

HOUSE BILL No. 2448

By Committee on Appropriations

3-23

1 AN ACT concerning foster care; relating to licenses for family foster
2 homes; creating an exemption to allow the secretary for the department
3 of children and families to license a family foster home where a former
4 foster care youth with juvenile adjudications resides; amending K.S.A.
5 65-516 and repealing the existing section.

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

8 Section 1. K.S.A. 65-516 is hereby amended to read as follows: 65-
9 516. (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 been convicted of a crime that is classified as a person
13 felony under the Kansas criminal code;

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

19 (C) has been convicted of any act that is described in articles 34, 35
20 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal,
21 or article 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or
22 K.S.A. 2020 Supp. 21-6104, 21-6325, 21-6326, 21-6418 through 21-6422
23 or 21-6424, and amendments thereto, or been convicted of an attempt
24 under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2020 Supp. 21-5301,
25 and amendments thereto, to commit any such act or been convicted of
26 conspiracy under K.S.A. 21-3302, prior to its repeal, or K.S.A. 2020 Supp.
27 21-5302, and amendments thereto, to commit such act, or similar statutes
28 of any other state or the federal government;

29 (D) has been convicted of any act that is described in K.S.A. 21-4301
30 or 21-4301a, prior to their repeal, or K.S.A. 2020 Supp. 21-6401, and
31 amendments thereto, or similar statutes of any other state or the federal
32 government; or

33 (E) has been convicted of any act that is described in K.S.A. 21-3718
34 or 21-3719, prior to their repeal, or K.S.A. 2020 Supp. 21-5812, and
35 amendments thereto, or similar statutes of any other state or the federal
36 government;

1 (2) *except as provided in subsection (b)*, has been adjudicated a
2 juvenile offender because of having committed an act that if done by an
3 adult would constitute the commission of a felony and that is a crime
4 against persons, is any act described in articles 34, 35 or 36 of chapter 21
5 of the Kansas Statutes Annotated, prior to their repeal, or article 54, 55 or
6 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2020 Supp.
7 21-6104, 21-6325, 21-6326, 21-6418 through 21-6422 or 21-6424, and
8 amendments thereto, or similar statutes of any other state or the federal
9 government, or is any act described in K.S.A. 21-4301 or 21-4301a, prior
10 to their repeal, or K.S.A. 2020 Supp. 21-6401, and amendments thereto, or
11 similar statutes of any other state or the federal government;

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

16 (4) has committed an act of physical, mental or emotional abuse or
17 neglect or sexual abuse and who is listed in the child abuse and neglect
18 registry maintained by the Kansas department for children and families
19 pursuant to K.S.A. 2020 Supp. 38-2226, and amendments thereto, or any
20 similar child abuse and neglect registries maintained by any other state or
21 the federal government and:

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

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

29 (5) has had a child removed from home based on a court order
30 pursuant to K.S.A. 2020 Supp. 38-2251, and amendments thereto, in this
31 state, or a court order in any other state based upon a similar statute that
32 finds the child to be deprived or a child in need of care based on a finding
33 of physical, mental or emotional abuse or neglect or sexual abuse and the
34 child has not been returned to the home or the child reaches majority
35 before being returned to the home and the person has failed to
36 satisfactorily complete a corrective action plan approved by the
37 department of health and environment;

38 (6) has had parental rights terminated pursuant to the Kansas juvenile
39 code or K.S.A. 2020 Supp. 38-2266 through 38-2270, and amendments
40 thereto, or a similar statute of other states;

41 (7) has signed a diversion agreement pursuant to K.S.A. 22-2906 et
42 seq., and amendments thereto, or an immediate intervention agreement
43 pursuant to K.S.A. 2020 Supp. 38-2346, and amendments thereto,

1 involving a charge of child abuse or a sexual offense; or

2 (8) has an infectious or contagious disease.

3 (b) *If the secretary determines there is no safety concern, the*
4 *secretary may license a family foster home, as defined in K.S.A. 38-134,*
5 *and amendments thereto, when a person who has been adjudicated as a*
6 *juvenile offender for an offense described in subsection (a)(2):*

7 (1) *Was a child in the custody of the secretary and placed with such*
8 *family foster home by the secretary;*

9 (2) *is 18 years of age or older; and*

10 (3) (A) *maintains residence at such family foster home; or*

11 (B) *has been legally adopted by any person who resides at such*
12 *family foster home.*

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

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

19 ~~(d)(e)~~ 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 of
24 investigation and any report of investigations as authorized by K.S.A.
25 2020 Supp. 38-2226, and amendments thereto, in the possession of the
26 Kansas department for children and families or court of this state
27 concerning persons working, regularly volunteering or residing in a child
28 care facility. The secretary shall have access to these records for the
29 purpose of determining whether or not the home meets the requirements of
30 K.S.A. 59-2132, 65-503, 65-508 and 65-516, and amendments thereto.

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

1 child care facility.

2 ~~(f)~~(g) Local and state law enforcement officers and agencies shall
3 assist the secretary in taking and processing fingerprints of persons
4 residing, working or regularly volunteering in a child care facility and
5 shall release all records of adult convictions and nonconvictions and adult
6 convictions or adjudications of another state or country to the department.

7 ~~(g)~~(h) (1) The secretary shall adopt rules and regulations on or before
8 January 1, 2019, to fix a fee for fingerprinting persons residing, working or
9 regularly volunteering in a child care facility, as may be required by the
10 department to reimburse the department for the cost of the fingerprinting.

11 (2) The secretary shall remit all moneys received from the fees
12 established under this section to the state treasurer in accordance with the
13 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
14 each such remittance, the state treasurer shall deposit the entire amount in
15 the state treasury to the credit of the child care criminal background and
16 fingerprinting fund.

17 ~~(h)~~(i) The child care criminal background and fingerprinting fund is
18 hereby created in the state treasury to be administered by the secretary of
19 health and environment. All moneys credited to the child care criminal
20 background and fingerprinting fund shall be used to pay local and state
21 law enforcement officers and agencies for the processing of fingerprints
22 and criminal history background checks for the department. All
23 expenditures from the child care criminal background and fingerprinting
24 fund shall be made in accordance with appropriation acts upon warrants of
25 the director of accounts and reports issued pursuant to vouchers approved
26 by the secretary or by a person designated by the secretary.

27 ~~(i)~~(j) The secretary shall notify the child care applicant or licensee,
28 within seven days by certified mail with return receipt requested, when the
29 result of the national criminal history record check or other appropriate
30 review reveals unfitness specified in subsections (a)(1) through (8) with
31 regard to the person who is the subject of the review.

32 ~~(j)~~(k) No child care facility or the employees thereof, shall be liable
33 for civil damages to any person refused employment or discharged from
34 employment by reason of such facility's or home's compliance with the
35 provisions of this section if such home acts in good faith to comply with
36 this section.

37 ~~(k)~~(l) For the purpose of subsection (a)(3), a person listed in the child
38 abuse and neglect central registry shall not be prohibited from residing,
39 working or volunteering in a child care facility unless such person has:

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

42 (2) been given notice of the agency decision and an opportunity to
43 appeal such decision to the secretary and to the courts pursuant to the

1 Kansas judicial review act.

2 ~~(h)~~(m) In regard to Kansas issued criminal history records:

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

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

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

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

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

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

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

28 (C) the department of health and environment;

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

30 (E) the department of corrections; and

31 (F) the courts.

32 (6) A violation of the provisions of ~~subsection (h)~~(5) *paragraph (5)*
33 shall be an unclassified misdemeanor punishable by a fine of \$100 for
34 each violation.

35 ~~(m)~~(n) No person shall maintain a day care facility unless such person
36 is a high school graduate or the equivalent thereof, except where
37 extraordinary circumstances exist, the secretary of health and environment
38 may exercise discretion to make exceptions to this requirement. The
39 provisions of this subsection shall not apply to any person who was
40 maintaining a day care facility on the day immediately prior to July 1,
41 2010, or who had an application for an initial license or the renewal of an
42 existing license pending on July 1, 2010.

43 Sec. 2. K.S.A. 65-516 is hereby repealed.

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