

**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* under K.S.A. 2010 Supp.  
15 21-36a01 through 21-36a17, prior to their transfer, or article 57 of chapter  
16 21 of the Kansas Statutes Annotated, and amendments thereto, or any  
17 felony violation of any provision of the uniform controlled substances act  
18 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;

34 (2) has been adjudicated a juvenile offender because of having  
35 committed an act ~~which~~ *that* if done by an adult would constitute the  
36 commission of a felony and ~~which~~ *that* is a crime against persons, is any

1 act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes  
2 Annotated, prior to their repeal, or article 54, 55 or 56 of chapter 21 of the  
3 Kansas Statutes Annotated, or K.S.A. 2016 Supp. 21-6104, 21-6325, 21-  
4 6326 or 21-6418 through 21-6421, and amendments thereto, or similar  
5 statutes of ~~other states~~ *any other state* or the federal government, or is any  
6 act described in K.S.A. 21-4301 or 21-4301a, prior to their repeal, or  
7 K.S.A. 2016 Supp. 21-6401, and amendments thereto, or similar statutes  
8 of ~~other states~~ *any other state* or the federal government;

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

13 ~~(3)-(4)~~ *has committed an act of physical, mental or emotional abuse*  
14 *or neglect or sexual abuse and who is listed in the child abuse and neglect*  
15 *registry maintained by the Kansas department for children and families*  
16 *pursuant to K.S.A. 2016 Supp. 38-2226, and amendments thereto, or any*  
17 *similar child abuse and neglect registries maintained by any other state or*  
18 *the federal government and:*

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

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

26 ~~(4)-(5)~~ *has had a child removed from home based on a court order*  
27 *pursuant to K.S.A. 2016 Supp. 38-2251, and amendments thereto, in this*  
28 *state, or a court order in any other state based upon a similar statute that*  
29 *finds the child to be deprived or a child in need of care based on a finding*  
30 *of physical, mental or emotional abuse or neglect or sexual abuse and the*  
31 *child has not been returned to the home or the child reaches majority*  
32 *before being returned to the home and the person has failed to*  
33 *satisfactorily complete a corrective action plan approved by the*  
34 *department of health and environment;*

35 ~~(5)-(6)~~ *has had parental rights terminated pursuant to the Kansas*  
36 *juvenile code or K.S.A. 2016 Supp. 38-2266 through 38-2270, and*  
37 *amendments thereto, or a similar statute of other states;*

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

42 ~~(7)-(8)~~ *has an infectious or contagious disease.*

43 (b) No person shall maintain a child care facility if such person has

1 been found to be a person in need of a guardian or a conservator, or both,  
2 as provided in K.S.A. 59-3050 through 59-3095, and amendments thereto.

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

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

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

32 (f) The secretary shall notify the child care applicant or licensee,  
33 within seven days by certified mail with return receipt requested, when the  
34 result of the national criminal history record check or other appropriate  
35 review reveals unfitness specified in ~~subsection~~ *subsections* (a)(1) through  
36 ~~(7)~~ (8) with regard to the person who is the subject of the review.

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

42 (h) For the purpose of subsection (a)(3), a person listed in the child  
43 abuse and neglect central registry shall not be prohibited from residing,

- 1 working or volunteering in a child care facility unless such person has:
- 2 (1) Had an opportunity to be interviewed and present information  
3 during the investigation of the alleged act of abuse or neglect; and
- 4 (2) been given notice of the agency decision and an opportunity to  
5 appeal such decision to the secretary and to the courts pursuant to the  
6 Kansas judicial review act.
- 7 (i) In regard to Kansas issued criminal history records:
- 8 (1) The secretary of health and environment shall provide in writing  
9 information available to the secretary to each child placement agency  
10 requesting information under this section, including the information  
11 provided by the Kansas bureau of investigation pursuant to this section, for  
12 the purpose of assessing the fitness of persons living, working or regularly  
13 volunteering in a family foster home under the child placement agency's  
14 sponsorship.
- 15 (2) The child placement agency is considered to be a governmental  
16 entity and the designee of the secretary of health and environment for the  
17 purposes of obtaining, using and disseminating information obtained under  
18 this section.
- 19 (3) The information shall be provided to the child placement agency  
20 regardless of whether the information discloses that the subject of the  
21 request has been convicted of any offense.
- 22 (4) Whenever the information available to the secretary reveals that  
23 the subject of the request has no criminal history on record, the secretary  
24 shall provide notice thereof in writing to each child placement agency  
25 requesting information under this section.
- 26 (5) Any staff person of a child placement agency who receives  
27 information under this subsection shall keep such information confidential,  
28 except that the staff person may disclose such information on a need-to-  
29 know basis to:
- 30 (A) The person who is the subject of the request for information;
- 31 (B) the applicant or operator of the family foster home in which the  
32 person lives, works or regularly volunteers;
- 33 (C) the department of health and environment;
- 34 (D) the Kansas department for children and families;
- 35 (E) the ~~juvenile justice authority~~ *Kansas department of corrections*;
- 36 and
- 37 (F) the courts.
- 38 (6) A violation of the provisions of subsection (i)(5) shall be an  
39 unclassified misdemeanor punishable by a fine of \$100 for each violation.
- 40 (j) No person shall maintain a day care facility unless such person is a  
41 high school graduate or the equivalent thereof, except where extraordinary  
42 circumstances exist, the secretary of health and environment may exercise  
43 discretion to make exceptions to this requirement. The provisions of this

1 subsection shall not apply to any person who was maintaining a day care  
2 facility on the day immediately prior to July 1, 2010 or who had an  
3 application for an initial license or the renewal of an existing license  
4 pending on July 1, 2010.

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

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