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CS FOR HOUSE BILL NO. 180(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/25/02

Referred: Rules

Sponsor(s): REPRESENTATIVES MCGUIRE, Murkowski, Dyson, Croft, Stevens, Hayes, Chenault,
Crawford, Meyer, Cissna

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to persons who provide services related to children; establishing a**
2 **legislative task force on child services; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 47.35.010(a) is amended to read:

5 (a) The department may

6 (1) license and supervise foster homes, residential child care facilities,
7 semi-secure residential child care facilities, secure residential psychiatric treatment
8 centers, child placement agencies, and maternity homes;

9 (2) investigate applicants, licensees, and persons that the department
10 reasonably believes are operating a facility without a license in violation of this
11 chapter;

12 (3) adopt regulations to implement the provisions of this chapter,
13 including regulations establishing licensure and renewal procedures, standards, and
14 fees; establishing requirements for operation of facilities or agencies licensed under

1 this chapter; and distinguishing between types of facilities;

2 (4) enter into agreements with private entities, municipalities, or
 3 individuals to investigate and make recommendations to the department for the
 4 licensing and supervision of foster homes, residential child care facilities, semi-secure
 5 residential child care facilities, secure residential psychiatric treatment centers, child
 6 placement agencies, and maternity homes under procedures and standards of operation
 7 established by the department;

8 **(5) accept licenses issued by other organizations or state agencies**
 9 **that have licensing authority under federal or state law for the facilities listed in**
 10 **(1) of this subsection.**

11 * **Sec. 2.** AS 47.35.015 is amended by adding a new subsection to read:

12 (h) A person, including a school district, may not provide domiciliary services
 13 to students as a charter school, state boarding school, or public school unless that
 14 school is licensed as a residential child care facility under this chapter.

15 * **Sec. 3.** AS 47.35 is amended by adding a new section to read:

16 **Sec. 47.35.019. Mandatory denial of initial license.** (a) The department
 17 may not issue an initial license under this chapter if the applicant for the license who is
 18 a natural person or a person who is required to submit a release under
 19 AS 47.35.017(b)(5) in connection with a license has been previously convicted of any
 20 of the following crimes or of violating a law or ordinance of this or another
 21 jurisdiction with similar elements, or of an attempt, solicitation, or conspiracy to
 22 commit any of the following crimes or to violate a law or ordinance of this or another
 23 jurisdiction with similar elements:

24 (1) a crime involving domestic violence, as defined in AS 18.66.990,
 25 that is a felony under AS 11;

26 (2) a crime that is an offense against the person under AS 11.41 and is
 27 a felony under AS 11, except for a crime committed under AS 11.41.200 - 11.41.220
 28 or 11.41.260;

29 (3) a crime that is a felony and involves a victim who was a child
 30 under 18 years of age at the time of the conduct, including a crime where the
 31 perpetrator was a person responsible for the child's welfare; in this paragraph, "person

1 responsible for the child's welfare" has the meaning given in AS 47.17.290;

2 (4) a crime that is arson under AS 11.46.400 or 11.46.410.

3 (b) The department may not issue an initial license under this chapter if the
4 applicant for the license who is a natural person or a person who is required to submit
5 a release under AS 47.35.017(b)(5) in connection with a license has been previously
6 convicted, within the five-year period immediately preceding the application, of any of
7 the following crimes or of violating a law or ordinance of this or another jurisdiction
8 with similar elements, or of an attempt, solicitation, or conspiracy to commit any of
9 the following crimes or to violate a law or ordinance of this or another jurisdiction
10 with similar elements:

11 (1) an assault that is a felony under AS 11.41.200 - 11.41.220;

12 (2) stalking under AS 11.41.260;

13 (3) a crime of misconduct involving controlled substances under
14 AS 11.71.010 - 11.71.060;

15 (4) a crime involving imitation controlled substances under
16 AS 11.73.010 - 11.73.040.

17 (c) In addition to the standards for denying an application or not issuing or
18 renewing a license under (a) and (b) of this section, the department may not issue an
19 initial license under this chapter if the applicant for the license who is a natural person
20 or a person who is required to submit a release under AS 47.35.017(b)(5) in
21 connection with the license

22 (1) has been found by a court or agency of this or another jurisdiction
23 to have neglected or abused a child as specified by the department in regulation; or

24 (2) is charged by information or complaint with, or under indictment or
25 presentment for, a crime listed in (a) or (b) of this section or is the respondent in a civil
26 proceeding related to the neglect or abuse of a child, unless the department finds that
27 issuing the license does not pose a threat to the department's ability to ensure the
28 health, safety, or welfare of children receiving care under this chapter.

29 * **Sec. 4.** AS 47.35 is amended by adding a new section to read:

30 **Sec. 47.35.021. Discretionary denial of initial license.** Regardless of
31 whether the applicant for licensure has met all of the other requirements under this

chapter and regulations adopted under this chapter, the department may refuse to issue an initial license under this chapter if the applicant for the license who is a natural person or a person who is required to submit a release under AS 47.35.017(b)(5) in connection with the license has been convicted, within the five-year period immediately preceding the date of the application, of any of the following offenses or of violating a law or ordinance of this or another jurisdiction with similar elements, or of an attempt, solicitation, or conspiracy to commit any of the following offenses or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) a crime involving domestic violence, as defined in AS 18.66.990, that is a misdemeanor under AS 11;

(2) assault in the fourth degree under AS 11.41.230;

(3) contributing to the delinquency of a minor under AS 11.51.130;

(4) endangering the welfare of a child in the second degree under AS 11.51.110;

(5) a serious offense as defined in AS 12.62.900, except for an offense included in AS 47.35.019;

(6) a crime concerning operating certain vehicles, aircraft, or watercraft while intoxicated under AS 28.33.030, 28.33.031, AS 28.35.030, 28.35.031, and 28.35.032.

*** Sec. 5.** AS 47.35.022(a) is repealed and reenacted to read:

(a) The department may not place or continue placement of a child for care for placement under AS 47.10 in a foster home that is licensed under this chapter if the licensee who is a natural person or a person who is required to submit a release under AS 47.35.017(b)(5) in connection with a license has been convicted of an offense listed in AS 47.35.019(a) or has been found by the court to have neglected or abused a child under AS 47.35.019(c)(1).

*** Sec. 6.** AS 47.35.022(b) is repealed and reenacted to read:

(b) The department may not place or continue a placement of a child for foster care if the applicant who is a natural person or a person who is required to submit a release under AS 47.35.017(b)(5) has been previously convicted within a five-year period immediately preceding the application for an offense described in

AS 47.35.019(b) or is in a situation described in AS 47.35.019(c)(2) unless the applicant demonstrates to the satisfaction of the department that the placement or continued placement does not pose a threat to the department's ability to ensure the health, safety, or welfare of the children receiving care under this chapter.

* **Sec. 7.** AS 47.35.023(b) is amended to read:

(b) Notwithstanding (a) of this section, if an emergency exists and a child must be immediately placed, the department [OR THE DEPARTMENT'S DESIGNEE] may issue a provisional foster home license on an emergency basis for a period of 90 days or less if the department [OR THE DEPARTMENT'S DESIGNEE] determines that the applicant meets minimal requirements for emergency conditions and the applicant agrees in writing to provide the fingerprint information described in AS 47.35.017(b) within 30 days **after** [OF] the placement of a child in the foster home. The department may extend a provisional foster home license issued under this subsection for one or two additional periods of up to 90 days each in order to obtain the information from the national criminal background check required under AS 47.35.017(b)(6). The department may not issue a license under this subsection before checking state [AND NATIONAL] criminal justice information available to the department under AS 12.62 and regulations adopted under AS 12.62 about the administrator or foster parent and each person who is 16 years of age or older in the foster home who will have contact with the child. If the department cannot obtain direct access to the state [AND FEDERAL] criminal justice information, the department shall request the agency having primary law enforcement responsibility for the geographic area in which the prospective foster home is located to obtain the information and provide it to the department before the license is issued under this section. If the criminal justice information readily available to the department shows an offense **about** which a person would be required to notify the department under AS 47.35.047(b), the department may not issue the license under this subsection. If the additional criminal justice information [AVAILABLE FROM THE FINGERPRINT SEARCH OR ANOTHER SOURCE AFTER THE LICENSE IS ISSUED] reveals that the person has a record for **an offense listed in AS 47.35.019(a) or (b) or is in a situation described in AS 47.35.019(c)** [ONE OR MORE OF

THESE OFFENSES], the department shall immediately revoke the license and move the child to an appropriate placement. **The department may revoke the license and move the child to an appropriate placement if the criminal justice information available from the fingerprint search or another source after the license is issued reveals that the person has a record for an offense listed in AS 47.35.021.** For purposes of obtaining criminal justice information under this subsection, the department is a criminal justice agency conducting a criminal justice activity under AS 12.62.

* **Sec. 8.** AS 47.35.023(d) is amended to read:

(d) Before expiration of a provisional license, the department shall issue a biennial license for the facility or agency if (1) after inspection and investigation under (c) of this section, the department finds that the facility or agency is operating in compliance with, and meets the licensure requirements of, this chapter and regulations adopted under this chapter; (2) **a** [THE] ground for revocation **or suspension** set out in **AS 47.35.130(a) or (b)** [AS 47.35.130(a)(2)] does not exist; and (3) all applicable fees have been paid. The department shall prepare a summary report of its findings and recommendations for issuance of a biennial license.

* **Sec. 9.** AS 47.35.027 is amended by adding a new subsection to read:

(f) Notwithstanding (a) - (e) of this section, the department may not grant a variance if the criminal record review indicates that the licensee or a person required to provide a release under AS 47.35.017(b)(5) has a conviction for an offense listed in AS 47.35.019(a) or (b).

* **Sec. 10.** AS 47.35.045(c) is amended to read:

(c) The department shall renew a biennial license if the department finds that

(1) the licensee

(A) either is in compliance with this chapter and regulations adopted under this chapter or is substantially in compliance and has implemented a plan of correction, approved by the department, that is designed to bring the facility or agency into full compliance; and

(B) has maintained the facility or agency in good repair and is in compliance with all state fire safety and environmental health and safety

code requirements;

(2) a [THE] ground for revocation or suspension set out in AS 47.35.130(a) or (b) [AS 47.35.130(a)(2)] does not exist; and

(3) all applicable fees have been paid.

* **Sec. 11.** AS 47.35.047(b) is repealed and reenacted to read:

(b) A licensee shall notify the department within 24 hours after having knowledge that an administrator, foster parent, member of the licensee's household, regular volunteer, or staff person has been

(1) convicted of, has been charged by information or complaint with, or is under indictment or presentment for, any offense listed in AS 47.35.019, 47.35.021, or a law or ordinance of this or another jurisdiction with similar elements; or

(2) found to have neglected or abused a child as described in AS 47.35.019(c)(1).

* **Sec. 12.** AS 47.35.130 is repealed and reenacted to read:

Sec. 47.35.130. Grounds for a license suspension, revocation, or nonrenewal. (a) Except as provided in AS 47.35.140, the department shall revoke or decline to renew a license issued under this chapter if the criminal record review of the licensee who is a natural person or a person who is required to submit a release under AS 47.35.017(b)(5) reveals a conviction for an offense listed in AS 47.35.019(a) or (b).

(b) The department shall suspend a license issued under this chapter during any period of time that the licensee who is a natural person or a person who is required to submit a release under AS 47.35.017(b)(5) in connection with the license is charged by information or complaint with, or under indictment or presentment for, a crime listed in AS 47.35.019(a) or (b) or is the respondent in a civil proceeding related to the neglect or abuse of a child, unless the department finds that not suspending the license does not pose a threat to the department's ability to ensure the health, safety, or welfare of the children receiving care under this chapter.

(c) The department may revoke, or decline to renew, a license issued under this chapter on one or more of the following grounds:

- 1 (1) failure to submit a timely and complete renewal application;
- 2 (2) obtaining or attempting to obtain or retain a license under this
- 3 chapter by fraudulent means, by misrepresentation, or by submitting false information;
- 4 (3) failure to correct a violation noted in a report of investigation
- 5 provided under AS 47.35.105(c) or 47.35.110(b);
- 6 (4) failure to comply with a final administrative order issued by the
- 7 department under AS 47.35.120.
- 8 (5) if the licensee who is a natural person or a person required to
- 9 submit a release under AS 47.35.017(b)(5) is the respondent in a civil proceeding
- 10 regarding the abuse or neglect of a child;
- 11 (6) violation of this chapter or a regulation adopted under this chapter.

12 (d) A licensee may voluntarily relinquish the license or withdraw an

13 application for renewal.

14 * **Sec. 13.** AS 47.35 is amended by adding a new section to read:

15 **Sec. 47.35.140. Exception for continued operation.** Notwithstanding any

16 other provision of this chapter, the department may allow a person licensed under this

17 chapter, other than as a provisional licensee under AS 47.35.023, to continue operating

18 if an employee of that facility or other agency who is required to submit a release

19 under AS 47.35.017(b)(5) discloses an offense under AS 47.35.019 or 47.35.021 if the

20 facility or agency takes immediate action to ensure the health, safety, and welfare of

21 the children residing at that facility or other agency, including notice to the department

22 and removing the person with the conviction described in AS 47.35.019 or 47.35.021

23 from contact with children at the facility or other agency.

24 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to

25 read:

26 **TASK FORCE ON CHILD SERVICES.** (a) There is established in the legislative

27 branch the Task Force on Child Services to focus on public and governmental concerns about

28 whether there are sufficient criminal background checks conducted before individuals are

29 allowed to perform services relating to children.

30 (b) The Speaker of the House of Representatives shall appoint two members of the

31 House as voting members, one member from the majority caucus and one member from the

1 minority caucus. The President of the Senate shall appoint two members of the Senate as
 2 voting members, one member from the majority caucus and one member from the minority
 3 caucus. The president and the speaker shall jointly appoint five members of the public who
 4 are child service providers to be the other voting members of the task force. The
 5 commissioners of public safety, health and social services, community and economic
 6 development, and education and early development, or their designees, may serve on the task
 7 force as nonvoting members. The voting members of the task force shall select a voting
 8 member to chair the task force. The public members of the task force shall serve without
 9 compensation and are not entitled to per diem or travel expenses authorized for boards and
 10 commissions under AS 39.20.180.

11 (c) The task force

12 (1) may begin work immediately upon the appointment of its full voting
 13 membership and shall meet as frequently as the task force determines necessary to perform its
 14 work;

15 (2) shall hold public hearings and may perform research related to its work;

16 (3) may meet during the interim and vote by teleconference;

17 (4) shall report its written findings and give a copy of its proposed legislation
 18 and other recommendations to the legislature by the first day of the First Regular Session of
 19 the Twenty-Third Alaska State Legislature; and

20 (5) is terminated upon the convening of the First Regular Session of the
 21 Twenty-Third Alaska State Legislature.

22 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
 23 read:

24 TRANSITIONAL PROVISION; REGULATIONS. The Department of Health and
 25 Social Services may begin the process of developing and adopting regulations to implement
 26 this Act. A regulation adopted under this section takes effect under AS 44.62 (Administrative
 27 Procedure Act) but not before July 1, 2002.

28 * **Sec. 16.** Sections 1 - 13 of this Act take effect July 1, 2002.

29 * **Sec. 17.** Sections 14 and 15 of this Act take effect immediately under AS 01.10.070(c).