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Governor Bill Walker  
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March 7, 2017

The Honorable Bryce Edgmon  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Edgmon:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to the criminal history, civil history, and establishing a civil registry for certain individuals or entities that are licensed or certified by the Department of Health and Social Services.

There are hundreds of individuals and entities that provide medical assistance and other services to Alaskans in need through individual assistance or group living homes. Many of the people qualifying for assistance are ill, elderly, or disabled. We must make sure that those providing services to these individuals are qualified to do so; that qualification includes assurance that an individual's or entity's past background does not reveal behaviors inconsistent with the safe care of our vulnerable citizens. Recognizing this need, the Legislature enacted statutes (AS 47.05.310 - 47.05.390) in 2005 to centralize and formalize the process by which the Department of Health and Social Services (Department) conducts criminal background checks for entities and individuals who seek to be licensed providers or who are paid, in whole or in part, by the Department to provide services to individuals in the Department's care and custody. Additionally, the 2005 legislation authorized the Department to create a centralized registry (that my bill would rename the civil registry) so the State could rely on certain civil findings to bar persons from owning, operating, and being an administrator of certain licensed facilities. Over the ensuing years, certain gaps in the statutes have become apparent. This legislation is designed to clarify and amend current statutes to fix those gaps. The changes proposed by the bill ensure proper application and fairness under the system.

This bill would make amendments to the criminal background statute (AS 47.05.310), removing substantive references to the centralized civil registry under AS 47.05.330 to alleviate confusion, inconsistencies, and redundancy between the statutes. These amendments would further clarify that individuals as well as entities may request a criminal and civil history background check. These amendments would also remove language that the Department of Health and Social Services is a criminal justice agency as unnecessary to accomplish the background checks needed.

The bill would add a new section to AS 47.05, establishing a civil history check statute that mirrors the criminal background check statute, primarily to clarify that the same individuals would be subject to review and possible bar, depending on the results of their background check under the centralized civil registry. This statute would further clarify what type of civil findings would prohibit an individual or entity from obtaining a license and would establish procedures for an individual or entity to request an exception or variance, or to request that incorrect information in a registry be addressed in a written finding.

To simplify and more accurately set out the centralized civil registry, the bill would repeal and reenact AS 47.05.330, providing for the identification of a civil registry. The Department would identify by regulation each register the Department would review to identify the names and certain civil events that would preclude someone from being allowed to own, operate, be employed by, or be paid by the State to provide medical assistance services.

The bill would add an important new provision as AS 47.05.360, establishing that a person could seek a variance from being allowed to own, operate, be employed by, or be paid by the State to provide services due to a condition identified as part of a criminal or civil history background check. If the request for a variance was denied, a person could seek review in superior court.

This bill makes amendments to AS 47.17.040, clarifying that the confidential child protection registry would contain substantiated findings of abuse or neglect. The amendment would further clarify that this information can be used for licensing both in and out of this state and confirms the due process protections before placement on the central registry.

Another gap addressed is to AS 47.32.090, allowing the Department to investigate an employee, contractor, or volunteer of a licensed entity and, if conduct that did not comply with licensing standard is substantiated, place the employee, contractor, or volunteer on the civil registry. Currently State law only allows the Department to investigate and issue findings against an entity, not against individuals who work for the entity.

Additionally, changes were made to AS 47.32.150(b), allowing a person subject to a civil fine as an enforcement action to have the right to appeal the fine. The bill would allow the Department to share, on a confidential basis, licensing information with a law enforcement agency upon request, further strengthening protections for vulnerable citizens. The bill would also address limitations in current law that limit sharing and access to the Divisions of Public Health and Public Assistance by amending AS 47.32.190 to allow any division of the Department that is responsible for licensing to share and gather information in order to implement the protections of AS 47.32, centralized licensing. This change is needed because licensing is done by the Office of Children's Services, Division of Health Care Services, and Division of Public Assistance. This amendment simply allows those divisions who are responsible for licensing to share and access information to implement this chapter without reference to specific divisions. This provides the Department with flexibility to implement the chapter when they make organizational changes in the future.

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This bill will improve the background check process and protect our vulnerable citizens. Additionally, it will add the necessary safeguards to allow persons to challenge or request a variance from the provisions that would otherwise bar individuals from certain employment. In order to protect vulnerable Alaskans yet offer due process and confidentiality protections to individuals, I am transmitting this bill and urge your prompt and favorable action on this measure.

Sincerely,



Bill Walker  
Governor

Enclosure