

**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~~  
18 *license granted to maintain a maternity center or child care facility* shall  
19 state the name of the licensee, describe the particular premises in or at  
20 which the business shall be carried on, whether it shall receive and care for  
21 women or children, and the number of women or children that may be  
22 treated, maintained, boarded or cared for at any one time. No greater  
23 number of women or children than is authorized in the license shall be  
24 kept on those premises and the business shall not be carried on in a  
25 building or place not designated in the license. The license shall be kept  
26 posted in a conspicuous place on the premises where the business is  
27 conducted. ~~The license~~ *A license granted to maintain a day care facility*  
28 shall have on its face an expiration sticker stating the date of expiration of  
29 the license.

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

1 full compliance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the person has failed to successfully complete a corrective action plan  
2 which had been deemed appropriate and approved by the department of  
3 social and rehabilitation services, or (B) the record has not been expunged  
4 pursuant to rules and regulations adopted by the secretary of social and  
5 rehabilitation services;

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

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

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

22 (7) has an infectious or contagious disease.

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

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

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

41 (e) In accordance with the provisions of this subsection, the secretary  
42 is authorized to conduct national criminal history record checks to  
43 determine criminal history on persons residing, working or regularly

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

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

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

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

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

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

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

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



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

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

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

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

21 *(j) No person shall maintain a day care facility unless such person is*  
22 *a high school graduate or the equivalent thereof, except where*  
23 *extraordinary circumstances exist, the secretary of health and*  
24 *environment may exercise discretion to make exceptions to this*  
25 *requirement. The provisions of this subsection shall not apply to any*  
26 *person who was maintaining a day care facility on the day immediately*  
27 *prior to July 1, 2010 or who had an application for an initial license or*  
28 *the renewal of an existing license pending on July 1, 2010.*

29 Sec. 6. K.S.A. 2011 Supp. 65-523 is hereby amended to read as  
30 follows: 65-523. The secretary may *limit, modify or* suspend any license or  
31 temporary permit issued under the provisions of K.S.A. 65-501 through  
32 65-516, and amendments thereto, upon any of the following grounds and  
33 in the manner provided in this act:

34 (a) Violation by the licensee or holder of a temporary permit of any  
35 provision of this act or of the rules and regulations promulgated under this  
36 act;

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

39 (c) conduct in the operation or maintenance, or both the operation and  
40 maintenance, of a *maternity center or* child care facility which is inimical  
41 to the health, ~~safety, comfort~~ or welfare or safety of either an individual in  
42 or receiving services from the facility or home or the people of this state of  
43 *any woman or child receiving services from such maternity center or child*

1 *care facility, or the public;*

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

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

9 Sec. 7. K.S.A. 2011 Supp. 65-524 is hereby amended to read as  
10 follows: 65-524. The secretary may *limit, modify or* suspend any license or  
11 temporary permit issued under the provisions of K.S.A. 65-501 through  
12 65-516, and amendments thereto, prior to any hearing when, in the opinion  
13 of the secretary, the action is necessary to protect any child in the child  
14 care facility from physical or mental abuse, abandonment or any other  
15 substantial threat to health ~~or~~ safety, ~~comfort~~ *or welfare*. Administrative  
16 proceedings under this section shall be conducted in accordance with the  
17 emergency adjudicative proceedings of the Kansas administrative  
18 procedure act and in accordance with other relevant provisions of the  
19 Kansas administrative procedure act.

20 Sec. 8. K.S.A. 65-502 and K.S.A. 2011 Supp. 65-503, 65-504, 65-  
21 506, 65-508, 65-516, 65-523 and 65-524 are hereby repealed.

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