

As Amended by House Committee

Session of 2016

HOUSE BILL No. 2607

By Committee on Health and Human Services

2-3

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. 2015 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. 2015 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 a crime ~~against persons that is~~
12 *classified as a person felony under the Kansas criminal code*; (B) has a
13 felony conviction under K.S.A. 2010 Supp. 21-36a01 through 21-36a17,
14 prior to their transfer, or article 57 of chapter 21 of the Kansas Statutes
15 Annotated, and amendments thereto, or any felony violation of any
16 provision of the uniform controlled substances act prior to July 1, 2009;
17 (C) has a conviction of any act which is described in articles 34, 35 or 36
18 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or
19 article 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or
20 K.S.A. 2015 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-
21 6421, and amendments thereto, or a conviction of an attempt under K.S.A.
22 21-3301, prior to its repeal, or K.S.A. 2015 Supp. 21-5301, and
23 amendments thereto, to commit any such act or a conviction of conspiracy
24 under K.S.A. 21-3302, prior to its repeal, or K.S.A. 2015 Supp. 21-5302,
25 and amendments thereto, to commit such act, or similar statutes of other
26 states or the federal government; or (D) has been convicted of any act
27 which is described in K.S.A. 21-4301 or 21-4301a, prior to their repeal, or
28 K.S.A. 2015 Supp. 21-6401, and amendments thereto, or similar statutes
29 of other states or the federal government;

30 (2) has been adjudicated a juvenile offender because of having
31 committed an act which if done by an adult would constitute the
32 commission of a felony and which is a crime against persons, is any act
33 described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes
34 Annotated, prior to their repeal, or article 54, 55 or 56 of chapter 21 of the
35 Kansas Statutes Annotated, or K.S.A. 2015 Supp. 21-6104, 21-6325, 21-
36 6326 or 21-6418 through 21-6421, and amendments thereto, or similar

1 statutes of other states or the federal government, or is any act described in
2 K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2015 Supp.
3 21-6401, and amendments thereto, or similar statutes of other states or the
4 federal government;

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

10 ~~(3)~~ (4) has committed an act of physical, mental or emotional abuse
11 or neglect or sexual abuse and who is listed in the child abuse and neglect
12 registry maintained by the Kansas department for children and families
13 pursuant to K.S.A. 2015 Supp. 38-2226, and amendments thereto, *or any*
14 *similar child abuse and neglect registries maintained by any other state or*
15 *the federal government* and: (A) The person has failed to successfully
16 complete a corrective action plan which had been deemed appropriate and
17 approved by the Kansas department for children and families; *or*
18 *requirements of similar entities in other states or the federal government;*
19 or (B) the record has not been expunged pursuant to rules and regulations
20 adopted by the secretary for children and families, *or similar entities in*
21 *other states or the federal government;*

22 ~~(4)~~ (5) has had a child removed from home based on a court order
23 pursuant to K.S.A. 2015 Supp. 38-2251, and amendments thereto, in this
24 state, or a court order in any other state based upon a similar statute that
25 finds the child to be deprived or a child in need of care based on a finding
26 of physical, mental or emotional abuse or neglect or sexual abuse and the
27 child has not been returned to the home or the child reaches majority
28 before being returned to the home and the person has failed to
29 satisfactorily complete a corrective action plan approved by the
30 department of health and environment;

31 ~~(5)~~ (6) has had parental rights terminated pursuant to the Kansas
32 juvenile code or K.S.A. 2015 Supp. 38-2266 through 38-2270, and
33 amendments thereto, or a similar statute of other states;

34 ~~(6)~~ (7) has signed a diversion agreement pursuant to K.S.A. 22-2906
35 et seq., and amendments thereto, or an immediate intervention agreement
36 pursuant to K.S.A. 2015 Supp. 38-2346, and amendments thereto,
37 involving a charge of child abuse or a sexual offense; or

38 ~~(7)~~ (8) has an infectious or contagious disease.

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

42 (c) Any person who resides in a child care facility and who has been
43 found to be in need of a guardian or a conservator, or both, shall be

1 counted in the total number of children allowed in care.

2 (d) In accordance with the provisions of this subsection, the secretary
3 of health and environment shall have access to any court orders or
4 adjudications of any court of record, any records of such orders or
5 adjudications, criminal history record information including, but not
6 limited to, diversion agreements, in the possession of the Kansas bureau of
7 investigation and any report of investigations as authorized by K.S.A.
8 2015 Supp. 38-2226, and amendments thereto, in the possession of the
9 Kansas department for children and families or court of this state
10 concerning persons working, regularly volunteering or residing in a child
11 care facility. The secretary shall have access to these records for the
12 purpose of determining whether or not the home meets the requirements of
13 K.S.A. 59-2132, 65-503, 65-508 and 65-516, and amendments thereto.

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

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

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

38 (h) For the purpose of subsection (a)(3), a person listed in the child
39 abuse and neglect central registry shall not be prohibited from residing,
40 working or volunteering in a child care facility unless such person has: (1)
41 Had an opportunity to be interviewed and present information during the
42 investigation of the alleged act of abuse or neglect; and (2) been given
43 notice of the agency decision and an opportunity to appeal such decision to

1 the secretary and to the courts pursuant to the Kansas judicial review act.

2 (i) 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: (A) The person who is the subject of the request for
25 information; (B) the applicant or operator of the family foster home in
26 which the person lives, works or regularly volunteers; (C) the department
27 of health and environment; (D) the Kansas department for children and
28 families; (E) the ~~juvenile justice authority~~ *Kansas department of*
29 *corrections*; and (F) the courts.

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

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

40 Sec. 2. K.S.A. 2015 Supp. 65-516 is hereby repealed.

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