

## HOUSE BILL No. 2660

By Committee on Health and Human Services

2-7

---

1 AN ACT concerning the department of health and environment; relating to  
2 the licensure of maternity centers and child care facilities; amending  
3 K.S.A. 2011 Supp. 65-503, 65-504, 65-506, 65-508, 65-516, 65-523  
4 and 65-524 and repealing the existing sections; also repealing K.S.A.  
5 65-502.

6  
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2011 Supp. 65-503 is hereby amended to read as  
9 follows: 65-503. As used in this act:

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

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

19 (c) "Child care facility" means:

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

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

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

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

36 (d) *"Day care facility" means a child care facility that includes a day*

1 *care home, preschool, child care center, school-age program or other*  
2 *facility of a type determined by the secretary to require regulation under*  
3 *the provisions of K.S.A. 65-501 et seq., and amendments thereto.*

4 ~~(d)~~(e) "Person" means any individual, association, partnership,  
5 corporation, government, governmental subdivision or other entity.

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

10 (g) "*Maternity center*" means a facility which provides delivery  
11 services for normal, uncomplicated pregnancies but does not include a  
12 medical care facility as defined by K.S.A. 65-425, and amendments  
13 thereto.

14 Sec. 2. K.S.A. 2011 Supp. 65-504 is hereby amended to read as  
15 follows: 65-504. (a) The secretary of health and environment shall have  
16 the power to grant a license to a person to maintain a maternity center or  
17 child care facility for children under 16 years of age. ~~The license~~ *A license*  
18 *granted to maintain a maternity center or child care facility* shall state the  
19 name of the licensee, describe the particular premises in or at which the  
20 business shall be carried on, whether it shall receive and care for women  
21 or children, and the number of women or children that may be treated,  
22 maintained, boarded or cared for at any one time. No greater number of  
23 women or children than is authorized in the license shall be kept on those  
24 premises and the business shall not be carried on in a building or place not  
25 designated in the license. The license shall be kept posted in a conspicuous  
26 place on the premises where the business is conducted. ~~The license~~ *A*  
27 *license granted to maintain a day care facility* shall have on its face an  
28 expiration sticker stating the date of expiration of the license.

29 The secretary of health and environment shall grant no license in any  
30 case until careful inspection of the maternity center or child care facility  
31 shall have been made according to the terms of this act and until such  
32 maternity center or child care facility has complied with all the  
33 requirements of this act. Except as provided by this subsection, no license  
34 shall be granted without the approval of the secretary of social and  
35 rehabilitation services. The secretary of health and environment may issue,  
36 without the approval of the secretary of social and rehabilitation services, a  
37 temporary permit to operate for a period not to exceed 90 days upon  
38 receipt of an initial application for license. The secretary of health and  
39 environment may extend, without the approval of the secretary of social  
40 and rehabilitation services, the temporary permit to operate for an  
41 additional period not to exceed 90 days if an applicant is not in full  
42 compliance with the requirements of this act but has made efforts towards  
43 full compliance.

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

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

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

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

33 (e) If the secretary revokes or refuses to renew a license, the licensee  
34 who had a license revoked or not renewed shall not be eligible to apply for  
35 a license for a period of one year subsequent to the date such revocation or  
36 refusal to renew becomes final. If the secretary revokes or refuses to renew  
37 a license of a licensee who is a repeat, three or more times, violator of  
38 statutory requirements or rules and regulations or is found to have  
39 contributed to the death or serious bodily harm of a child under such  
40 licensee's care, such licensee shall be permanently prohibited from  
41 applying for a new license to provide child care or from seeking  
42 employment under another licensee.

43 (f) Any applicant or licensee aggrieved by a final order of the

1 secretary of health and environment denying or revoking a license under  
2 this act may appeal the order in accordance with the Kansas judicial  
3 review act.

4 Sec. 3. K.S.A. 2011 Supp. 65-506 is hereby amended to read as  
5 follows: 65-506. The secretary of health and environment shall serve  
6 notice of the issuance, *limitation, modification*, suspension or revocation  
7 of a license to conduct a maternity center or child care facility to the  
8 secretary of social and rehabilitation services, juvenile justice authority,  
9 department of education, office of the state fire marshal, county, city-  
10 county or multi-county department of health, and to any licensed child  
11 placement agency or licensed child care resource and referral agency  
12 serving the area where the center or facility is located. A maternity center  
13 or child care facility that has had a license *limited, modified*, suspended,  
14 revoked or denied by the secretary of health and environment shall notify  
15 in writing the parents or guardians of the enrollees of the *limitation,*  
16 *modification*, suspension, revocation or denial. Neither the secretary of  
17 social and rehabilitation services nor any other person shall place or cause  
18 to be placed any ~~maternity patient~~ *woman* or child under 16 years of age in  
19 any maternity center or child care facility not licensed by the secretary of  
20 health and environment.

21 Sec. 4. K.S.A. 2011 Supp. 65-508 is hereby amended to read as  
22 follows: 65-508. (a) Any maternity center or child care facility subject to  
23 the provisions of this act shall: (1) Be properly heated, plumbed, lighted  
24 and ventilated; (2) have plumbing, water and sewerage systems which  
25 conform to all applicable state and local laws; and (3) be operated with  
26 strict regard to the health, comfort, safety and ~~social~~ welfare of ~~the~~  
27 ~~residents~~ *any woman or child*.

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

35 (c) (1) The secretary of health and environment with the cooperation  
36 of the secretary of social and rehabilitation services shall develop and  
37 adopt rules and regulations for the operation and maintenance of maternity  
38 centers and child care facilities. The rules and regulations for operating  
39 and maintaining maternity centers and child care facilities shall be  
40 designed to promote the health, safety, *comfort* and welfare of ~~the residents~~  
41 ~~who are to be~~ *any woman or child* served in such facilities by ensuring  
42 safe and adequate physical surroundings, healthful food, adequate  
43 handwashing, safe storage of toxic substances and hazardous chemicals,

1 sanitary diapering and toileting, home sanitation, supervision and care of  
2 the residents by capable, qualified persons of sufficient number, after hour  
3 care, an adequate program of activities and services, sudden infant death  
4 syndrome and safe sleep practices training, prohibition on corporal  
5 punishment, crib safety, protection from electrical hazards, protection from  
6 swimming pools and other water sources, fire drills, emergency plans,  
7 safety of outdoor playground surfaces, door locks, safety gates and  
8 transportation and such appropriate parental participation as may be  
9 feasible under the circumstances. Boarding schools are excluded from  
10 requirements regarding the number of qualified persons who must  
11 supervise and provide care to residents. ~~The notice of hearing on initial  
12 rules and regulations proposed to be adopted to carry out the amendments  
13 to this subsection (c)(1) by this act shall be published in the Kansas  
14 register after February 14, 2011, but prior to March 11, 2011.~~

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

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

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

43 (1) Certification from a licensed physician stating that the physical

1 condition of the child is such that immunization would endanger the child's  
2 life or health; or

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

6 Sec. 5. K.S.A. 2011 Supp. 65-516 is hereby amended to read as  
7 follows: 65-516.

8 (a) No person shall knowingly maintain a child care facility if, there  
9 resides, works or regularly volunteers any person who in this state or in  
10 other states or the federal government:

11 (1) (A) Has a felony conviction for a crime against persons; (B) has  
12 a felony conviction under K.S.A. 2010 Supp. 21-36a01 through 21-36a17,  
13 and amendments thereto, or any felony violation of any provision of the  
14 uniform controlled substances act prior to July 1, 2009; (C) has a  
15 conviction of any act which is described in articles 34, 35 or 36 of chapter  
16 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54, 55  
17 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2011  
18 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, and  
19 amendments thereto, or a conviction of an attempt under K.S.A. 21-3301,  
20 prior to its repeal, or K.S.A. 2011 Supp. 21-5301, and amendments thereto,  
21 to commit any such act or a conviction of conspiracy under K.S.A. 21-  
22 3302, prior to its repeal, or K.S.A. 2011 Supp. 21-5302, and amendments  
23 thereto, to commit such act, or similar statutes of other states or the federal  
24 government; or (D) has been convicted of any act which is described in  
25 K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2011 Supp.  
26 21-6401, and amendments thereto, or similar statutes of other states or the  
27 federal government;

28 (2) has been adjudicated a juvenile offender because of having  
29 committed an act which if done by an adult would constitute the  
30 commission of a felony and which is a crime against persons, is any act  
31 described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes  
32 Annotated, prior to their repeal, or article 54, 55 or 56 of chapter 21 of the  
33 Kansas Statutes Annotated, or K.S.A. 2011 Supp. 21-6104, 21-6325, 21-  
34 6326 or 21-6418 through 21-6421, and amendments thereto, or similar  
35 statutes of other states or the federal government, or is any act described in  
36 K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2011 Supp.  
37 21-6401, and amendments thereto, or similar statutes of other states or the  
38 federal government;

39 (3) has committed an act of physical, mental or emotional abuse or  
40 neglect or sexual abuse and who is listed in the child abuse and neglect  
41 registry maintained by the department of social and rehabilitation services  
42 pursuant to K.S.A. 2011 Supp. 38-2226, and amendments thereto, and (A)  
43 the person has failed to successfully complete a corrective action plan

1 which had been deemed appropriate and approved by the department of  
2 social and rehabilitation services, or (B) the record has not been expunged  
3 pursuant to rules and regulations adopted by the secretary of social and  
4 rehabilitation services;

5 (4) has had a child removed from home based on a court order  
6 pursuant to K.S.A. 2011 Supp. 38-2251, and amendments thereto, in this  
7 state, or a court order in any other state based upon a similar statute that  
8 finds the child to be deprived or a child in need of care based on a finding  
9 of physical, mental or emotional abuse or neglect or sexual abuse and the  
10 child has not been returned to the home or the child reaches majority  
11 before being returned to the home and the person has failed to  
12 satisfactorily complete a corrective action plan approved by the  
13 department of health and environment;

14 (5) has had parental rights terminated pursuant to the Kansas juvenile  
15 code or K.S.A. 2011 Supp. 38-2266 through 38-2270, and amendments  
16 thereto, or a similar statute of other states;

17 (6) has signed a diversion agreement pursuant to K.S.A. 22-2906 *et*  
18 *seq.*, and amendments thereto, or an immediate intervention agreement  
19 pursuant to K.S.A. 2011 Supp. 38-2346, and amendments thereto,  
20 involving a charge of child abuse or a sexual offense; or

21 (7) has an infectious or contagious disease.

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

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

28 (d) In accordance with the provisions of this subsection, the secretary  
29 of health and environment shall have access to any court orders or  
30 adjudications of any court of record, any records of such orders or  
31 adjudications, criminal history record information including, but not  
32 limited to, diversion agreements, in the possession of the Kansas bureau of  
33 investigation and any report of investigations as authorized by K.S.A.  
34 2011 Supp. 38-2226, and amendments thereto, in the possession of the  
35 department of social and rehabilitation services or court of this state  
36 concerning persons working, regularly volunteering or residing in a child  
37 care facility. The secretary shall have access to these records for the  
38 purpose of determining whether or not the home meets the requirements of  
39 K.S.A. 59-2132, 65-503, 65-508 and 65-516, and amendments thereto.

40 (e) In accordance with the provisions of this subsection, the secretary  
41 is authorized to conduct national criminal history record checks to  
42 determine criminal history on persons residing, working or regularly  
43 volunteering in a child care facility. In order to conduct a national criminal

1 history check the secretary shall require fingerprinting for identification  
2 and determination of criminal history. The secretary shall submit the  
3 fingerprints to the Kansas bureau of investigation and to the federal bureau  
4 of investigation and receive a reply to enable the secretary to verify the  
5 identity of such person and whether such person has been convicted of any  
6 crime that would prohibit such person from residing, working or regularly  
7 volunteering in a child care facility. The secretary is authorized to use  
8 information obtained from the national criminal history record check to  
9 determine such person's fitness to reside, work or regularly volunteer in a  
10 child care facility.

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

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

21 (h) For the purpose of subsection (a)(3), a person listed in the child  
22 abuse and neglect central registry shall not be prohibited from residing,  
23 working or volunteering in a child care facility unless such person has: (1)  
24 Had an opportunity to be interviewed and present information during the  
25 investigation of the alleged act of abuse or neglect; and (2) been given  
26 notice of the agency decision and an opportunity to appeal such decision to  
27 the secretary and to the courts pursuant to the Kansas judicial review act.

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

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

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

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

43 (4) Whenever the information available to the secretary reveals that



1 the subject of the request has no criminal history on record, the secretary  
2 shall provide notice thereof in writing to each child placement agency  
3 requesting information under this section.

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

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

14 ~~(j) Except as provided in this subsection, no person shall maintain a~~  
15 ~~child care facility unless such person is a high school graduate or the~~  
16 ~~equivalent thereof. The provisions of this subsection shall not apply to any~~  
17 ~~person who was maintaining a child care facility on the day immediately~~  
18 ~~prior to July 1, 2010 or who has an application for an initial license or the~~  
19 ~~renewal of an existing license pending on July 1, 2010.~~

20 Sec. 6. K.S.A. 2011 Supp. 65-523 is hereby amended to read as  
21 follows: 65-523. The secretary may *limit, modify or* suspend any license or  
22 temporary permit issued under the provisions of K.S.A. 65-501 through  
23 65-516, and amendments thereto, upon any of the following grounds and  
24 in the manner provided in this act:

25 (a) Violation by the licensee or holder of a temporary permit of any  
26 provision of this act or of the rules and regulations promulgated under this  
27 act;

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

30 (c) conduct in the operation or maintenance, or both the operation and  
31 maintenance, of a *maternity center* or child care facility which is inimical  
32 to *the health, safety, comfort or welfare* or ~~safety of either an individual in~~  
33 ~~or receiving services from the facility or home or the people of this state of~~  
34 *any woman or child receiving services from such maternity center or child*  
35 *care facility, or the public;*

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

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

43 Sec. 7. K.S.A. 2011 Supp. 65-524 is hereby amended to read as

1 follows: 65-524. The secretary may *limit, modify or* suspend any license or  
2 temporary permit issued under the provisions of K.S.A. 65-501 through  
3 65-516, and amendments thereto, prior to any hearing when, in the opinion  
4 of the secretary, the action is necessary to protect any child in the child  
5 care facility from physical or mental abuse, abandonment or any other  
6 substantial threat to health ~~or~~, safety, *comfort or welfare*. Administrative  
7 proceedings under this section shall be conducted in accordance with the  
8 emergency adjudicative proceedings of the Kansas administrative  
9 procedure act and in accordance with other relevant provisions of the  
10 Kansas administrative procedure act.

11 Sec. 8. K.S.A. 65-502 and K.S.A. 2011 Supp. 65-503, 65-504, 65-  
12 506, 65-508, 65-516, 65-523 and 65-524 are hereby repealed.

13 Sec. 9. This act shall take effect and be in force from and after its  
14 publication in the statute book.