

**HOUSE BILL No. 2639**

By Committee on Children and Seniors

2-6

1 AN ACT concerning child care facilities; relating to individuals  
2 maintaining or residing, working or regularly volunteering at a child  
3 care facility; collection of a fee for fingerprinting such individuals;  
4 amending K.S.A. 2017 Supp. 65-516 and repealing the existing section.  
5

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

7 Section 1. K.S.A. 2017 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 been convicted of a crime that is classified as a person  
12 felony under the Kansas criminal code;

13 (B) has been convicted of a felony under K.S.A. 2010 Supp. 21-  
14 36a01 through 21-36a17, prior to their transfer, or article 57 of chapter 21  
15 of the Kansas Statutes Annotated, and amendments thereto, or any felony  
16 violation of any provision of the uniform controlled substances act prior to  
17 July 1, 2009;

18 (C) has been convicted of any act that is described in articles 34, 35  
19 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal,  
20 or article 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or  
21 K.S.A. 2017 Supp. 21-6104, 21-6325, 21-6326-~~or~~, 21-6418 through ~~21-~~  
22 ~~6421~~ 21-6422 or 21-6424, and amendments thereto, or been convicted of  
23 an attempt under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2017 Supp.  
24 21-5301, and amendments thereto, to commit any such act or been  
25 convicted of conspiracy under K.S.A. 21-3302, prior to its repeal, or  
26 K.S.A. 2017 Supp. 21-5302, and amendments thereto, to commit such act,  
27 or similar statutes of any other state or the federal government;

28 (D) has been convicted of any act that is described in K.S.A. 21-4301  
29 or 21-4301a, prior to their repeal, or K.S.A. 2017 Supp. 21-6401, and  
30 amendments thereto, or similar statutes of any other state or the federal  
31 government; or

32 (E) has been convicted of any act that is described in K.S.A. 21-3718  
33 or 21-3719, prior to their repeal, or K.S.A. 2017 Supp. 21-5812, and  
34 amendments thereto, or similar statutes of any other state or the federal  
35 government;

36 (2) has been adjudicated a juvenile offender because of having

1 committed an act that if done by an adult would constitute the commission  
2 of a felony and that is a crime against persons, is any act described in  
3 articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior  
4 to their repeal, or article 54, 55 or 56 of chapter 21 of the Kansas Statutes  
5 Annotated, or K.S.A. 2017 Supp. 21-6104, 21-6325, 21-6326-~~or~~, 21-6418  
6 through ~~21-6421~~ 21-6422 or 21-6424, and amendments thereto, or similar  
7 statutes of any other state or the federal government, or is any act  
8 described in K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A.  
9 2017 Supp. 21-6401, and amendments thereto, or similar statutes of any  
10 other state or the federal government;

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

15 (4) has committed an act of physical, mental or emotional abuse or  
16 neglect or sexual abuse and who is listed in the child abuse and neglect  
17 registry maintained by the Kansas department for children and families  
18 pursuant to K.S.A. 2017 Supp. 38-2226, and amendments thereto, or any  
19 similar child abuse and neglect registries maintained by any other state or  
20 the federal government and:

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

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

28 (5) has had a child removed from home based on a court order  
29 pursuant to K.S.A. 2017 Supp. 38-2251, and amendments thereto, in this  
30 state, or a court order in any other state based upon a similar statute that  
31 finds the child to be deprived or a child in need of care based on a finding  
32 of physical, mental or emotional abuse or neglect or sexual abuse and the  
33 child has not been returned to the home or the child reaches majority  
34 before being returned to the home and the person has failed to  
35 satisfactorily complete a corrective action plan approved by the  
36 department of health and environment;

37 (6) has had parental rights terminated pursuant to the Kansas juvenile  
38 code or K.S.A. 2017 Supp. 38-2266 through 38-2270, and amendments  
39 thereto, or a similar statute of other states;

40 (7) has signed a diversion agreement pursuant to K.S.A. 22-2906 et  
41 seq., and amendments thereto, or an immediate intervention agreement  
42 pursuant to K.S.A. 2017 Supp. 38-2346, and amendments thereto,  
43 involving a charge of child abuse or a sexual offense; or

1 (8) has an infectious or contagious disease.

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

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

8 (d) In accordance with the provisions of this subsection, the secretary  
9 of health and environment shall have access to any court orders or  
10 adjudications of any court of record, any records of such orders or  
11 adjudications, criminal history record information including, but not  
12 limited to, diversion agreements, in the possession of the Kansas bureau of  
13 investigation and any report of investigations as authorized by K.S.A.  
14 2017 Supp. 38-2226, and amendments thereto, in the possession of the  
15 Kansas department for children and families or court of this state  
16 concerning persons working, regularly volunteering or residing in a child  
17 care facility. The secretary shall have access to these records for the  
18 purpose of determining whether or not the home meets the requirements of  
19 K.S.A. 59-2132, 65-503, 65-508 and 65-516, and amendments thereto.

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

34 (f) *Local and state law enforcement officers and agencies shall assist*  
35 *the secretary in taking and processing fingerprints of persons residing,*  
36 *working or regularly volunteering in a child care facility and shall release*  
37 *all records of adult convictions and nonconvictions and adult convictions*  
38 *or adjudications of another state or country to the department.*

39 (g) (1) *The secretary shall adopt rules and regulations **on or before***  
40 ***January 1, 2019,** to fix a fee for fingerprinting persons residing, working*  
41 *or regularly volunteering in a child care facility, as may be required by the*  
42 *department to reimburse the department for the cost of the fingerprinting.*

43 (2) *The secretary shall remit all moneys received from the fees*

1 *established under this section to the state treasurer in accordance with the*  
2 *provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of*  
3 *each such remittance, the state treasurer shall deposit the entire amount in*  
4 *the state treasury to the credit of the child care criminal background and*  
5 *fingerprinting fund.*

6 *(h) The child care criminal background and fingerprinting fund is*  
7 *hereby created in the state treasury to be administered by the secretary of*  
8 *health and environment. All moneys credited to the child care criminal*  
9 *background and fingerprinting fund shall be used to pay local and state*  
10 *law enforcement officers and agencies for the processing of fingerprints*  
11 *and criminal history background checks for the department. All*  
12 *expenditures from the child care criminal background and fingerprinting*  
13 *fund shall be made in accordance with appropriation acts upon warrants*  
14 *of the director of accounts and reports issued pursuant to vouchers*  
15 *approved by the secretary or by a person designated by the secretary.*

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

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

26 ~~(k)~~ *(k) For the purpose of subsection (a)(3), a person listed in the*  
27 *child abuse and neglect central registry shall not be prohibited from*  
28 *residing, working or volunteering in a child care facility unless such*  
29 *person has:*

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

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

35 ~~(l)~~ *(l) In regard to Kansas issued criminal history records:*

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

43 *(2) The child placement agency is considered to be a governmental*

1 entity and the designee of the secretary of health and environment for the  
2 purposes of obtaining, using and disseminating information obtained under  
3 this section.

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

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

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

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

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

18 (C) the department of health and environment;

19 (D) the Kansas department for children and families;

20 (E) the department of corrections; and

21 (F) the courts.

22 (6) A violation of the provisions of subsection-~~(j)~~ (l)(5) shall be an  
23 unclassified misdemeanor punishable by a fine of \$100 for each violation.

24 ~~(j)~~ (m) No person shall maintain a day care facility unless such person  
25 is a high school graduate or the equivalent thereof, except where  
26 extraordinary circumstances exist, the secretary of health and environment  
27 may exercise discretion to make exceptions to this requirement. The  
28 provisions of this subsection shall not apply to any person who was  
29 maintaining a day care facility on the day immediately prior to July 1,  
30 2010, or who had an application for an initial license or the renewal of an  
31 existing license pending on July 1, 2010.

32 Sec. 2. K.S.A. 2017 Supp. 65-516 is hereby repealed.

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