

HOUSE BILL No. 2735

By Committee on Judiciary

2-9

1 AN ACT concerning child care facilities; relating to restrictions on persons
2 residing, working or volunteering; criminal history; amending K.S.A.
3 2017 Supp. 65-516 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2017 Supp. 65-516 is hereby amended to read as
7 follows: 65-516. (a) No person shall knowingly maintain a child care
8 facility if there resides, works or regularly volunteers any person who in
9 this state or in other states or the federal government:

10 (1) (A) Has been convicted of a crime that is classified as a person
11 felony under the Kansas criminal code;

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

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

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

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

35 (2) has been adjudicated a juvenile offender because of having
36 committed an act that if ~~done~~ committed by an adult, would constitute:

1 (A) The commission of a felony ~~and~~ that is a crime against persons;;

2 (B) ~~is any felony offense for an~~ act described in articles 34, 35 or 36
3 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or
4 article 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or
5 K.S.A. 2017 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-
6 6421, and amendments thereto, or similar statutes of any other state or the
7 federal government;; or

8 (C) ~~is any felony offense for an~~ act described in K.S.A. 21-4301 or
9 21-4301a, prior to their repeal, or K.S.A. 2017 Supp. 21-6401, and
10 amendments thereto, or similar statutes of any other state or the federal
11 government;

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

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

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

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

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

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

41 (7) has signed a diversion agreement pursuant to K.S.A. 22-2906 et
42 seq., and amendments thereto, or an immediate intervention agreement
43 pursuant to K.S.A. 2017 Supp. 38-2346, and amendments thereto,

1 involving a charge of child abuse or a sexual offense; or

2 (8) has an infectious or contagious disease.

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

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

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

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

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

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

1 this section.

2 (h) For the purpose of subsection (a)(3), a person listed in the child
3 abuse and neglect central registry shall not be prohibited from residing,
4 working or volunteering in a child care facility unless such person has:

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

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

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

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

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

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

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

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

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

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

36 (C) the department of health and environment;

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

38 (E) the department of corrections; and

39 (F) the courts.

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

42 (j) No person shall maintain a day care facility unless such person is a
43 high school graduate or the equivalent thereof, except where extraordinary

1 circumstances exist, the secretary of health and environment may exercise
2 discretion to make exceptions to this requirement. The provisions of this
3 subsection shall not apply to any person who was maintaining a day care
4 facility on the day immediately prior to July 1, 2010, or who had an
5 application for an initial license or the renewal of an existing license
6 pending on July 1, 2010.

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

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