

Senate Substitute for HOUSE BILL No. 2304

AN ACT concerning child care facilities; relating to infant sleeping equipment and sleeping areas; individuals maintaining or residing, working or volunteering in such facilities; background checks; amending K.S.A. 2016 Supp. 65-508 and 65-516 and repealing the existing sections.

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

Section 1. K.S.A. 2016 Supp. 65-508 is hereby amended to read as follows: 65-508. (a) Any maternity center or child care facility subject to the provisions of this act shall: (1) Be properly heated, plumbed, lighted and ventilated; (2) have plumbing, water and sewerage systems which conform to all applicable state and local laws; and (3) be operated with strict regard to the health, safety and welfare of any woman or child.

(b) Every maternity center or child care facility shall furnish or cause to be furnished for the use of each resident and employee individual towel, wash cloth, comb and individual drinking cup or sanitary bubbling fountain, and toothbrushes for all other than infants, and shall keep or require such articles to be kept at all times in a clean and sanitary condition. Every maternity center or child care facility shall comply with all applicable fire codes and rules and regulations of the state fire marshal.

(c) (1) The secretary of health and environment with the cooperation of the secretary for children and families shall develop and adopt rules and regulations for the operation and maintenance of maternity centers and child care facilities. The rules and regulations for operating and maintaining maternity centers and child care facilities shall be designed to promote the health, safety and welfare of any woman or child served in such facilities by ensuring safe and adequate physical surroundings, healthful food, adequate handwashing, safe storage of toxic substances and hazardous chemicals, sanitary diapering and toileting, home sanitation, supervision and care of the residents by capable, qualified persons of sufficient number, after-hour care, an adequate program of activities and services, sudden infant death syndrome and safe sleep practices training, prohibition on corporal punishment, crib safety, protection from electrical hazards, protection from swimming pools and other water sources, fire drills, emergency plans, safety of outdoor playground surfaces, door locks, safety gates and transportation and such appropriate parental participation as may be feasible under the circumstances. Boarding schools are excluded from requirements regarding the number of qualified persons who must supervise and provide care to residents.

(2) Rules and regulations developed under this subsection shall include provisions for the competent supervision and care of children in day care facilities. For purposes of such rules and regulations, competent supervision as this term relates to children less than five years of age includes, but is not limited to, direction of activities, adequate oversight including sight or sound monitoring, or both, physical proximity to children, diapering and toileting practices; and for all children, competent supervision includes, but is not limited to, planning and supervision of daily activities, safe sleep practices, including, but not limited to, visual or sound monitoring, periodic checking, emergency response procedures and drills, illness and injury response procedures, food service preparation and sanitation, playground supervision, pool and water safety practices.

(d) *In addition to any rules and regulations adopted under this section for safe sleep practices, child care facilities shall ensure that all of the following requirements are met for children under 12 months of age:*

(1) *A child shall only be placed to sleep on a surface and in an area that has been approved for use as such by the secretary of health and environment;*

(2) *the sleep surface shall be free from soft or loose bedding, including, but not limited to, blankets, bumpers and pillows; and*

(3) *the sleep surface shall be free from toys, including mobiles and other types of play equipment or devices.*

(e) *Child care facilities shall ensure that children over 12 months of age only be placed to sleep on a surface and in an area that has been approved for use as such by the secretary of health and environment.*

(f) *The secretary of health and environment may exercise discretion to make exceptions to requirements in subsections (d) and (e) where special health needs exist.*

(g) Each child cared for in a child care facility, including children of the person maintaining the facility, shall be required to have current such immunizations as the secretary of health and environment considers nec-

essary. The person maintaining a child care facility shall maintain a record of each child's immunizations and shall provide to the secretary of health and environment such information relating thereto, in accordance with rules and regulations of the secretary, but the person maintaining a child care facility shall not have such person's license revoked solely for the failure to have or to maintain the immunization records required by this subsection.

~~(e)~~^(h) The immunization requirement of subsection ~~(d)~~ ^(g) shall not apply if one of the following is obtained:

(1) Certification from a licensed physician stating that the physical condition of the child is such that immunization would endanger the child's life or health; or

(2) a written statement signed by a parent or guardian that the parent or guardian is an adherent of a religious denomination whose teachings are opposed to immunizations.

Sec. 2. K.S.A. 2016 Supp. 65-516 is hereby amended to read as follows: 65-516. (a) No person shall knowingly maintain a child care facility if: there resides, works or regularly volunteers any person who in this state or in other states or the federal government:

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

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

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

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

(E) *has been convicted of any act that is described in K.S.A. 21-3718 or 21-3719, prior to their repeal, or K.S.A. 2016 Supp. 21-5812, and amendments thereto, or similar statutes of any other state or the federal government;*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) For the purpose of subsection (a)(3), a person listed in the child

abuse and neglect central registry shall not be prohibited from residing, working or volunteering in a child care facility unless such person has:

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

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

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

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

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

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

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

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

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

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

(C) the department of health and environment;

(D) the Kansas department for children and families;

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

(F) the courts.

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

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

Sec. 3. K.S.A. 2016 Supp. 65-508 and 65-516 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.