

65-516. Restrictions on persons maintaining or residing, working or volunteering at child care facility; criminal history check by secretary of health and environment; information to be provided sponsoring child placement agency.

(a) No person shall knowingly maintain a child care facility if, there resides, works or regularly volunteers any person who in this state or in other states or the federal government:

(1) (A) Has a felony conviction for a crime against persons; (B) has a felony conviction under K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, or article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009; (C) has a conviction of any act which is described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, and amendments thereto, or a conviction of an attempt under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2014 Supp. 21-5301, and amendments thereto, to commit any such act or a conviction of conspiracy under K.S.A. 21-3302, prior to its repeal, or K.S.A. 2014 Supp. 21-5302, and amendments thereto, to commit such act, or similar statutes of other states or the federal government; or (D) has been convicted of any act which is described in K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2014 Supp. 21-6401, and amendments thereto, or similar statutes of other states or the federal government;

(2) has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of a felony and which is a crime against persons, is any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, and amendments thereto, or similar statutes of other states or the federal government, or is any act described in K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2014 Supp. 21-6401, and amendments thereto, or similar statutes of other states or the federal government;

(3) has committed an act of physical, mental or emotional abuse or neglect or sexual abuse and who is listed in the child abuse and neglect registry maintained by the Kansas department for children and families pursuant to K.S.A. 2014 Supp. 38-2226, and amendments thereto, and (A) the person has failed to successfully complete a corrective action plan which had been deemed appropriate and approved by the Kansas department for children and families, or (B) the record has not been expunged pursuant to rules and regulations adopted by the secretary for children and families;

(4) has had a child removed from home based on a court order pursuant to K.S.A. 2014 Supp. 38-2251, and amendments thereto, in this state, or a court order in any other state based upon a similar statute that finds the child to be deprived or a child in need of care based on a finding of physical, mental or emotional abuse or neglect or sexual abuse and the child has not been returned to the home or the child reaches majority before being returned to the home and the person has failed to satisfactorily complete a corrective action plan approved by the department of health and environment;

(5) has had parental rights terminated pursuant to the Kansas juvenile code or K.S.A. 2014 Supp. 38-2266 through 38-2270, and amendments thereto, or a similar statute of other states;

(6) has signed a diversion agreement pursuant to K.S.A. 22-2906 et seq., and amendments thereto, or an immediate intervention agreement pursuant to K.S.A. 2014 Supp. 38-2346, and amendments thereto, involving a charge of child abuse or a sexual offense; or

(7) has an infectious or contagious disease.

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

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

(d) In accordance with the provisions of this subsection, the secretary of health and environment shall have access to any court orders or adjudications of any court of record, any records of such orders or adjudications, criminal history record information including, but not limited to, diversion agreements, in the possession of the Kansas bureau of investigation and any report of investigations as authorized by K.S.A. 2014 Supp. 38-2226, and amendments thereto, in the possession of the Kansas department for children and families or court of this state concerning persons working, regularly volunteering or residing in a child care facility. The secretary shall have access to these records for the purpose of determining whether or not the home meets the requirements of K.S.A. 59-2132, 65-503, 65-508 and 65-516, and amendments thereto.

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

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

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

(h) For the purpose of subsection (a)(3), a person listed in the child abuse and neglect central registry shall not be prohibited from residing, working or volunteering in a child care facility unless such person has: (1) Had an opportunity to be interviewed and present information during the investigation of the alleged act of abuse or neglect; and (2) been given notice of the agency decision and an opportunity to appeal such decision to the secretary and to the courts pursuant to the Kansas judicial review act.

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

(1) The secretary of health and environment shall provide in writing information available to the secretary to each

child placement agency requesting information under this section, including the information provided by the Kansas bureau of investigation pursuant to this section, for the purpose of assessing the fitness of persons living, working or regularly volunteering in a family foster home under the child placement agency's sponsorship.

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

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

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

(5) Any staff person of a child placement agency who receives information under this subsection shall keep such information confidential, except that the staff person may disclose such information on a need-to-know basis to: (A) The person who is the subject of the request for information; (B) the applicant or operator of the family foster home in which the person lives, works or regularly volunteers; (C) the department of health and environment; (D) the Kansas department for children and families; (E) the juvenile justice authority; and (F) the courts.

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

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

History: L. 1980, ch. 184, § 2; L. 1982, ch. 259, § 2; L. 1983, ch. 140, § 46; L. 1984, ch. 225, § 1; L. 1985, ch. 210, § 1; L. 1987, ch. 233, § 1; L. 1988, ch. 232, § 10; L. 1991, ch. 185, § 1; L. 1994, ch. 279, § 15; L. 1996, ch. 229, § 117; L. 2002, ch. 114, § 74; L. 2006, ch. 169, § 116; L. 2007, ch. 147, § 1; L. 2009, ch. 32, § 53; L. 2010, ch. 74, § 13; L. 2010, ch. 155, § 18; L. 2011, ch. 30, § 235; L. 2012, ch. 99, § 5; L. 2012, ch. 166, § 10; L. 2014, ch. 115, § 254; July 1.

Revisor's Note:

Section was amended twice in the 2006 session, see also 65-516a.

Section was amended twice in the 2010 session, see also 65-516b.

Section was also amended by L. 2010, ch. 17, § 122, but that version was repealed by L. 2010, ch. 155, § 26.