

HOUSE BILL No. 2223

By Committee on Health and Human Services

2-3

9 AN ACT concerning child care; family day care homes; amending K.S.A.
10 65-504, 65-506, 65-523, 65-524, 65-529, 65-530 and 65-531 and K.S.A.
11 2008 Supp. 65-503, 65-516, 65-525 and 65-526 and repealing the ex-
12 isting sections; also repealing K.S.A. 65-517, 65-518, 65-519, 65-520,
13 65-521 and 65-522.

14

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

16 Section 1. K.S.A. 2008 Supp. 65-503 is hereby amended to read as
17 follows: 65-503. As used in this act:

18 (a) “Child placement agency” means a business or service conducted,
19 maintained or operated by a person engaged in finding homes for children
20 by placing or arranging for the placement of such children for adoption
21 or foster care.

22 (b) “Child care resource and referral agency” means a business or
23 service conducted, maintained or operated by a person engaged in pro-
24 viding resource and referral services, including information of specific
25 services provided by child care facilities, to assist parents to find child
26 care.

27 (c) ~~(A)~~ “Child care facility” means:

28 (A) A facility maintained by a person who has control or custody of
29 one or more children under 16 years of age, unattended by parent or
30 guardian, for the purpose of providing the children with food or lodging,
31 or both, except children in the custody of the secretary of social and
32 rehabilitation services who are placed with a prospective adoptive family
33 pursuant to the provisions of an adoptive placement agreement or who
34 are related to the person by blood, marriage or legal adoption;

35 (B) a children’s home, orphanage, maternity home, day care facility
36 or other facility of a type determined by the secretary to require regula-
37 tion under the provisions of this act;

38 (C) a child placement agency or child care resource and referral
39 agency, or a facility maintained by such an agency for the purpose of
40 caring for children under 16 years of age; or

41 (D) any receiving or detention home for children under 16 years of
42 age provided or maintained by, or receiving aid from, any city or county
43 or the state.

1 ~~(2) “Child care facility” shall not include a family day care home de-~~
2 ~~finied in K.S.A. 65-517 and amendments thereto.~~

3 (d) “Person” means any individual, association, partnership, corpo-
4 ration, government, governmental subdivision or other entity.

5 (e) “Boarding school” means a facility which provides 24-hour care
6 to school age children, provides education as its primary function, and is
7 accredited by an accrediting agency acceptable to the secretary of health
8 and environment.

9 Sec. 2. K.S.A. 65-504 is hereby amended to read as follows: 65-504.

10 (a) The secretary of health and environment shall have the power to grant
11 a license to a person to maintain a maternity center or child care facility
12 for children under 16 years of age. The license shall state the name of
13 the licensee, describe the particular premises in or at which the business
14 shall be carried on, whether it shall receive and care for women or chil-
15 dren, and the number of women or children that may be treated, main-
16 tained, boarded or cared for at any one time. No greater number of
17 women or children than is authorized in the license shall be kept on those
18 premises and the business shall not be carried on in a building or place
19 not designated in the license. The license shall be kept posted in a con-
20 spicuous place on the premises where the business is conducted. The
21 secretary of health and environment shall grant no license in any case
22 until careful inspection of the maternity center or child care facility shall
23 have been made according to the terms of this act and until such mater-
24 nity center or child care facility has complied with all the requirements
25 of this act. Except as provided by this subsection, no license shall be
26 granted without the approval of the secretary of social and rehabilitation
27 services. The secretary of health and environment may issue, without the
28 approval of the secretary of social and rehabilitation services, a temporary
29 permit to operate for a period not to exceed 90 days upon receipt of an
30 initial application for license. The secretary of health and environment
31 may extend, without the approval of the secretary of social and rehabili-
32 tation services, the temporary permit to operate for an additional period
33 not to exceed 90 days if an applicant is not in full compliance with the
34 requirements of this act but has made efforts towards full compliance.

35 (b) (1) In all cases where the secretary of social and rehabilitation
36 services deems it necessary, an investigation of the maternity center or
37 child care facility shall be made under the supervision of the secretary of
38 social and rehabilitation services or other designated qualified agents. For
39 that purpose and for any subsequent investigations they shall have the
40 right of entry and access to the premises of the center or facility and to
41 any information deemed necessary to the completion of the investigation.
42 In all cases where an investigation is made, a report of the investigation
43 of such center or facility shall be filed with the secretary of health and

1 environment.

2 (2) In cases where neither approval or disapproval can be given within
3 a period of 30 days following formal request for such a study, the secretary
4 of health and environment may issue a temporary license without fee
5 pending final approval or disapproval of the center or facility.

6 (c) Whenever the secretary of health and environment refuses to
7 grant a license to an applicant, the secretary shall issue an order to that
8 effect stating the reasons for such denial and within five days after the
9 issuance of such order shall notify the applicant of the refusal. Upon
10 application not more than 15 days after the date of its issuance a hearing
11 on the order shall be held in accordance with the provisions of the Kansas
12 administrative procedure act.

13 (d) When the secretary of health and environment finds upon inves-
14 tigation or is advised by the secretary of social and rehabilitation services
15 that any of the provisions of this act or the provisions of K.S.A. 59-2123
16 and amendments thereto are being violated, or that the maternity center
17 or child care facility is maintained without due regard to the health, com-
18 fort or welfare of the residents, the secretary of health and environment,
19 after giving notice and conducting a hearing in accordance with the pro-
20 visions of the Kansas administrative procedure act, shall issue an order
21 revoking such license. The order shall clearly state the reason for the
22 revocation.

23 (e) If the secretary revokes or refuses to renew a license, the licensee
24 who had a license revoked or not renewed shall not be eligible to apply
25 for a license ~~or for a certificate of registration to maintain a family day~~
26 ~~care home under K.S.A. 65-518 and amendments thereto~~ for a period of
27 one year subsequent to the date such revocation or refusal to renew be-
28 comes final.

29 (f) Any applicant or licensee aggrieved by a final order of the secretary
30 of health and environment denying or revoking a license under this act
31 may appeal the order in accordance with the act for judicial review and
32 civil enforcement of agency actions.

33 Sec. 3. K.S.A. 65-506 is hereby amended to read as follows: 65-506.
34 The secretary of health and environment shall serve notice of the issua-
35 nce, suspension or revocation of a license to conduct a maternity center
36 or child care facility ~~or the issuance, suspension or revocation of a certifi-~~
37 ~~cate of registration for a family day care home~~ to the secretary of social
38 and rehabilitation services, juvenile justice authority, department of ed-
39 ucation, office of the state fire marshal, county, city-county or multi-
40 county department of health, and to any licensed child placement agency
41 or licensed child care resource and referral agency serving the area where
42 the center or facility is located. A maternity center or child care facility
43 that has had a license suspended, revoked or denied by the secretary of

1 health and environment or a family day care home that has had a certifi-
2 cate of registration suspended, revoked or denied by the secretary of
3 health and environment shall notify in writing the parents or guardians
4 of the enrollees of the suspension, revocation or denial. Neither the sec-
5 retary of social and rehabilitation services nor any other person shall place
6 or cause to be placed any maternity patient or child under 16 years of
7 age in any maternity center or child care facility not licensed by the sec-
8 retary of health and environment ~~or family day care home not holding a~~
9 ~~certificate of registration from the secretary of health and environment.~~

10 Sec. 4. K.S.A. 2008 Supp. 65-516 is hereby amended to read as fol-
11 lows: 65-516. (a) No person shall knowingly maintain a child care facility
12 ~~or maintain a family day care home~~ if, in the child care facility ~~or family~~
13 ~~day care home~~, there resides, works or regularly volunteers any person
14 who in this state or in other states or the federal government:

15 (1) (A) Has a felony conviction for a crime against persons, (B) has
16 a felony conviction under the uniform controlled substances act, (C) has
17 a conviction of any act which is described in articles 34, 35 or 36 of chapter
18 21 of the Kansas Statutes Annotated, and amendments thereto, or a con-
19 viction of an attempt under K.S.A. 21-3301, and amendments thereto, to
20 commit any such act or a conviction of conspiracy under K.S.A. 21-3302,
21 and amendments thereto, to commit such act, or similar statutes of other
22 states or the federal government, or (D) has been convicted of any act
23 which is described in K.S.A. 21-4301 or 21-4301a, and amendments
24 thereto, or similar statutes of other states or the federal government;

25 (2) has been adjudicated a juvenile offender because of having com-
26 mitted an act which if done by an adult would constitute the commission
27 of a felony and which is a crime against persons, is any act described in
28 articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and
29 amendments thereto, or similar statutes of other states or the federal
30 government, or is any act 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 (3) has committed an act of physical, mental or emotional abuse or
34 neglect or sexual abuse and who is listed in the child abuse and neglect
35 registry maintained by the department of social and rehabilitation services
36 pursuant to K.S.A. 2008 Supp. 38-2226, and amendments thereto, and
37 (A) the person has failed to successfully complete a corrective action plan
38 which had been deemed appropriate and approved by the department of
39 social and rehabilitation services, or (B) the record has not been expunged
40 pursuant to rules and regulations adopted by the secretary of social and
41 rehabilitation services;

42 (4) has had a child removed from home based on a court order pur-
43 suant to K.S.A. 2008 Supp. 38-2251, and amendments thereto, in this

1 state, or a court order in any other state based upon a similar statute that
2 finds the child to be deprived or a child in need of care based on a finding
3 of physical, mental or emotional abuse or neglect or sexual abuse and the
4 child has not been returned to the home or the child reaches majority
5 before being returned to the home and the person has failed to satisfac-
6 torily complete a corrective action plan approved by the department of
7 health and environment;

8 (5) has had parental rights terminated pursuant to the Kansas juvenile
9 code or K.S.A. 2008 Supp. 38-2266 through 38-2270, and amendments
10 thereto, or a similar statute of other states;

11 (6) has signed a diversion agreement pursuant to K.S.A. 22-2906 et
12 seq., and amendments thereto, or an immediate intervention agreement
13 pursuant to K.S.A. 2008 Supp. 38-2346, and amendments thereto, in-
14 volving a charge of child abuse or a sexual offense; or

15 (7) has an infectious or contagious disease.

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

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

24 (d) In accordance with the provisions of this subsection, the secretary
25 of health and environment shall have access to any court orders or ad-
26 judications of any court of record, any records of such orders or adjudi-
27 cations, criminal history record information including, but not limited to,
28 diversion agreements, in the possession of the Kansas bureau of investi-
29 gation and any report of investigations as authorized by K.S.A. 2008 Supp.
30 38-2226, and amendments thereto, in the possession of the department
31 of social and rehabilitation services or court of this state concerning per-
32 sons working, regularly volunteering or residing in a child care facility ~~or~~
33 ~~a family day care home~~. The secretary shall have access to these records
34 for the purpose of determining whether or not the home meets the
35 requirements of K.S.A. 59-2132, 65-503, 65-508; ~~and 65-516 and 65-519,~~
36 and amendments thereto.

37 (e) In accordance with the provisions of this subsection, the secretary
38 is authorized to conduct national criminal history record checks to deter-
39 mine criminal history on persons residing, working or regularly volun-
40 teering in a child care facility ~~or family day care home~~. In order to conduct
41 a national criminal history check the secretary shall require fingerprinting
42 for identification and determination of criminal history. The secretary
43 shall submit the fingerprints to the Kansas bureau of investigation and to

1 the federal bureau of investigation and receive a reply to enable the sec-
2 retary to verify the identity of such person and whether such person has
3 been convicted of any crime that would prohibit such person from resid-
4 ing, working or regularly volunteering in a child care facility ~~or family day~~
5 ~~care home~~. The secretary is authorized to use information obtained from
6 the national criminal history record check to determine such person's
7 fitness to reside, work or regularly volunteer in a child care facility ~~or~~
8 ~~family day care home~~.

9 (f) The secretary shall notify the child care applicant; ~~or licensee or~~
10 ~~registrant~~, within seven days by certified mail with return receipt re-
11 quested, when the result of the national criminal history record check or
12 other appropriate review reveals unfitness specified in subsection (a)(1)
13 through (7) with regard to the person who is the subject of the review.

14 (g) No child care facility ~~or family day care home~~ or the employees
15 thereof, shall be liable for civil damages to any person refused employ-
16 ment or discharged from employment by reason of such facility's ~~or~~
17 ~~home's~~ compliance with the provisions of this section if such ~~home~~ *facility*
18 acts in good faith to comply with this section.

19 (h) For the purpose of subsection (a)(3), a person listed in the child
20 abuse and neglect central registry shall not be prohibited from residing,
21 working or volunteering in a child care facility ~~or family day care home~~
22 unless such person has: (1) Had an opportunity to be interviewed and
23 present information during the investigation of the alleged act of abuse
24 or neglect; and (2) been given notice of the agency decision and an op-
25 portunity to appeal such decision to the secretary and to the courts pur-
26 suant to the act for judicial review and civil enforcement of agency actions.

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

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

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

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

42 (4) Whenever the information available to the secretary reveals that
43 the subject of the request has no criminal history on record, the secretary

1 shall provide notice thereof in writing to each child placement agency
2 requesting information under this section.

3 (5) Any staff person of a child placement agency who receives infor-
4 mation under this subsection shall keep such information confidential,
5 except that the staff person may disclose such information on a need-to-
6 know basis to: (A) The person who is the subject of the request for in-
7 formation, (B) the applicant or operator of the family foster home in
8 which the person lives, works or regularly volunteers, (C) the department
9 of health and environment, (D) the department of social and rehabilita-
10 tion services, (E) the juvenile justice authority, and (F) the courts.

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

13 Sec. 5. K.S.A. 65-523 is hereby amended to read as follows: 65-523.
14 The secretary may suspend any license, ~~certificate of registration~~ or tem-
15 porary permit issued under the provisions of K.S.A. 65-501 through ~~65-~~
16 ~~522~~ 65-516, and amendments thereto, upon any of the following grounds
17 and in the manner provided in this act:

18 (a) Violation by the licensee, ~~registrant~~ or holder of a temporary per-
19 mit of any provision of this act or of the rules and regulations promulgated
20 under this act;

21 (b) aiding, abetting or permitting the violating of any provision of this
22 act or of the rules and regulations promulgated under this act;

23 (c) conduct in the operation or maintenance, or both the operation
24 and maintenance, of a child care facility ~~or family day care home~~ which
25 is inimical to health, welfare or safety of either an individual in or receiv-
26 ing services from the facility ~~or home~~ or the people of this state;

27 (d) the conviction of a licensee, ~~registrant~~ or holder of a temporary
28 permit, at any time during licensure ~~or registration~~ or during the time
29 the temporary permit is in effect, of crimes as defined in K.S.A. 65-516
30 and amendments thereto; and

31 (e) a third or subsequent violation by the licensee, ~~registrant~~ or holder
32 of a temporary permit of subsection (b) of K.S.A. 65-530 and amendments
33 thereto.

34 Sec. 6. K.S.A. 65-524 is hereby amended to read as follows: 65-524.
35 The secretary may suspend any license, ~~certificate of registration~~ or tem-
36 porary permit issued under the provisions of K.S.A. 65-501 through ~~65-~~
37 ~~522~~ 65-516, and amendments thereto, prior to any hearing when, in the
38 opinion of the secretary, the action is necessary to protect any child in
39 the child care facility ~~or family day care home~~ from physical or mental
40 abuse, abandonment or any other substantial threat to health or safety.
41 Administrative proceedings under this section shall be conducted in ac-
42 cordance with the emergency adjudicative proceedings of the Kansas ad-
43 ministrative procedure act and in accordance with other relevant provi-

1 sions of the Kansas administrative procedure act.

2 Sec. 7. K.S.A. 2008 Supp. 65-525 is hereby amended to read as fol-
3 lows: 65-525. (a) Records in the possession of the department of health
4 and environment or its agents regarding child care facilities; *or* maternity
5 centers ~~or family day care homes~~ shall not be released publicly in a man-
6 ner that would identify individuals, unless required by law.

7 (b) Records containing the name, address and telephone number of
8 a child care facility; *or* maternity center ~~or family day care home~~ in the
9 possession of the department of health and environment or its agents
10 shall not be released publicly unless required by law.

11 (c) Records that cannot be released by subsection (a) or (b) may be
12 released to: (1) An agency or organization authorized to receive notice
13 under K.S.A. 65-506, and amendments thereto; (2) a criminal justice
14 agency; (3) any state or federal agency that provides child care services,
15 funding for child care or child protective services; (4) any federal agency
16 for the purposes of compliance with federal funding requirements; (5)
17 any local fire department; (6) any child and adult care food program
18 sponsoring agency; or (7) any local disaster agency.

19 (d) Any state or federal agency or any person receiving records under
20 subsection (a) or (b) shall not disseminate the records without the consent
21 of the person whose records will be disseminated unless required by law.
22 Any state or federal agency or any person receiving records under sub-
23 section (e) may disseminate the information contained in the records
24 without the consent of the person whose records will be disseminated.

25 (e) The secretary of health and environment may release the name,
26 address and telephone number of a maternity center; *or* child care facility
27 ~~or family day care home~~ when the secretary determines that the release
28 of the information is necessary to protect the health, safety or welfare of
29 the public or the patients or children enrolled in the maternity center; *or*
30 child care facility ~~or family day care home~~.

31 (f) Any records under subsection (a) or (b) shall be available to any
32 member of the standing committee on appropriations of the house of
33 representatives or the standing committee on ways and means of the
34 senate carrying out such member's or committee's official functions in
35 accordance with K.S.A. 75-4319, and amendments thereto, in a closed or
36 executive meeting. Except in limited conditions established by $\frac{2}{3}$ of the
37 members of such committee, records received by the committee shall not
38 be further disclosed. Unauthorized disclosure may subject such member
39 to discipline or censure from the house of representatives or senate. Such
40 records shall not identify individuals but shall include data and contract
41 information concerning specific facilities.

42 (g) In any hearings conducted under the licensing or regulation pro-
43 visions of K.S.A. 65-501 et seq. and amendments thereto, the presiding

1 officer may close the hearing to the public to prevent public disclosure
2 of matters relating to persons restricted by other laws.

3 Sec. 8. K.S.A. 2008 Supp. 65-526 is hereby amended to read as fol-
4 lows: 65-526. (a) The secretary of health and environment, in addition to
5 any other penalty prescribed under article 5 of chapter 65 of the Kansas
6 Statutes Annotated, and amendments thereto, may assess a civil fine, after
7 proper notice and an opportunity to be heard in accordance with the
8 Kansas administrative procedure act, against a licensee ~~or registrant~~ for
9 each violation of such provisions or rules and regulations adopted pur-
10 suant thereto which affect significantly and adversely the health, safety
11 or sanitation of children in a child care facility ~~or family day care home~~.
12 Each civil fine assessed under this section shall not exceed \$500. In the
13 case of a continuing violation, every day such violation continues shall be
14 deemed a separate violation.

15 (b) All fines assessed and collected under this section shall be remit-
16 ted to the state treasurer in accordance with the provisions of K.S.A. 75-
17 4215, and amendments thereto. Upon receipt of each such remittance,
18 the state treasurer shall deposit the entire amount in the state treasury
19 to the credit of the state general fund.

20 Sec. 9. K.S.A. 65-529 is hereby amended to read as follows: 65-529.
21 Any license, ~~certificate of registration~~ or temporary permit which was
22 issued prior to the effective date of this act and which is in effect on the
23 effective date of this act shall continue in effect until the expiration
24 thereof, unless suspended or revoked prior to such time.

25 Sec. 10. K.S.A. 65-530 is hereby amended to read as follows: 65-530.
26 (a) As used in this section:

27 (1) "Day care home" means a day care home as defined under Kansas
28 administrative regulation 28-4-113; *and* a group day care home as defined
29 under Kansas administrative regulation 28-4-113 ~~and a family day care~~
30 ~~home as defined under K.S.A. 65-517 and amendments thereto.~~

31 (2) "Smoking" means possession of a lighted cigarette, cigar, pipe or
32 burning tobacco in any other form or device designed for the use of
33 tobacco.

34 (b) Smoking within any room, enclosed area or other enclosed space
35 of a facility or facilities of a day care home during a time when children
36 who are not related by blood, marriage or legal adoption to the person
37 who maintains the home are being cared for, as part of the operation of
38 the day care home, within the facility or facilities is hereby prohibited.
39 Nothing in this subsection shall be construed to prohibit smoking on the
40 premises of the day care home outside the facility or facilities of a day
41 care home, including but not limited to porches, yards or garages.

42 (c) Each day care home ~~registration certificate or~~ license shall contain
43 a statement in bold print that smoking is prohibited within a room, en-

1 closed area or other enclosed space of the facility or facilities of the day
2 care home under the conditions specified in subsection (b). The state-
3 ment shall be phrased in substantially the same language as subsection
4 (b). ~~The registration certificate or~~ license shall be posted in a conspicuous
5 place in the facility or facilities.

6 (d) The secretary of health and environment may levy a civil fine
7 under K.S.A. 65-526 and amendments thereto against any day care home
8 for a first or second violation of this section. A third or subsequent vio-
9 lation shall be subject to the provisions of K.S.A. 65-523 and amendments
10 thereto.

11 Sec. 11. K.S.A. 65-531 is hereby amended to read as follows: 65-531.
12 On and after July 1, 1996: (a) Except as provided further, information
13 and records which pertain to the immunization status of persons against
14 childhood diseases as required by K.S.A. 65-508 and 65-519, and amend-
15 ments thereto, may be disclosed and exchanged without a parent or
16 guardian's written release authorizing such disclosure, to the following,
17 who need to know such information to assure compliance with state stat-
18 utes or to achieve age appropriate immunization status for children:

- 19 (1) Employees of public agencies or departments;
- 20 (2) health records staff of child care facilities ~~and family day care~~
21 ~~homes~~, including, but not limited to, facilities licensed by the secretary
22 of health and environment;
- 23 (3) persons other than public employees who are entrusted with the
24 regular care of those under the care and custody of a state agency in-
25 cluding, but not limited to, operators of day care facilities, group homes,
26 residential care facilities and adoptive or foster homes; and
- 27 (4) health care professionals.

28 (b) Notwithstanding K.S.A. 60-427 and amendments thereto or any
29 other Kansas statute which provides for privileged information between
30 a patient and a health care provider, there shall be no privilege preventing
31 the furnishing of information and records as authorized by this section
32 by any health care provider.

33 (c) Information and records which pertain to the immunization status
34 of persons against childhood diseases as required by K.S.A. 65-508 and
35 65-519, and amendments thereto, whose parent or guardian has submit-
36 ted a written statement of religious objection to immunization as provided
37 in K.S.A. 65-508 or 65-519, and amendments thereto, may not be dis-
38 closed or exchanged without a parent or guardian's written release au-
39 thORIZING such disclosure.

40 Sec. 12. K.S.A. 65-504, 65-506, 65-517, 65-518, 65-519, 65-520, 65-
41 521, 65-522, 65-523, 65-524, 65-529, 65-530 and 65-531 and K.S.A. 2008
42 Supp. 65-503, 65-516, 65-525 and 65-526 are hereby repealed.

43

1 Sec. 13. This act shall take effect and be in force from and after July
2 1, 2010, and its publication in the statute book.