropriate parental participation as may be
38 feasible under the circumstances. Boarding schools are excluded from
39 requirements regarding the number of qualified persons who must
40 supervise and provide care to residents. ~~The notice of hearing on initial~~
41 ~~rules and regulations proposed to be adopted to carry out the amendments~~
42 ~~to this subsection (c)(1) by this act shall be published in the Kansas~~
43 ~~register after February 14, 2011, but prior to March 11, 2011.~~

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

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

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

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

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

35 Sec. 14. K.S.A. 2010 Supp. 65-512 is hereby amended to read as
36 follows: 65-512. (a) It is hereby made the duty of the secretary of health
37 and environment to inspect or cause to be inspected at least once every ~~15~~
38 ~~12 months prior to July 1, 2012, and once every 12 months thereafter,~~
39 ~~every maternity center or child care facility, unless otherwise provided in~~
40 ~~subsections (b) and (c). For the purpose of inspection the secretary or the~~
41 ~~secretary's authorized agent and for that purpose it shall have the right of~~
42 ~~entry and access thereto in every department and to every place in the~~
43 ~~premises, shall call for and examine the records which are required to be~~

1 kept by the provisions of this act and shall make and preserve a record of
2 every inspection. The licensee shall give all reasonable information to the
3 authorized agent of the secretary of health and environment and shall
4 afford every reasonable facility for viewing the premises and seeing the
5 patients or children therein. No such patient or child without the consent
6 of the patient or child shall be required to be interviewed by any agent
7 unless the agent is an authorized person or a licensed physician.

8 ~~(b) (1) On or after the effective date of this act, the secretary of~~
9 ~~health and environment shall commence the inspection of registered~~
10 ~~family day care homes pursuant to K.S.A. 2010 Supp. 65-533 and~~
11 ~~amendments thereto.~~

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

20 ~~(e) (1) Except as provided in subsection (b)(2), the following~~
21 ~~categories of child care facilities which were in compliance on the~~
22 ~~effective date of this act are not required to be inspected until July 1,~~
23 ~~2011: Day care homes, as defined in K.A.R. 28-4-113; group day care~~
24 ~~homes, as defined in K.A.R. 28-4-113; child care centers, as defined in~~
25 ~~K.A.R. 28-4-420; preschools, as defined in K.A.R. 28-4-420; school-age~~
26 ~~programs, as defined in K.A.R. 28-4-576; and drop-in programs, as~~
27 ~~defined in K.A.R. 28-4-700.~~

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

29 Sec. 15. K.S.A. 2010 Supp. 65-516 is hereby amended to read as
30 follows:

31 (a) No person shall knowingly maintain a child care facility or
32 maintain a family day care home if, in the child care facility or family day
33 care home, there resides, works or regularly volunteers any person who in
34 this state or in other states or the federal government:

35 (1) (A) Has a felony conviction for a crime against persons; (B) has
36 a felony conviction under K.S.A. 2010 Supp. 21-36a01 through 21-
37 36a17, and amendments thereto, or any felony violation of any provision
38 of the uniform controlled substances act prior to July 1, 2009; (C) has a
39 conviction of any act which is described in articles 34, 35 or 36 of chapter
40 21 of the Kansas Statutes Annotated, and amendments thereto, or a
41 conviction of an attempt under K.S.A. 21-3301, and amendments thereto,
42 to commit any such act or a conviction of conspiracy under K.S.A. 21-
43 3302, and amendments thereto, to commit such act, or similar statutes of

1 other states or the federal government; or (D) has been convicted of any
2 act which is described in K.S.A. 21-4301 or 21-4301a, and amendments
3 thereto, or similar statutes of other states or the federal government;

4 (2) has been adjudicated a juvenile offender because of having
5 committed an act which if done by an adult would constitute the
6 commission of a felony and which is a crime against persons, is any act
7 described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes
8 Annotated, and amendments thereto, or similar statutes of other states or
9 the federal government, or is any act described in K.S.A. 21-4301 or 21-
10 4301a, and amendments thereto, or similar statutes of other states or the
11 federal government;

12 (3) has committed an act of physical, mental or emotional abuse or
13 neglect or sexual abuse and who is listed in the child abuse and neglect
14 registry maintained by the department of social and rehabilitation services
15 pursuant to K.S.A. 2010 Supp. 38-2226, and amendments thereto, and:
16 (A) The person has failed to successfully complete a corrective action
17 plan which had been deemed appropriate and approved by the department
18 of social and rehabilitation services; or (B) the record has not been
19 expunged pursuant to rules and regulations adopted by the secretary of
20 social and rehabilitation services;

21 (4) has had a child removed from home based on a court order
22 pursuant to K.S.A. 2010 Supp. 38-2251, and amendments thereto, in this
23 state, or a court order in any other state based upon a similar statute that
24 finds the child to be deprived or a child in need of care based on a finding
25 of physical, mental or emotional abuse or neglect or sexual abuse and the
26 child has not been returned to the home or the child reaches majority
27 before being returned to the home and the person has failed to
28 satisfactorily complete a corrective action plan approved by the
29 department of health and environment;

30 (5) has had parental rights terminated pursuant to the Kansas
31 juvenile code or K.S.A. 2010 Supp. 38-2266 through 38-2270, and
32 amendments thereto, or a similar statute of other states;

33 (6) has signed a diversion agreement pursuant to K.S.A. 22-2906 et
34 seq., and amendments thereto, or an immediate intervention agreement
35 pursuant to K.S.A. 2010 Supp. 38-2346, and amendments thereto,
36 involving a charge of child abuse or a sexual offense; or

37 (7) has an infectious or contagious disease.

38 (b) No person shall maintain a child care facility or a family day
39 care home if such person has been found to be a person in need of a
40 guardian or a conservator, or both, as provided in K.S.A. 59-3050 through
41 59-3095, and amendments thereto.

42 (c) Any person who resides in a child care facility or family day care
43 home and who has been found to be in need of a guardian or a

1 conservator, or both, shall be counted in the total number of children
2 allowed in care.

3 (d) In accordance with the provisions of this subsection, the
4 secretary of health and environment shall have access to any court orders
5 or adjudications of any court of record, any records of such orders or
6 adjudications, criminal history record information including, but not
7 limited to, diversion agreements, in the possession of the Kansas bureau
8 of investigation and any report of investigations as authorized by K.S.A.
9 2010 Supp. 38-2226, and amendments thereto, in the possession of the
10 department of social and rehabilitation services or court of this state
11 concerning persons working, regularly volunteering or residing in a child
12 care facility or a family day care home. The secretary shall have access to
13 these records for the purpose of determining whether or not the home
14 meets the requirements of K.S.A. 59-2132, 65-503, 65-508, 65-516 and
15 ~~65-519~~ *section 3*, and amendments thereto.

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

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

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

41 (h) For the purpose of subsection (a)(3), a person listed in the child
42 abuse and neglect central registry shall not be prohibited from residing,
43 working or volunteering in a child care facility or family day care home

1 unless such person has: (1) Had an opportunity to be interviewed and
2 present information during the investigation of the alleged act of abuse or
3 neglect; and (2) been given notice of the agency decision and an
4 opportunity to appeal such decision to the secretary and to the courts
5 pursuant to the Kansas judicial review act.

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

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

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

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

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

25 (5) Any staff person of a child placement agency who receives
26 information under this subsection shall keep such information
27 confidential, except that the staff person may disclose such information
28 on a need-to-know basis to: (A) The person who is the subject of the
29 request for information; (B) the applicant or operator of the family foster
30 home in which the person lives, works or regularly volunteers; (C) the
31 department of health and environment; (D) the department of social and
32 rehabilitation services; (E) the juvenile justice authority; and (F) the
33 courts.

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

36 Sec. 16. On and after July 1, 2011, K.S.A. 2010 Supp. 65-516, as
37 amended by section 15 of this act is hereby amended to read as follows:
38 65-516. (a) No person shall knowingly maintain a child care facility or
39 maintain a family day care home if, in the child care facility or family day
40 care home, there resides, works or regularly volunteers any person who in
41 this state or in other states or the federal government:

42 (1) (A) Has a felony conviction for a crime against persons; (B) has
43 a felony conviction under K.S.A. 2010 Supp. 21-36a01 through 21-

1 36a17, and amendments thereto, or any felony violation of any provision
2 of the uniform controlled substances act prior to July 1, 2009; (C) has a
3 conviction of any act which is described in articles 34, 35 or 36 of chapter
4 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 36*
5 *through 86, 174, 210, 211 or 229 through 231 of chapter 136 of the 2010*
6 *Session Laws of Kansas*, and amendments thereto, or a conviction of an
7 attempt under K.S.A. 21-3301, *prior to its repeal, or section 33 of*
8 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
9 thereto, to commit any such act or a conviction of conspiracy under
10 K.S.A. 21-3302, *prior to its repeal, or section 34 of chapter 136 of the*
11 *2010 Session Laws of Kansas*, and amendments thereto, to commit such
12 act, or similar statutes of other states or the federal government; or (D)
13 has been convicted of any act which is described in K.S.A. 21-4301 or
14 21-4301a, *prior to their repeal, or section 212 of chapter 136 of the 2010*
15 *Session Laws of Kansas*, and amendments thereto, or similar statutes of
16 other states or the federal government;

17 (2) has been adjudicated a juvenile offender because of having
18 committed an act which if done by an adult would constitute the
19 commission of a felony and which is a crime against persons, is any act
20 described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes
21 Annotated, *prior to their repeal, or sections 36 through 86, 174, 210, 211*
22 *or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*,
23 and amendments thereto, or similar statutes of other states or the federal
24 government, or is any act described in K.S.A. 21-4301 or 21-4301a, *prior*
25 *to their repeal, or section 212 of chapter 136 of the 2010 Session Laws of*
26 *Kansas*, and amendments thereto, or similar statutes of other states or the
27 federal government;

28 (3) has committed an act of physical, mental or emotional abuse or
29 neglect or sexual abuse and who is listed in the child abuse and neglect
30 registry maintained by the department of social and rehabilitation services
31 pursuant to K.S.A. 2010 Supp. 38-2226, and amendments thereto, and:
32 (A) The person has failed to successfully complete a corrective action
33 plan which had been deemed appropriate and approved by the department
34 of social and rehabilitation services; or (B) the record has not been
35 expunged pursuant to rules and regulations adopted by the secretary of
36 social and rehabilitation services;

37 (4) has had a child removed from home based on a court order
38 pursuant to K.S.A. 2010 Supp. 38-2251, and amendments thereto, in this
39 state, or a court order in any other state based upon a similar statute that
40 finds the child to be deprived or a child in need of care based on a finding
41 of physical, mental or emotional abuse or neglect or sexual abuse and the
42 child has not been returned to the home or the child reaches majority
43 before being returned to the home and the person has failed to

1 satisfactorily complete a corrective action plan approved by the
2 department of health and environment;

3 (5) has had parental rights terminated pursuant to the Kansas
4 juvenile code or K.S.A. 2010 Supp. 38-2266 through 38-2270, and
5 amendments thereto, or a similar statute of other states;

6 (6) has signed a diversion agreement pursuant to K.S.A. 22-2906 et
7 seq., and amendments thereto, or an immediate intervention agreement
8 pursuant to K.S.A. 2010 Supp. 38-2346, and amendments thereto,
9 involving a charge of child abuse or a sexual offense; or

10 (7) has an infectious or contagious disease.

11 (b) No person shall maintain a child care facility or a family day
12 care home if such person has been found to be a person in need of a
13 guardian or a conservator, or both, as provided in K.S.A. 59-3050 through
14 59-3095, and amendments thereto.

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

19 (d) In accordance with the provisions of this subsection, the
20 secretary of health and environment shall have access to any court orders
21 or adjudications of any court of record, any records of such orders or
22 adjudications, criminal history record information including, but not
23 limited to, diversion agreements, in the possession of the Kansas bureau
24 of investigation and any report of investigations as authorized by K.S.A.
25 2010 Supp. 38-2226, and amendments thereto, in the possession of the
26 department of social and rehabilitation services or court of this state
27 concerning persons working, regularly volunteering or residing in a child
28 care facility or a family day care home. The secretary shall have access to
29 these records for the purpose of determining whether or not the home
30 meets the requirements of K.S.A. 59-2132, 65-503, 65-508, 65-516 and
31 *section 3*, and amendments thereto.

32 (e) In accordance with the provisions of this subsection, the
33 secretary is authorized to conduct national criminal history record checks
34 to determine criminal history on persons residing, working or regularly
35 volunteering in a child care facility or family day care home. In order to
36 conduct a national criminal history check the secretary shall require
37 fingerprinting for identification and determination of criminal history.
38 The secretary shall submit the fingerprints to the Kansas bureau of
39 investigation and to the federal bureau of investigation and receive a
40 reply to enable the secretary to verify the identity of such person and
41 whether such person has been convicted of any crime that would prohibit
42 such person from residing, working or regularly volunteering in a child
43 care facility or family day care home. The secretary is authorized to use

1 information obtained from the national criminal history record check to
2 determine such person's fitness to reside, work or regularly volunteer in a
3 child care facility or family day care home.

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

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

14 (h) For the purpose of subsection (a)(3), a person listed in the child
15 abuse and neglect central registry shall not be prohibited from residing,
16 working or volunteering in a child care facility or family day care home
17 unless such person has: (1) Had an opportunity to be interviewed and
18 present information during the investigation of the alleged act of abuse or
19 neglect; and (2) been given notice of the agency decision and an
20 opportunity to appeal such decision to the secretary and to the courts
21 pursuant to the Kansas judicial review act.

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

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

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

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

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

41 (5) Any staff person of a child placement agency who receives
42 information under this subsection shall keep such information
43 confidential, except that the staff person may disclose such information

1 on a need-to-know basis to: (A) The person who is the subject of the
2 request for information; (B) the applicant or operator of the family foster
3 home in which the person lives, works or regularly volunteers; (C) the
4 department of health and environment; (D) the department of social and
5 rehabilitation services; (E) the juvenile justice authority; and (F) the
6 courts.

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

9 Sec. 17. K.S.A. 2010 Supp. 65-523 is hereby amended to read as
10 follows: 65-523. The secretary may suspend any license, *certificate of*
11 *registration* or temporary permit issued under the provisions of K.S.A.
12 65-501 through 65-516 *and sections 1 through 6*, and amendments
13 thereto, upon any of the following grounds and in the manner provided in
14 this act:

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

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

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

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

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

31 Sec. 18. K.S.A. 2010 Supp. 65-524 is hereby amended to read as
32 follows: 65-524. The secretary may suspend any license, *certificate of*
33 *registration* or temporary permit issued under the provisions of K.S.A.
34 65-501 through 65-516 *and sections 1 through 6*, and amendments
35 thereto, prior to any hearing when, in the opinion of the secretary, the
36 action is necessary to protect any child in the child care facility *or family*
37 *day care home* from physical or mental abuse, abandonment or any other
38 substantial threat to health or safety. Administrative proceedings under
39 this section shall be conducted in accordance with the emergency
40 adjudicative proceedings of the Kansas administrative procedure act and
41 in accordance with other relevant provisions of the Kansas administrative
42 procedure act.

43 Sec. 19. K.S.A. 2010 Supp. 65-526 is hereby amended to read as

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

12 (b) All fines assessed and collected under this section shall be
13 remitted to the state treasurer in accordance with the provisions of K.S.A.
14 75-4215, and amendments thereto. Upon receipt of each such remittance,
15 the state treasurer shall deposit the entire amount in the state treasury to
16 the credit of the state general fund.

17 Sec. 20. K.S.A. 2010 Supp. 65-530 is hereby amended to read as
18 follows: 65-530. (a) As used in this section:

19 (1) "Day care home" means a day care home as defined under
20 Kansas administrative regulation 28-4-113, a group day care home as
21 defined under Kansas administrative regulation 28-4-113 and a family
22 day care home as defined under ~~K.S.A. 65-517~~ *section 1*, and
23 amendments thereto.

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

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

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

42 (d) The secretary of health and environment may levy a civil fine
43 under K.S.A. 65-526, and amendments thereto, against any day care

1 home for a first or second violation of this section. A third or subsequent
2 violation shall be subject to the provisions of K.S.A. 65-523, and
3 amendments thereto.

4 (e) In addition to any civil fine which may be levied pursuant to
5 subsection (d), any day care home that violates any provision of this
6 section may also be subject to criminal punishment pursuant to K.S.A.
7 21-4012, and amendments thereto.

8 Sec. 21. K.S.A. 2010 Supp. 65-531 is hereby amended to read as
9 follows: 65-531. On and after July 1, 1996: (a) Except as provided
10 further, information and records which pertain to the immunization status
11 of persons against childhood diseases as required by K.S.A. 65-508 *and*
12 *section 3*, and amendments thereto, may be disclosed and exchanged
13 without a parent or guardian's written release authorizing such disclosure,
14 to the following, who need to know such information to assure
15 compliance with state statutes or to achieve age appropriate immunization
16 status for children:

17 (1) Employees of public agencies or departments;

18 (2) health records staff of child care facilities *and family day care*
19 *homes*, including, but not limited to, facilities licensed by the secretary of
20 health and environment;

21 (3) persons other than public employees who are entrusted with the
22 regular care of those under the care and custody of a state agency
23 including, but not limited to, operators of day care facilities, group
24 homes, residential care facilities and adoptive or foster homes; and

25 (4) health care professionals.

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

31 (c) Information and records which pertain to the immunization status
32 of persons against childhood diseases as required by K.S.A. 65-508 *and*
33 *section 3*, and amendments thereto, whose parent or guardian has
34 submitted a written statement of religious objection to immunization as
35 provided in K.S.A. 65-508 *or section 3*, and amendments thereto, may not
36 be disclosed or exchanged without a parent or guardian's written release
37 authorizing such disclosure.

38 Sec. 22. K.S.A. 2009 Supp. 65-525 as amended by section 13 of
39 chapter 161 of the 2010 Session Laws of Kansas and K.S.A. 2010 Supp.
40 39-7,129, 59-29a11, 65-503, 65-504, 65-504a, 65-505, 65-506, 65-508,
41 65-512, 65-516, 65-516b, 65-523, 65-524, 65-526, 65-530, 65-530a, 65-
42 531, 65-532, 65-533 and 65-534 are hereby repealed.

43 Sec. 23. On and after July 1, 2011, K.S.A. 2010 Supp. 65-516, as

- 1 amended by section 15 of this act is hereby repealed.
- 2 Sec. 24. This act shall take effect and be in force from and after its
- 3 publication in the Kansas register.