

SESSION OF 2007

SUPPLEMENTAL NOTE ON SENATE BILL NO. 201

As Amended by House Committee on
Health and Human Services

Brief*

SB 201, if enacted, would amend one statute in the act under which child care facilities are licensed and regulated. The statute that would be amended prohibits certain persons from working, living or regularly volunteering in child care facilities and family day care homes. The bill also would repeal a statute that was amended twice in 2006.

Child care facilities and family day care homes covered by the statute include those places in which children under age 16 are cared for outside their own homes by persons who are not related to the child by blood or marriage. The bill would:

- Extend the statutory prohibitions to working, residing, or volunteering in a child care facility or family day care home to actions taken by another state or by the federal government;
- Add conviction of conspiracy to commit a crime under Kansas law or that of another state or the federal government of an act that would bar a person from working, residing or volunteering in a child care facility or family day care home;
- Change the terminology used to refer to persons who have been substantiated as having committed child abuse or neglect and whose name is in the child abuse and neglect registry of the Department of Social and Rehabilitation Services to reflect current terminology;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Authorize the Secretary of Health and Environment to have access to criminal history information, including, but not limited to, diversion agreements;
- Exempt from the statutory prohibition, any person whose child has been returned after the child was removed from the home by a court because of physical, mental, or emotional abuse or neglect or sexual abuse. The provision also would exempt persons whose child is not returned to the home because the child reaches the age of majority, but who satisfactorily completes a corrective action plan;
- Authorize the Secretary to conduct national criminal history record checks on persons working, residing, or volunteering in a child care facility or family day care home; and
- Require the Secretary to require fingerprinting for identification and a determination of criminal history and to submit such prints to the KBI and the FBI to determine whether an individual has been convicted of a crime that would result in barring the person from working, residing, or volunteering in a child care facility or a family day care home.

A new subsection (l) would be added to the statute that would:

- Require the Secretary to provide, in writing, criminal history information available to the Secretary to a requesting child placement agency for the purpose of assessing the fitness of persons living, working, or volunteering in a family foster home that is under the child placing agency's sponsorship;
- Provide that a child placing agency is considered to be a governmental entity and a designee of the Secretary of

Health and Environment for the purposes of obtaining, using, and disseminating information obtained under the statute;

- Require information to be provided to a child placing agency regardless of whether the information discloses that the subject of the information has been convicted of any offense;
- Require the Secretary to provide notice to a child placement agency that the subject of a criminal history record check has no criminal history on record;
- Require staff of a child placement agency that receives information under the new subsection to keep such information confidential except for exceptions specified in the amendment; and
- Make violation of the confidentiality requirement by staff of a child placement agency an unclassified misdemeanor punishable by a fine of \$100 for each violation.

A further amendment would require the Secretary of Health and Environment to notify any child care applicant, licensee or registrant by certified mail with a return receipt requested within seven days when the result of the national criminal history check or other appropriate review indicates the subject of the review would be barred by Kansas law from working, living, or residing in a child care facility.

Background

SB 201 was introduced at the request of the Department of Health and Environment, the agency that licenses child care facilities and registers family day care homes. At the Senate Committee hearing, a representative of the Department presented testimony in support of the bill as did a representative of the Department of Social and Rehabilitation

Services. It was noted the agencies had worked together in developing clarifying language for references to the child abuse and neglect registry maintained by Social and Rehabilitation Services and developing necessary legislation to implement a new federal law that requires states to conduct fingerprint background checks with the FBI and to check with appropriate child abuse and neglect registries in other states prior to licensing foster homes. Failure to comply with the federal requirements can result in loss of federal funds. Written support was submitted on behalf of the Children's Alliance and Kansas Advocates for Better Care. The Chairman of the Board of Emporia Christian School appeared in support of the bill and offered some recommendations for changes in the law.

The Senate Committee amendment would require additional actions by the Department of Health and Environment in terms of how information resulting from background checks is handled.

At the House Health and Human Services Committee hearing on the bill representatives of the Department of Social and Rehabilitation Services and the Department of Health and Environment presented testimony in support of the bill. Amendments were suggested by the proponents. No opponents to the bill presented testimony to the House Committee.

The House Committee amendments:

- Exempt from the statutory prohibition, any person whose child has been returned after the child was removed from the home by a court because of physical, mental, or emotional abuse or neglect or sexual abuse. The provision also would exempt persons whose child is not returned to the home because the child reaches the age of majority, but who satisfactorily completes a corrective action plan;
- Require the Secretary of Health and Environment to notify any child care applicant, licensee or registrant by certified,

rather than registered, mail when the result of the criminal history check indicates the subject of the review would be prohibited from working, living, or residing in a child care facility; and

- Are clarifying and technical in nature.

The fiscal note on SB 201 as introduced indicates there would be no direct fiscal effect on the Department of Health and Environment. Child placement agencies, which are not governmental entities, estimate savings of \$9,000 because they would not have to duplicate background checks. Fingerprints based on national background checks could cost as much as \$50 per individual, which cost would be borne by the foster or adoptive family or child placement agency. No estimate of the cost of implementing the Senate Committee amendment was available to the Committee.