

SENATE BILL No. 126

By Committee on Public Health and Welfare

2-1

1 AN ACT concerning child care facilities; relating to individuals
2 maintaining or residing, working or volunteering therein; background
3 checks; amending K.S.A. 2016 Supp. 65-516 and repealing the existing
4 section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2016 Supp. 65-516 is hereby amended to read as
8 follows: 65-516. (a) No person shall knowingly maintain a child care
9 facility if; there resides, works or regularly volunteers any person who in
10 this state or in other states or the federal government:

11 (1) (A) ~~Has a felony conviction for~~ *been convicted of a crime against*
12 ~~persons that is classified as a person felony under the Kansas criminal~~
13 ~~code;~~

14 (B) ~~has a felony conviction~~ *been convicted {of a felony}* under K.S.A.
15 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, or article
16 57 of chapter 21 of the Kansas Statutes Annotated, and amendments
17 thereto, or any felony violation of any provision of the uniform controlled
18 substances act prior to July 1, 2009;

19 (C) ~~has a conviction~~ *been convicted* of any act ~~which~~ *that* is described
20 in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated,
21 prior to their repeal, or article 54, 55 or 56 of chapter 21 of the Kansas
22 Statutes Annotated, or K.S.A. 2016 Supp. 21-6104, 21-6325, 21-6326 or
23 21-6418 through 21-6421, and amendments thereto, or ~~a conviction~~ *been*
24 *convicted* of an attempt under K.S.A. 21-3301, prior to its repeal, or
25 K.S.A. 2016 Supp. 21-5301, and amendments thereto, to commit any such
26 act or ~~a conviction~~ *been convicted* of conspiracy under K.S.A. 21-3302,
27 prior to its repeal, or K.S.A. 2016 Supp. 21-5302, and amendments
28 thereto, to commit such act, or similar statutes of ~~other states~~ *any other*
29 *state* or the federal government; ~~or~~

30 (D) has been convicted of any act ~~which~~ *that* is described in K.S.A.
31 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2016 Supp. 21-6401,
32 and amendments thereto, or similar statutes of ~~other states~~ *any other state*
33 or the federal government; ~~or~~

34 (E) *has been convicted of any act that is described in K.S.A. 21-*

1 *3718 or 21-3719, prior to their repeal, or K.S.A. 2016 Supp. 21-5812,*
2 *and amendments thereto, or similar statutes of any other state or the*
3 *federal government;*

4 (2) has been adjudicated a juvenile offender because of having
5 committed an act ~~which~~ *that* if done by an adult would constitute the
6 commission of a felony and ~~which~~ *that* is a crime against persons, is any
7 act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes
8 Annotated, prior to their repeal, or article 54, 55 or 56 of chapter 21 of the
9 Kansas Statutes Annotated, or K.S.A. 2016 Supp. 21-6104, 21-6325, 21-
10 6326 or 21-6418 through 21-6421, and amendments thereto, or similar
11 statutes of ~~other states~~ *any other state* or the federal government, or is any
12 act described in K.S.A. 21-4301 or 21-4301a, prior to their repeal, or
13 K.S.A. 2016 Supp. 21-6401, and amendments thereto, or similar statutes
14 of ~~other states~~ *any other state* or the federal government;

15 (3) *has been convicted or adjudicated of a crime that requires*
16 *registration as a sex offender under the Kansas offender registration act,*
17 *K.S.A. 22-4901 et seq., and amendments thereto, as a sex offender in any*
18 *other state or as a sex offender on the national sex offender registry;*

19 ~~(3)-(4)~~ (4) has committed an act of physical, mental or emotional abuse
20 or neglect or sexual abuse and who is listed in the child abuse and neglect
21 registry maintained by the Kansas department for children and families
22 pursuant to K.S.A. 2016 Supp. 38-2226, and amendments thereto, *or any*
23 *similar child abuse and neglect registries maintained by any other state or*
24 *the federal government and:*

25 (A) The person has failed to successfully complete a corrective action
26 plan ~~which~~ *that* had been deemed appropriate and approved by the Kansas
27 department for children and families; *or requirements of similar entities in*
28 *any other state or the federal government; or*

29 (B) the record has not been expunged pursuant to rules and
30 regulations adopted by the secretary for children and families *or similar*
31 *entities in any other state or the federal government;*

32 ~~(4)-(5)~~ (5) has had a child removed from home based on a court order
33 pursuant to K.S.A. 2016 Supp. 38-2251, and amendments thereto, in this
34 state, or a court order in any other state based upon a similar statute that
35 finds the child to be deprived or a child in need of care based on a finding
36 of physical, mental or emotional abuse or neglect or sexual abuse and the
37 child has not been returned to the home or the child reaches majority
38 before being returned to the home and the person has failed to
39 satisfactorily complete a corrective action plan approved by the
40 department of health and environment;

41 ~~(5)-(6)~~ (6) has had parental rights terminated pursuant to the Kansas
42 juvenile code or K.S.A. 2016 Supp. 38-2266 through 38-2270, and
43 amendments thereto, or a similar statute of other states;

1 ~~(6)~~(7) has signed a diversion agreement pursuant to K.S.A. 22-2906
2 et seq., and amendments thereto, or an immediate intervention agreement
3 pursuant to K.S.A. 2016 Supp. 38-2346, and amendments thereto,
4 involving a charge of child abuse or a sexual offense; or

5 ~~(7)~~(8) has an infectious or contagious disease.

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

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

12 (d) In accordance with the provisions of this subsection, the secretary
13 of health and environment shall have access to any court orders or
14 adjudications of any court of record, any records of such orders or
15 adjudications, criminal history record information including, but not
16 limited to, diversion agreements, in the possession of the Kansas bureau of
17 investigation and any report of investigations as authorized by K.S.A.
18 2016 Supp. 38-2226, and amendments thereto, in the possession of the
19 Kansas department for children and families or court of this state
20 concerning persons working, regularly volunteering or residing in a child
21 care facility. The secretary shall have access to these records for the
22 purpose of determining whether or not the home meets the requirements of
23 K.S.A. 59-2132, 65-503, 65-508 and 65-516, and amendments thereto.

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

38 (f) The secretary shall notify the child care applicant or licensee,
39 within seven days by certified mail with return receipt requested, when the
40 result of the national criminal history record check or other appropriate
41 review reveals unfitness specified in ~~subsection~~ subsections (a)(1) through
42 ~~(7)~~(8) with regard to the person who is the subject of the review.

43 (g) No child care facility or the employees thereof, shall be liable for

1 civil damages to any person refused employment or discharged from
2 employment by reason of such facility's or home's compliance with the
3 provisions of this section if such home acts in good faith to comply with
4 this section.

5 (h) For the purpose of subsection (a)(3), a person listed in the child
6 abuse and neglect central registry shall not be prohibited from residing,
7 working or volunteering in a child care facility unless such person has:

8 (1) Had an opportunity to be interviewed and present information
9 during the investigation of the alleged act of abuse or neglect; and

10 (2) been given notice of the agency decision and an opportunity to
11 appeal such decision to the secretary and to the courts pursuant to the
12 Kansas judicial review act.

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

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

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

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

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

32 (5) Any staff person of a child placement agency who receives
33 information under this subsection shall keep such information confidential,
34 except that the staff person may disclose such information on a need-to-
35 know basis to:

36 (A) The person who is the subject of the request for information;

37 (B) the applicant or operator of the family foster home in which the
38 person lives, works or regularly volunteers;

39 (C) the department of health and environment;

40 (D) the Kansas department for children and families;

41 (E) ~~the juvenile justice authority~~ *Kansas department of corrections*;
42 and

43 (F) the courts.

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

3 (j) No person shall maintain a day care facility unless such person is a
4 high school graduate or the equivalent thereof, except where extraordinary
5 circumstances exist, the secretary of health and environment may exercise
6 discretion to make exceptions to this requirement. The provisions of this
7 subsection shall not apply to any person who was maintaining a day care
8 facility on the day immediately prior to July 1, 2010 or who had an
9 application for an initial license or the renewal of an existing license
10 pending on July 1, 2010.

11 Sec. 2. K.S.A. 2016 Supp. 65-516 is hereby repealed.

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