

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2005

HOUSE BILL No. 2497

By Committee on Appropriations

2-22

12 AN ACT concerning restrictions on persons maintaining or residing,
13 working or volunteering at child care facilities or family day care
14 homes; amending K.S.A. 65-516 and repealing the existing section.
15

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

17 Section 1. K.S.A. 65-516 is hereby amended to read as follows: 65-
18 516. (a) No person shall knowingly maintain a child care facility or main-
19 tain a family day care home if, in the child care facility or family day care
20 home, there resides, works or regularly volunteers any person who, **in**
21 **this state or in other states or the federal government:**

22 (1) (A) Has a felony conviction for a crime against persons, (B) has
23 a felony conviction under the uniform controlled substances act, (C) has
24 a conviction of any act which is described in articles 34, 35 or 36 of chapter
25 21 of the Kansas Statutes Annotated, and amendments thereto or a con-
26 viction of an attempt under K.S.A. 21-3301 and amendments thereto to
27 commit any such act **or a conviction of conspiracy under K.S.A. 21-**
28 **3302, and amendments thereto, to commit such act, or similar stat-**
29 **utes of other states or the federal government,** or (D) has been con-
30 victed of any act which is described in K.S.A. 21-4301 or 21-4301a and
31 amendments thereto or similar statutes of other states or the federal
32 government;

33 (2) has been adjudicated a juvenile offender because of having com-
34 mitted an act which if done by an adult would constitute the commission
35 of a felony and which is a crime against persons, is any act described in
36 articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and
37 amendments thereto, **or similar statutes of other states or the federal**
38 **government,** or is any act described in K.S.A. 21-4301 or 21-4301a and
39 amendments thereto or similar statutes of other states or the federal
40 government;

41 (3) has committed an act of physical, mental or emotional abuse or
42 neglect or sexual abuse as ~~validated~~ **determined by a finding** by the
43 department of social and rehabilitation services pursuant to K.S.A. 38-

1 1523 and amendments thereto and (A) the person has failed to success-
2 fully complete a corrective action plan which had been deemed appro-
3 priate and approved by the department of social and rehabilitation
4 services, or (B) the record has not been expunged pursuant to rules and
5 regulations adopted by the secretary of social and rehabilitation services;

6 (4) has had a child declared in a court order in this or any other state
7 to be deprived or a child in need of care based on an allegation of physical,
8 mental or emotional abuse or neglect or sexual abuse;

9 (5) has had parental rights terminated pursuant to the Kansas juvenile
10 code or K.S.A. 38-1581 through 38-1584, and amendments thereto, or a
11 similar statute of other states;

12 (6) has signed a diversion agreement pursuant to K.S.A. 22-2906 *et*
13 *seq.*, and amendments thereto, or an immediate intervention agreement
14 pursuant to K.S.A. 38-1635 and amendments thereto involving a charge
15 of child abuse or a sexual offense; or

16 (7) has an infectious or contagious disease.

17 (b) No person shall maintain a child care facility or a family day care
18 home if such person has been found to be a person in need of a guardian
19 or a conservator, or both, as provided in K.S.A. ~~2002 2004 Supp.~~ 59-3050
20 through 59-3095, and amendments thereto.

21 (c) Any person who resides in a child care facility or family day care
22 home and who has been found to be in need of a guardian or a conser-
23 vator, or both, shall be counted in the total number of children allowed
24 in care.

25 (d) In accordance with the provisions of this subsection (d), the sec-
26 retary *of health and environment* shall have access to any court orders or
27 adjudications of any court of record, any records of such orders or adju-
28 dications, criminal history record information **including, but not limited**
29 **to, diversion agreements**, in the possession of the Kansas bureau of
30 investigation and any report of investigations as authorized by subsection
31 (e) of K.S.A. 38-1523 and amendments thereto in the possession of the
32 department of social and rehabilitation services or court of this state con-
33 cerning persons working, regularly volunteering or residing in a child care
34 facility or a family day care home. The secretary shall have access to these
35 records ~~and may require submission of fingerprints for identifica-~~
36 ~~tion purposes and~~ for the purpose of determining whether or not the
37 home meets the requirements of K.S.A. 65-503, 65-508, 65-516 ~~and~~, 65-
38 519 *and* 59-2132 and amendments thereto.

39 [(e) In accordance with the provisions of this subsection (e), the
40 secretary is authorized to conduct national criminal history record
41 checks to determine criminal history on persons residing, working
42 or regularly volunteering in a child care facility or family day care
43 home. In order to conduct a national criminal history check the

1 secretary shall require fingerprinting for identification and deter-
2 mination of criminal history. The secretary shall submit the fin-
3 gerprints to the Kansas bureau of investigation and to the federal
4 bureau of investigation and receive a reply to enable the secretary
5 to verify the identity of such person and whether such person has
6 been convicted of any crime that would prohibit such person from
7 residing, working or regularly volunteering in a child care facility
8 or family day care home. The secretary is authorized to use infor-
9 mation obtained from the national criminal history record check
10 to determine such person's fitness to reside, work or regularly vol-
11 unteer in a child care facility or family day care home.]

12 ~~(e)~~ [(f)] No child care facility or family day care home or the em-
13 ployees thereof, shall be liable for civil damages to any person refused
14 employment or discharged from employment by reason of such facility's
15 or home's compliance with the provisions of this section if such home
16 acts in good faith to comply with this section.

17 ~~(f)~~ [(g)] For the purpose of subsection (a)(3), an act of abuse or ne-
18 glect shall not be considered to have been ~~validated~~ **determined to be**
19 **a finding** by the department of social and rehabilitation services unless
20 the alleged perpetrator has: (1) Had an opportunity to be interviewed and
21 present information during the investigation of the alleged act of abuse
22 or neglect; and (2) been given notice of the agency decision and an op-
23 portunity to appeal such decision to the secretary and to the courts pur-
24 suant to the act for judicial review and civil enforcement of agency actions.

25 [(h) **In regard to Kansas issued criminal history records:**]

26 ~~(g)~~ (1) The secretary of health and environment shall provide ~~in writ-~~
27 ~~ing information available to the secretary to each child placement agency~~
28 ~~requesting information under this section, including the information pro-~~
29 ~~vided by the Kansas bureau of investigation pursuant to this section, for~~
30 ~~the purpose of assessing the fitness of persons living, working or regularly~~
31 ~~volunteering in a family foster home under the child placement agency's~~
32 ~~sponsorship.~~

33 (2) *The child placement agency is considered to be a governmental*
34 *entity and the designee of the secretary of health and environment for the*
35 *purposes of obtaining, using and disseminating information obtained un-*
36 *der this section.*

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

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

- 1 (5) *Any staff person of a child placement agency who receives infor-*
2 *mation under this subsection (g) shall keep such information confidential,*
3 *except that the staff person may disclose such information [on a need to*
4 **know basis** *to: (A) The person who is the subject of the request for*
5 *information, (B) the applicant or operator of the family foster home in*
6 *which the person lives, works or regularly volunteers, (C) the department*
7 *of health and environment, (D) the department of social and rehabilitation*
8 *services, (E) the juvenile justice authority, and (F) the courts.*
- 9 (6) *A violation of the provisions of subsection ~~(g)(5)~~ [(h)(5)] shall be*
10 *an unclassified misdemeanor punishable by a fine of \$100 for each*
11 *violation.*
- 12 Sec. 2. K.S.A. 65-516 is hereby repealed.
- 13 Sec. 3. This act shall take effect and be in force from and after its
14 publication in the statute book.