

SENATE BILL NO. 81

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/8/17

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to criminal and civil history requirements and a registry regarding
2 certain licenses, certifications, appeals, and authorizations by the Department of Health
3 and Social Services; and providing for an effective date."

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

5 * **Section 1.** AS 44.62.330(a)(41) is amended to read:

6 (41) Department of Health and Social Services relating to the civil
7 [CENTRALIZED] registry under AS 47.05.330 - 47.05.390;

8 * **Sec. 2.** AS 47.05.310(b) is amended to read:

9 (b) The department may not issue or renew a license or a certification for an
10 entity or an individual that is in violation of (a) of this section or that would be in
11 violation based on the information received as part of the application process.

12 * **Sec. 3.** AS 47.05.310(d) is amended to read:

13 (d) An entity or an individual shall provide to the department a release of
14 information authorization for a criminal history check under this section for each

[AN] individual who is not a recipient of services from the entity; **who is not in the custody of the department;** and, after the entity **applies for or** has been issued a license, license renewal, certification, or certification renewal by the department,

(1) who intends to become an owner of the entity, or an officer, director, partner, member, or principal of the business organization that owns the entity;

(2) whom the entity intends to hire or retain as the operator of the entity's business;

(3) whom the entity intends to hire or retain as an employee, independent contractor, or unsupervised volunteer of the entity; or

(4) who will be present in the entity or at the places of operation of **the** entity, and would have regular contact with individuals who receive services from the entity, but who is not a family member or visitor of an individual who receives services from the entity.

* **Sec. 4.** AS 47.05.310(e) is amended to read:

(e) An individual for whom a release of information authorization has been provided to the department shall submit the individual's fingerprints to the department, with the fee established under AS 12.62.160, for a report of criminal justice information under AS 12.62 and for submission by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. The Department of Public Safety shall provide the report of criminal justice information and the results of the national criminal history record check to the department for its use in considering an application for a license, license renewal, certification, or certification renewal, or in considering other approval or selection regarding an entity **or individual**, for compliance with the standards established in this section. [FOR PURPOSES OF OBTAINING ACCESS TO CRIMINAL JUSTICE INFORMATION MAINTAINED BY THE DEPARTMENT OF PUBLIC SAFETY UNDER AS 12.62, THE DEPARTMENT IS A CRIMINAL JUSTICE AGENCY CONDUCTING A CRIMINAL JUSTICE ACTIVITY.] The department may waive the requirement for fingerprint submission if an individual is unable to provide fingerprints due to a medical or physical condition that is documented by a licensed physician.

1 * **Sec. 5.** AS 47.05.310(f) is amended to read:

2 (f) The provisions of this section do not apply if the department grants an
3 exception from a requirement of (a) - (e) of this section under a regulation adopted by
4 the department, or if the department grants a variance under AS 47.05.360.

5 * **Sec. 6.** AS 47.05.310(h) is repealed and reenacted to read:

6 (h) For purposes of this section, in place of nonissuance or nonrenewal of a
7 license or certification, an entity or individual service provider that is not required to
8 be licensed or certified by the department or a person wishing to become an entity or
9 individual service provider that is not required to be licensed or certified by the
10 department is ineligible to receive a payment, in whole or in part, from the department
11 to provide for the health, safety, and welfare of persons who are served by the
12 programs administered by the department if the entity, individual service provider, or
13 person is in violation of this section or would be in violation of this section based on
14 information received by the department as part of an application, approval, or
15 selection process.

16 * **Sec. 7.** AS 47.05.310(i) is amended to read:

17 (i) For purposes of (b) and (c) of this section, in place of nonissuance or
18 nonrenewal of a license or certification, an entity or individual service provider that is
19 not required to be licensed or certified by the department or a person wishing to
20 become an entity or individual service provider that is not required to be licensed or
21 certified by the department is instead ineligible to receive a payment, in whole or in
22 part, from the department to provide for the health, safety, and welfare of persons who
23 are served by the programs administered by the department if the entity, individual
24 service provider, or person

25 (1) is in violation of (a) of this section or would be in violation based
26 on information received by the department as part of an application, approval, or
27 selection process;

28 (2) has been found by a court or agency of this or another jurisdiction
29 to have neglected, abused, or exploited a child or vulnerable adult under AS 47.10,
30 AS 47.24, or AS 47.62 or a substantially similar provision in another jurisdiction, or to
31 have committed medical assistance fraud under AS 47.05.210 or a substantially

1 similar provision in another jurisdiction; or

2 (3) appears on the civil [CENTRALIZED] registry established under
3 AS 47.05.330 or a similar registry of this state or another jurisdiction.

4 * **Sec. 8.** AS 47.05.310 is amended by adding a new subsection to read:

5 (l) A person is presumed to be acting in good faith and is immune from civil
6 or criminal liability if the person

7 (1) makes a report of medical assistance fraud, abuse, neglect, or
8 exploitation;

9 (2) submits information to the civil registry; or

10 (3) fails to hire or retain an employee or unsupervised volunteer
11 because the employee or unsupervised volunteer is included in the civil
12 [CENTRALIZED] registry.

13 * **Sec. 9.** AS 47.05 is amended by adding new sections to read:

14 **Sec. 47.05.325. Civil history; civil history check; compliance.** (a) The
15 department shall establish by regulation standards for issuance or renewal of a license
16 or certification for an individual or for an entity if an individual is applying for a
17 license, license renewal, certification, or certification renewal for the entity and that
18 individual

19 (1) is a biological or adoptive parent, guardian, custodian, or Indian
20 custodian of a child who is or was the subject of a child-in-need-of-aid petition under
21 AS 47.10 and if the individual had custody of the child at the time the child was the
22 subject of a petition; or

23 (2) is the subject of a finding described in AS 47.05.330.

24 (b) If an individual is the subject of a petition or finding described in (a) of
25 this section, or a substantially similar provision in another jurisdiction, the individual
26 may not own an entity or be an officer, director, partner, member, employee, or
27 principal of the business organization that owns an entity. In addition, an entity may
28 not

29 (1) allow that individual to operate the entity;

30 (2) hire or retain that individual at the entity as an employee,
31 independent contractor, or unsupervised volunteer of the entity;

1 (3) allow that individual to reside in the entity, unless that individual
2 receives services from the entity or is in the custody of the state; or

3 (4) allow that individual to be present in the entity if the individual
4 would have regular contact with individuals who receive services from the entity,
5 unless that individual is a family member of or visitor of an individual who receives
6 services from the entity.

7 (c) An entity or an individual shall provide to the department a release of
8 information authorization for a civil history check under this section for each
9 individual who is not a recipient of services from the entity; who is not in the custody
10 of the department; and, after the entity applies for or has been issued a license, license
11 renewal, certification, or certification renewal by the department,

12 (1) who intends to become an owner of the entity, or an officer,
13 director, partner, member, or principal of the business organization that owns the
14 entity;

15 (2) whom the entity intends to hire or retain as the operator of the
16 entity's business;

17 (3) whom the entity intends to hire or retain as an employee,
18 independent contractor, or unsupervised volunteer of the entity; or

19 (4) who will be present in the entity or at the places of operation of the
20 entity, and would have regular contact with individuals who receive services from the
21 entity, but who is not a family member or visitor of an individual who receives
22 services from the entity.

23 (d) For purposes of (a) and (b) of this section, in place of nonissuance or
24 nonrenewal of a license or certification, an entity or individual service provider that is
25 not required to be licensed or certified by the department or a person wishing to
26 become an entity or individual service provider that is not required to be licensed or
27 certified by the department is instead ineligible to receive a payment, in whole or in
28 part, from the department to provide for the health, safety, and welfare of persons who
29 are served by the programs administered by the department if the entity, individual
30 service provider, or person is in violation of this section or would be in violation of
31 this section based on information received by the department as part of an application,

1 approval, or selection process.

2 (e) The department shall by regulation identify other governmental agencies or
3 political subdivisions of the state that can request information that is required under
4 this section for a similar purpose.

5 (f) The provisions of this section do not apply if the department grants an
6 exception from the requirements of (a) or (b) of this section under a regulation adopted
7 by the department, or if the department grants a variance under AS 47.05.360.

8 (g) A person is presumed to be acting in good faith and is immune from civil
9 and criminal liability if the person

10 (1) makes a report of medical assistance fraud, abuse, neglect, or
11 exploitation;

12 (2) submits information to the civil registry; or

13 (3) fails to hire or retain an employee or unsupervised volunteer
14 because the employee or unsupervised volunteer is included in the civil registry.

15 (h) The department shall by regulation establish standards for the
16 consideration and use by the department, an entity, or an individual service provider of
17 the civil history of an individual obtained under this section.

18 * **Sec. 10.** AS 47.05.330 is repealed and reenacted to read:

19 **Sec. 47.05.330. Identification of civil registry; confidentiality.** (a) The
20 department shall by regulation identify each registry the department will review to
21 identify and list individuals who have been found to

22 (1) have committed abuse, neglect, undue influence, or exploitation, or
23 to have significantly impacted health, safety, or welfare under AS 47.32 or regulations
24 adopted under AS 47.32;

25 (2) have been sanctioned by the state medical assistance program;

26 (3) have a license revoked or suspended under AS 47.32 or the
27 licensee voluntarily relinquished a license as part of a settlement agreement in lieu of
28 an enforcement action to suspend or revoke a license;

29 (4) have a license denied under AS 47.32 or had a nonrenewal of a
30 current license;

31 (5) have a substantiated finding of child abuse or neglect under

AS 47.10 or AS 47.17;

(6) be a biological or adoptive parent, guardian, custodian, or Indian custodian who had custody of a child at the time the child was found to be a child in need of aid under AS 47.10; or

(7) have been terminated from employment with the department, or received a substantiated allegation, for assaultive, abusive, neglectful, or exploitive behavior or actions;

(8) have, in this state or another state or jurisdiction, had a professional license, certification, or similar professional designation revoked, suspended, or denied; or a request to renew a professional license, certification, or similar professional designation denied;

(9) have been identified by another state or jurisdiction as a person identified on a civil registry, or substantially similar registry, for reasons substantially similar to those in (1) - (8) of this subsection.

(b) The civil registry is not a public record under AS 40.25.110. Information contained in the registry is confidential and is not subject to public inspection and copying under AS 40.25.110 - 40.25.125. Information contained in the civil registry may be released to entities, individual service providers, and governmental agencies or political subdivisions of the state in a manner provided under this section and regulations adopted under this chapter.

* **Sec. 11.** AS 47.05.350 is amended to read:

Sec. 47.05.350. Use of information; immunity. An entity or individual service provider that obtains information about an employee under a criminal history check under AS 47.05.310 or a civil history check under AS 47.05.325 may use that information only as provided for in regulations adopted by the department under **this chapter** [AS 47.05.320]. However, if an entity or individual service provider reasonably relies on the information provided under the regulations adopted by the department to deny employment to an individual who was selected for hire as an employee, including during a period of provisional employment, the entity or individual service provider is not liable in an action brought by the individual based on the employment determination resulting from the information.

1 * **Sec. 12.** AS 47.05 is amended by adding a new section to read:

2 **Sec. 47.05.360. Variance request; final decision.** (a) An individual or entity
3 subject to the provisions of AS 47.05.310 or 47.05.325 may request a variance from
4 the provisions of AS 47.05.310 or 47.05.325 under procedures established by the
5 department by regulation. If the request for a variance is denied, the individual or
6 entity may, not later than 30 days after the department's denial, seek reconsideration
7 by the commissioner. A request for a variance may include a request that the
8 department issue a written explanation of incorrect information contained in the civil
9 registry under AS 45.05.330.

10 (b) A determination under (a) of this section is a final agency decision for
11 purposes of appeal to the superior court.

12 * **Sec. 13.** AS 47.05.390(6) is amended to read:

13 (6) "entity" means an entity listed in AS 47.32.010(b) or an individual
14 service provider listed in AS 47.05.300 and includes an owner, officer, director,
15 member, or partner of the entity;

16 * **Sec. 14.** AS 47.17.040 is amended to read:

17 **Sec. 47.17.040. Child protection [CENTRAL] registry; confidentiality.** (a)
18 The department shall maintain a child protection [CENTRAL] registry of all
19 investigation reports, including, substantiated findings under AS 47.10 or AS 47.17
20 [BUT NOT OF THE REPORTS OF HARM].

21 (b) Investigation reports and reports of harm filed under this chapter are
22 considered confidential and are not subject to public inspection and copying under
23 AS 40.25.110 and 40.25.120. However, in accordance with department regulations,
24 investigation reports, including substantiated findings under AS 47.10 or AS 47.17,
25 may be used by appropriate governmental agencies with child-protection functions,
26 inside and outside the state, in connection with investigations or judicial proceedings
27 involving child abuse, neglect, or custody and in conjunction with licensing action
28 under AS 47.32 or a similar statute in another state. A person [,] not acting in
29 accordance with department regulations [,] who, with criminal negligence, makes
30 public information contained in confidential reports is guilty of a class B
31 misdemeanor.

1 * **Sec. 15.** AS 47.17.040 is amended by adding new subsections to read:

2 (c) Before a substantiated finding may be placed on the child protection
3 registry under AS 47.17.040 and provided as part of a civil history check under
4 AS 47.05.325, the department must provide the applicant notice of the finding and
5 provide the opportunity for the applicant to appeal the finding. The department shall
6 adopt regulations to implement this section.

7 (d) In this section,

8 (1) "governmental agency" includes tribes or tribal organizations
9 conducting child protection functions;

10 (2) "investigations or judicial proceedings" means any governmental
11 agency, including school districts or educational instructors, that provides services
12 related to the health, safety, and welfare of children.

13 * **Sec. 16.** AS 47.32.010(c) is amended to read:

14 (c) The provisions of AS 47.05.300 - 47.05.390, regarding criminal history,
15 criminal history checks, criminal history use standards, and a civil [CENTRALIZED]
16 registry, apply to entities listed in (b) of this section, as provided in AS 47.05.300.

17 * **Sec. 17.** AS 47.32.070 is amended by adding a new subsection to read:

18 (c) In considering whether to deny a license or to place a condition on a
19 license, the department shall consider the licensing history of the applicant, including
20 any enforcement action under this chapter.

21 * **Sec. 18.** AS 47.32.090 is amended by adding a new subsection to read:

22 (d) The department may investigate an employee, contractor, or unsupervised
23 volunteer of a licensed entity and may substantiate that the individual engaged in
24 conduct that would significantly impact the health, safety, and welfare of a resident in
25 care. If the conduct is substantiated against an employee, contractor, or unsupervised
26 volunteer, the department shall issue a notice of the finding and the person shall be
27 placed on the civil registry under AS 47.05.330. Before a substantiated finding against
28 an employee, contractor, or unsupervised volunteer may be placed on the civil registry
29 and provided as part of a check under AS 47.05.325, the department shall provide the
30 applicant notice of the finding and the ability to appeal the finding. The department
31 shall adopt regulations to implement this section. For the purposes of this section

1 "unsupervised volunteer" includes an individual placed in a facility for training,
2 educational, or internship purposes.

3 * **Sec. 19.** AS 47.32.150(b) is amended to read:

4 (b) Upon receipt of a timely request for a hearing by an entity regarding an
5 enforcement action under AS 47.05.310, 47.32.070 or 47.32.140(d)(1), (2), (4), (8),
6 (10), (11), (12), or **(f)** [(13)], the department shall conduct a hearing in front of an
7 officer appointed by the commissioner. A hearing under this subsection may be
8 conducted on the record, in an informal manner, and may not be conducted under
9 AS 44.62 or AS 44.64. The appointed hearing officer may be a state employee.

10 * **Sec. 20.** AS 47.32.180 is amended by adding a new subsection to read:

11 (c) Notwithstanding any other provision of law, if a law enforcement agency
12 is investigating a crime that is also the subject of a licensing investigation, the
13 department may share all information with the law enforcement agency upon request.

14 * **Sec. 21.** AS 47.32.190 is amended to read:

15 **Sec. 47.32.190. Access to information.** Notwithstanding any contrary
16 provision of law, the divisions of the department assigned **to implement this chapter**
17 [PUBLIC HEALTH AND PUBLIC ASSISTANCE FUNCTIONS] shall have access
18 to any information compiled or retained by other divisions within the department,
19 regardless of the nature of the information or whether the information is considered
20 confidential, in order to assist in administering the provisions of this chapter.

21 * **Sec. 22.** AS 47.05.310(c), 47.05.390(1), 47.05.390(2), 47.05.390(3); and
22 AS 47.32.140(d)(13) are repealed.

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

25 APPLICABILITY. This Act applies whether the criminal or civil conduct identified
26 under AS 47.05.310, 47.05.325, or 47.05.330 occurred before, on, or after the effective date
27 of this Act.

28 * **Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 REVISOR'S INSTRUCTION. The revisor of statutes is requested to change the

31 (1) heading of art. 3 of AS 47.05 from "Criminal History; Registry" to

- 1 "Criminal and Civil History; Registry"; and
- 2 (2) catch line for AS 47.32.140 from "Enforcement actions" to "Notice; plan
- 3 of correction; allegation of compliance; enforcement action."
- 4 * **Sec. 25.** This Act takes effect immediately under AS 01.10.070(c).