

UPDATED
SESSION OF 2019

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2228

As Amended by House Committee on Children
and Seniors

Brief*

HB 2228, as amended, would amend laws regarding the operation of a child care facility to require written notice to individuals found to be operating a child care facility without a license; establish civil fines that may be assessed for operating without a license; limit the amount of the civil fines for continuing violations of law or rules and regulations that affect significantly and adversely the health, safety, or sanitation of children in a child care facility; and provide for appeal rights for individuals aggrieved by an order of the Secretary of Health and Environment (Secretary) with regard to the civil fines imposed.

***Fines for Continuing Violations Affecting Health, Safety,
or Sanitation***

With regard to violations of law or rule and regulation relating to the health, safety, or sanitation of children in a child care facility, the bill would limit the civil fine that may be assessed for a continuing violation. The bill would provide that for every day of a continuing violation, which is deemed a separate violation subject to a civil fine, the civil fine that may be assessed would not exceed \$100.

*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>

Notification and Fines for Operating without a License

The bill would require the Secretary to provide written notice to individuals found to be operating a child care facility without a license that a license is required under state law.

Upon finding a child care facility continues to operate without a license after being provided with written notice of such violation and after proper notice and an opportunity to be heard according with the Kansas Administrative Procedure Act, the bill would authorize the Secretary to assess a civil fine. The bill would provide the civil fine for a violation would not exceed \$500, except in the case of a continuing violation, every day such previously notified violation continues would be deemed a separate violation that would be subject to a civil fine not to exceed \$100.

Exceptions from Child Care Licensure Requirements

The provisions of the bill that would require written notice to persons operating without a license and allow for the assessment of civil fines for continuing to operate without a license would not apply to persons providing child care for:

- Children provided care in the home in which they reside;
- Children who are all relatives of the person; or
- Up to 2 children unrelated to the person for not more than 20 hours a week, with the 20 hours calculated by combining the hours each child is provided care during the week by such person.

Appeal Rights

The bill would allow a person aggrieved by an order of the Secretary imposing a fine for the operation of a child care facility without a license to appeal the order to the district court, as provided by the Kansas Judicial Review Act.

Background

The bill was introduced by the House Committee on Children and Seniors at the request of the Kansas Department of Health and Environment (KDHE). In the House Committee hearing, representatives of Child Care Aware and KDHE testified in support of the bill. The KDHE representative stated child care facilities operating without a license are not inspected or monitored by KDHE, resulting in no assurance to parents that foundational health and safety standards are met. The proponents generally stated the bill would increase protections for children in out-of-home care, and the assessment of civil fines would serve as a deterrent to illegal care and potentially increase the number of licensed and inspected child care facilities. No other testimony was provided.

The House Committee amended the bill by setting a maximum civil fine for a continuing violation of provisions or rules and regulations pertaining to the health safety or sanitation of children in a child care facility, reducing the maximum civil fine for operating a child care facility without a license and for a continuing violation, and identifying the circumstances that are not to be considered as providing child care and to which the civil fines specified in the bill would not apply.

The House Committee recommended the bill favorably for passage, as amended, on February 26, 2019, but the bill was withdrawn from the House Calendar and referred to the House Committee on Appropriations on February 27, 2019. The bill was then withdrawn from the House Committee on

Appropriations and rereferred to the House Committee on Children and Seniors on March 6, 2019. On March 18, 2019, the House Committee on Children and Seniors voted to recommend the bill favorably with the amendments previously adopted by the House Committee.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, KDHE indicates enactment of the bill would not have a fiscal effect on expenditures, but would provide additional revenue. Based upon cases in FY 2018, KDHE estimates there would be 70 substantiated illegal care cases. If the maximum fine of \$1,000 would be levied, the agency would receive \$70,000 in additional revenue.

The Office of Judicial Administration (OJA) indicates the bill has the potential for increasing litigation in the courts because of the new violation created by the bill. If litigation increases, OJA indicates there would be a fiscal effect on the operations of the court system. However, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. Any fiscal effect associated with the bill is not reflected in *The FY 2020 Governor's Budget Report*.