

As Amended by House Committee

Session of 2021

HOUSE BILL No. 2149

By Committee on Children and Seniors

1-27

1 AN ACT concerning child care facilities; relating to individuals
2 maintaining or residing, working or regularly volunteering at a ~~child~~
3 ~~care facility~~ **family foster home**; imposing prohibitions based on state
4 and federal law; providing exemptions at the discretion of ~~the secretary~~
5 ~~for children and families~~ **an internal panel established by the Kansas**
6 **department for children and families; notice to county or district**
7 **attorney**; amending K.S.A. 65-516 and repealing the existing section.
8

9 *Be it enacted by the Legislature of the State of Kansas:*

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

14 (1) *Subject to the provisions of subsection (k):*

15 (A) Has been convicted of a crime that is classified as a person felony
16 under the Kansas criminal code *or similar statutes of any other state or the*
17 *federal government*;

18 (B) has been convicted of a felony under K.S.A. 2010 Supp. 21-
19 36a01 through 21-36a17, prior to their transfer, or article 57 of chapter 21
20 of the Kansas Statutes Annotated, and amendments thereto, or any felony
21 violation of any provision of the uniform controlled substances act prior to
22 July 1, 2009, *or similar statutes of any other state or the federal*
23 *government*;

24 (C) has been convicted of any act that is described in articles 34, 35
25 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal,
26 or article 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or
27 K.S.A. 2020 Supp. 21-6104, 21-6325, 21-6326, 21-6418 through 21-6422
28 or 21-6424, and amendments thereto, or been convicted of an attempt
29 under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2020 Supp. 21-5301,
30 and amendments thereto, to commit any such act or been convicted of
31 conspiracy under K.S.A. 21-3302, prior to its repeal, or K.S.A. 2020 Supp.
32 21-5302, and amendments thereto, to commit such act, or similar statutes
33 of any other state or the federal government;

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

1 government; or

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

6 (2) has been adjudicated a juvenile offender because of having
7 committed an act that if done by an adult would constitute the commission
8 of a felony and that is a crime against persons, is any act described in
9 articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior
10 to their repeal, or article 54, 55 or 56 of chapter 21 of the Kansas Statutes
11 Annotated, or K.S.A. 2020 Supp. 21-6104, 21-6325, 21-6326, 21-6418
12 through 21-6422 or 21-6424, and amendments thereto, or similar statutes
13 of any other state or the federal government, or is any act described in
14 K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2020 Supp.
15 21-6401, and amendments thereto, or similar statutes of any other state or
16 the federal government, *subject to the provisions of subsection (k)*;

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

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

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

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

34 (5) has had a child removed from home based on a court order
35 pursuant to K.S.A. 2020 Supp. 38-2251, and amendments thereto, in this
36 state, or a court order in any other state based upon a similar statute that
37 finds the child to be deprived or a child in need of care based on a finding
38 of physical, mental or emotional abuse or neglect or sexual abuse and:

39 (A) The child has not been returned to the home or the child reaches
40 majority before being returned to the home; and

41 (B) the person has failed to satisfactorily complete a corrective action
42 plan approved by the ~~Kansas department of health and environment for~~
43 *children and families or the requirements of similar entities in any other*

1 *state or the federal government;*

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

5 (7) has signed a diversion agreement pursuant to K.S.A. 22-2906 et
6 seq., and amendments thereto, or an immediate intervention agreement
7 pursuant to K.S.A. 2020 Supp. 38-2346, and amendments thereto,
8 involving a charge of child abuse or a sexual offense *or similar statutes of*
9 *any other state or the federal government;* or

10 (8) has an infectious or contagious disease, *subject to the provisions*
11 *of subsection (k).*

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

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

18 (d) In accordance with the provisions of this subsection, the secretary
19 of health and environment shall have access to any court orders or
20 adjudications of any court of record, any records of such orders or
21 adjudications, criminal history record information including, but not
22 limited to, diversion agreements, in the possession of the Kansas bureau of
23 investigation and any report of investigations as authorized by K.S.A.
24 2020 Supp. 38-2226, and amendments thereto, in the possession of the
25 Kansas department for children and families or court of this state
26 concerning persons working, regularly volunteering or residing in a child
27 care facility. The secretary shall have access to these records for the
28 purpose of determining whether or not the home meets the requirements of
29 K.S.A. 59-2132, 65-503, 65-508 and 65-516, and amendments thereto.

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

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

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

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

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

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

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

36 (k) ~~At the discretion of the secretary for children and families, a child~~
37 ~~care facility that is licensed by or is applying for licensure from the~~
38 ~~Kansas department for children and families may be exempted from the~~
39 ~~provisions of subsection (a)(1), (a)(2) or (a)(8), if the secretary determines~~
40 ~~that such exemption:~~

41 ~~(1) Is in the best interests of a child in the custody of the secretary~~
42 ~~who is or will be under the care of such child care facility; and~~

43 ~~(2) does not present a safety concern~~

1 **(1) Except as provided in paragraph (2), at the discretion of an**
2 **internal panel established by the Kansas department for children and**
3 **families in rules and regulations, a family foster home, as defined in**
4 **K.S.A. 38-134, and amendments thereto, that is licensed by or is**
5 **applying for licensure with the department may be exempted from the**
6 **provisions of subsection (a)(1), (a)(2) or (a)(8) if such panel determines**
7 **that such exemption:**

8 **(A) Is in the best interest of a child in custody of the secretary**
9 **who is or will be under the care of the family foster home; and**

10 **(B) does not present a safety concern.**

11 **(2) The panel shall not grant an exemption when a person who**
12 **resides, works or regularly volunteers at the family foster home has a**
13 **conviction for a:**

14 **(A) Severity level 1 through 5 felony, person or nonperson;**

15 **(B) crime that involved a child victim; or**

16 **(C) drug severity level 1 through 3 felony.**

17 **(3) At least 10 days prior to the final decision of the internal panel**
18 **to grant the exemption, the secretary shall provide a written notice of**
19 **the pending exemption to the county or district attorney in the judicial**
20 **district where the conviction occurred.**

21 *(l)* For the purpose of subsection (a)(~~3~~)(4), 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:

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

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

29 ~~(m)~~*(m)* 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:

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

10 (B) the applicant or operator of the family foster home ~~in which~~
11 *where* the person lives, works or regularly volunteers;

12 (C) the department of health and environment;

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

14 (E) the department of corrections; and

15 (F) the courts.

16 (6) A violation of the provisions of subsection ~~(m)~~(5) shall be an
17 unclassified *nonperson* misdemeanor punishable by a fine of \$100 for each
18 violation.

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

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

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