SENATE Substitute for HOUSE BILL No. 2067

AN ACT concerning providers of care services; relating to employment of persons convicted or adjudicated of certain offenses; concerning adult care home, home health agency, developmental disability and pregnancy maintenance service providers; amending K.S.A. 39-970 and 65-3506 and K.S.A. 2000 Supp. 65-5117 and repealing the existing sections.

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

Section 1. K.S.A. 39-970 is hereby amended to read as follows: 39-970. (a) (1) On and after July 1, 1998, No person shall knowingly operate an adult care home if, in the adult care home, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439 and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401 and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto, voluntary man-slaughter, pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510 and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, and amendments thereto, or similar statutes of other states or the federal government.

(2) On and after July 1, 1998, A person operating an adult care home may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in: (A) article 34 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) a conviction of an attempt under K.S.A. 21 3301 and amendments thereto to commit any act listed in this subsection or subsection (a)(1); or (D) an attempt to commit any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and amendments thereto; (D) a conspiracy to commit any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto; (E) criminal solicitation of any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, and amendments thereto; or (F) similar statutes of other states or the federal government.

(b) No person shall operate an adult care home if such person has been found to be a disabled person in need of a guardian or conservator, or both.

(c) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation *regarding felony convictions, convictions under K.S.A. 21-3437 and 21-3517, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437 and 21-3517, and amendments thereto, concerning persons working in an adult care home. The secretary shall have access to*

these records for the purpose of determining whether or not the adult care home meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.

For the purpose of complying with this section, the operator of (d) an adult care home shall request from the department of health and environment information obtained by the secretary of health and environment regarding only felony convictions, convictions under K.S.A. 21-3437 and 21-3517, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437 and 21-3517, and amendments thereto, and which relates to a person who works in the adult care home, or is being considered for employment by the adult care home, for the purpose of determining whether such person is subject to the provision of this section. For the purpose of complying with this section, the operator of an adult care home shall receive from any employment agency which provides employees to work in the adult care home written certification that such employees are not prohibited from working in the adult care home under this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, a person who operates an adult care home may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No adult care home, the operator or employees of an adult care home or an employment agency, or the operator or employees of an employment agency, shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such adult care home's compliance with the provisions of this section if such adult care home or employment agency acts in good faith to comply with this section.

(e) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted to the department under this section.

(f) (1) The secretary of health and environment shall provide each operator requesting information under this section with the criminal history record information concerning felony convictions and convictions under K.S.A. 21-3437 and 21-3517, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).

(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.

(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.

(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 38-1618 and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information.

(5) An operator who receives criminal history record information under this subsection (f) shall keep such information confidential, except that the operator may disclose such information to the person who is the subject of the request for information. A violation of this paragraph (5) shall be an unclassified misdemeanor punishable by a fine of \$100.

(f) (g) No person who works for an adult care home and who is currently licensed or registered by an agency of this state to provide professional services in the state and who provides such services as part of the work which such person performs for the adult care home shall be subject to the provisions of this section.

(g) (h) A person who volunteers in an adult care home shall not be subject to the provisions of this section because of such volunteer activity.

(h) (i) No person who has been employed by the same adult care home for five consecutive years immediately prior to the effective date of this act shall be subject to the provisions of this section while employed by such adult care home.

(i) (j) The operator of an adult care home shall not be required under this section to conduct a background check on an applicant for employment with the adult care home if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the adult care home. The operator of an adult care home where the applicant was the subject of such background check may release a copy of such background check to the operator of an adult care home where the applicant is currently applying.

(i) (k) No person who is in the custody of the secretary of corrections and who provides services, under direct supervision in nonpatient areas, on the grounds or other areas designated by the superintendent of the Kansas soldiers' home or the Kansas veterans' home shall be subject to the provisions of this section while providing such services.

(k) (l) For purposes of this section, the Kansas bureau of investigation shall only report felony convictions, convictions under K.S.A. 21-3437 and 21-3517, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437 and 21-3517, and amendments thereto, to the secretary of health and environment when a background check is requested.

(*m*) This section shall be part of and supplemental to the adult care home licensure act.

K.S.A. 2000 Supp. 65-5117 is hereby amended to read as Sec. 2. follows: 65-5117. (a) (1) On and after July 1, 1998, No person shall knowingly operate a home health agency if, for the home health agency, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439 and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401 and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510 and amendments thereto, aggravated indecent solicitation of a child, pursuant to

K.S.A. 21-3511 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, and amendments thereto, or similar statutes of other states or the federal government.

On and after July 1, 1998, A person operating a home health (2)agency may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in: (A) article 34 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) a conviction of an attempt under K.S.A. 21 3301 and amendments thereto to commit any act listed in this subsection or subsection (a)(1); or (D) an attempt to commit any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and amendments thereto; (D) a conspiracy to commit any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto; (E) criminal solicitation of any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, and amendments thereto; or (F) similar statutes of other states or the federal government.

(b) No person shall operate a home health agency if such person has been found to be a disabled person in need of a guardian or conservator, or both.

(c) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation *regarding felony convictions, convictions under K.S.A. 21-3437 and 21-3517, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437 and 21-3517, and amendments thereto, concerning persons working for a home health agency. The secretary shall have access to these records for the purpose of determining whether or not the home health agency meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.*

For the purpose of complying with this section, the operator of a (d) home health agency shall request from the department of health and environment information obtained by the secretary of health and environment regarding only felony convictions, convictions under K.S.A. 21-3437 and 21-3517, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437 and 21-3517, and amendments thereto, and which relates to a person who works for the home health agency or is being considered for employment by the home health agency, for the purpose of determining whether such person is subject to the provisions of this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, the operator of a home health agency shall receive from any employment agency which provides employees to work for the

home health agency written certification that such employees are not prohibited from working for the home health agency under this section. For the purpose of complying with this section, a person who operates a home health agency may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No home health agency, the operator or employees of a home health agency or an employment agency, or the operator or employees of an employment agency, which provides employees to work for the home health agency shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such home health agency's compliance with the provisions of this section if such home health agency or employment agency acts in good faith to comply with this section.

(e) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted under this section.

(f) (1) The secretary of health and environment shall provide each operator requesting information under this section with the criminal history record information concerning felony convictions and convictions under K.S.A. 21-3437 and 21-3517, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).

(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.

(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.

(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 38-1618 and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information.

(5) An operator who receives criminal history record information under this subsection (f) shall keep such information confidential, except that the operator may disclose such information to the person who is the subject of the request for information. A violation of this paragraph (5) shall be an unclassified misdemeanor punishable by a fine of \$100.

(f) (g) No person who works for a home health agency and who is currently licensed or registered by an agency of this state to provide professional services in this state and who provides such services as part of the work which such person performs for the home health agency shall be subject to the provisions of this section.

(g) (h) A person who volunteers to assist a home health agency shall not be subject to the provisions of this section because of such volunteer activity.

(h) (i) No person who has been employed by the same home health agency for five consecutive years immediately prior to the effective date of this act shall be subject to the requirements of this section while employed by such home health agency.

(i) (j) The operator of a home health agency shall not be required under this section to conduct a background check on an applicant for employment with the home health agency if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the home health agency. The operator of a home health agency where the applicant was the subject of such background check may release a copy of such background check to the operator of a home health agency where the applicant is currently applying.

(k) For purposes of this section, the Kansas bureau of investigation shall only report felony convictions, convictions under K.S.A. 21-3437 and 21-3517, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437 and 21-3517, and amendments thereto, to the secretary of health and environment when a background check is requested.

(j) (l) This section shall be part of and supplemental to the provisions of article 51 of chapter 65 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto.

Sec. 3. K.S.A. 65-3506 is hereby amended to read as follows: 65-3506. (a) There is hereby established the board of adult care home administrators. The board shall be attached to the department of health and environment and shall be within the department as a part thereof. All budgeting, purchasing and related management functions of the board shall be administered under the direction and supervision of the secretary of health and environment. The department shall serve as the administrative and environment. The department shall serve as the administrative and environment agency of the board in all respects and shall perform such services and duties as it may be legally called upon to perform. The attorney for the board shall be an assistant attorney general appointed by the attorney general. The office of the attorney general shall serve as the enforcement agency for the board. All vouchers for expenditures and all payrolls of the board shall be approved by the chairperson of the board and by the secretary of health and environment.

The board of adult care home administrators shall be composed (b) of seven members appointed by the secretary of health and environment governor, three of whom are representatives of professions and institutions concerned with the care and treatment of chronically ill or infirm elderly patients, two consumer representatives who have no current or previous involvement in the financial affairs or as a member of the governing body of any adult care home or any association directly concerned with the regulation or licensure of adult care homes in the state and two adult care home administrators who, at the time of their appointment, are licensed by the state and are actively engaged in the administration of adult care homes within the state. No more than three members of the board may be licensed administrators. Members of the board, other than the licensed administrators, shall have no direct financial interest in adult care homes. Members of the board shall serve on the board for terms of two years or until otherwise disqualified from serving on the board, except two of the members first appointed shall serve on the board for terms of one year and thereafter, upon the expiration of such one year terms, successors shall be appointed in the same manner as the original appointments for terms of two years. The provisions of this act shall not affect the office of any member of the board of adult care home administrators appointed prior to the effective date of this act. All members of the board appointed after the effective date of this act shall be appointed by the governor.

(c) Members of the board of adult care home administrators shall meet at such times as may be appropriate but in no case less than once each four months. The chairperson of the board shall be elected annually from among the members of the board. All final orders shall be in writing and shall be signed by the chairperson and approved by the board.

(d) Members of the board who attend meetings of such board, or attend a subcommittee meeting thereof authorized by such board, shall

be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

New Sec. 4. The department of health and environment shall make grants in the amount of \$300,000 from moneys appropriated for the fiscal year ending June 30, 2002, in the operating expenditures (including official hospitality) account of the state general fund pursuant to contracts for programs that provide services for women which enable them to carry their pregnancies to term, which are hereby authorized and directed to be entered into by the secretary of health and environment with the same not-for-profit organizations that the secretary entered into contracts with pursuant to section 30(h) of chapter 160 of the 1999 Session Laws of Kansas for fiscal year 2000: Provided, That such contracted services may include an array of social services relating to pregnancy maintenance and shall provide that no individuals who are unable to pay shall be denied the delivery or provision of pregnancy maintenance services: Provided further, That no contract or contracts under pregnancy maintenance programs shall be entered into with any group performing, promoting, referring for or educating in favor of abortion: And provided further, That a not-for-profit organization awarded a contract under this proviso shall match state moneys under this contract on the basis of a 50% match from a not-for-profit organization and a 50% match from the department of health and environment: And provided further, That the secretary of health and environment shall submit a report to the legislature at the beginning of the regular session of the legislature in 2002 on the results and outcomes of such pregnancy maintenance programs: And provided further, That no part of the grant moneys shall be used for any political purposes.

New Sec. 5. (a) In carrying out the provisions of subsection (b)(2) of K.S.A. 39-1804, and amendments thereto, the secretary shall ensure annually that all available state funds appropriated for community developmental disability services are used as match or certified match to secure federal financial participation to the maximum extent feasible.

(b) In addition, the secretary shall ensure that funding provided to any community developmental disability organization or any affiliate thereof by any taxing subdivision of the state is utilized as certified match for federal financial participation to the maximum extent feasible. Any public funding identified under this section shall be retained at the local level and the authority for the use of such revenues shall be subject to the statutory authority under which such funds are collected and expended and to any agreements entered into by the local authority with the community service provider or community developmental disability organization to which such funds have been granted, appropriated or otherwise transferred. No community developmental disability organization or affiliate shall use any funding received pursuant to this section to supplant funds previously received from any taxing subdivision of the state. In the event that such funding provided by any taxing subdivision of the state becomes unavailable for any reason, the state shall have no obligation, except as otherwise provided by law, to provide funding in the amount no longer available in order to retain the same level of federal financial participation.

(c) All actions of the secretary to maximize the availability of federal financial participation shall be in accordance with applicable federal statutes and regulations.

(d) Except as otherwise provided in this section, revenue derived from the maximization of federal financial participation shall be used exclusively (1) to increase the regular, nonspecialized tier reimbursement rate above the state fiscal year 2001 levels for the home and community based services developmental disabilities waiver for day, residential, and individual and family supports, provided on or after July 1, 2001, based on an apportionment agreed to by the secretary and the community developmental disability organizations; or (2) for other medicaid-reimbursable services for persons with developmental disabilities based upon an agreement entered into by the secretary and community developmental disability organizations by written contract. The secretary shall not be required to utilize more than \$15,000,000 in funding provided to community developmental disability organizations and their affiliates by any taxing subdivision of the state as match for additional federal financial participation in any state fiscal year.

(e) The secretary shall require that the council of community members in each service area convene representatives of the community developmental disability organization, community service providers, families, consumers and other community stakeholders to develop and implement community capacity building plans annually, to improve the quality and efficiency of service delivery. Each such local plan shall: (1) Identify strengths within the local service area, including natural and community supports; (2) identify barriers to meeting the independence, productivity, integration and inclusion goals of the developmental disabilities reform act; and (3) identify key goals that will be addressed in the service area to develop and maintain such community capacity.

(f) The secretary shall report regularly to the SRS oversight committee during the interim period prior to the 2002 regular session of the legislature and shall report to the legislature on or before the 15th day of each regular session on the results of plans to maximize federal financial participation and on the results of community capacity building plans developed and implemented within each service area.

(g) This section shall be construed to be part of and supplemental to the developmental disabilities reform act.

Sec. 6. K.S.A. 39-970 and 65-3506 and K.S.A. 2000 Supp. 65-5117 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted Conference Committee Report	
	Speaker of the House.
	Chief Clerk of the House.
Passed the SENATE as amended	
SENATE adopted Conference Committee Report	
	President of the Senate.
	Secretary of the Senate.
Approved	

Governor.