

30-GH1676J
Glover
2/15/18

CS FOR HOUSE BILL NO. 162()

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act relating to criminal and civil history record checks and requirements; relating to licenses, certifications, appeals, and authorizations by the Department of Health and Social Services; relating to child protection information; and providing for an effective date."

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

*** Section 1.** AS 12.62.400(a) is amended by adding a new paragraph to read:

(19) licensure, license renewal, certification, certification renewal, or payment from the Department of Health and Social Services of an individual and an entity subject to the requirements for a criminal history check under AS 47.05.310, including

(A) a public home care provider described in AS 47.05.017;

(B) a provider of home and community-based waiver services financed under AS 47.07.030(c);

(C) a case manager to coordinate community mental health

services under AS 47.30.530;

(D) an entity listed in AS 47.32.010(b), including an owner, officer, director, member, partner, employee, volunteer, or contractor of an entity; or

(E) an individual or entity not described in (A) - (D) of this paragraph that is required by statute or regulation to be licensed or certified by the Department of Health and Social Services or that is eligible to receive payments, in whole or in part, from the Department of Health and Social Services to provide for the health, safety, and welfare of persons who are served by the programs administered by the Department of Health and Social Services.

* **Sec. 2.** AS 44.62.330(a)(41) is amended to read:

(41) Department of Health and Social Services relating to the civil history databases [CENTRALIZED REGISTRY] under AS 47.05.330 - 47.05.390;

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

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

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

(d) An entity or an individual shall provide to the department a release of 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. 5.** 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.

* **Sec. 6.** AS 47.05.310(f) is amended to read:

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

* **Sec. 7.** AS 47.05.310(h) is repealed and reenacted to read:

(h) For purposes of this section, in place of nonissuance or nonrenewal of a license or certification, an entity or individual that is not required to be licensed or certified by the department or a person wishing to become an entity or individual that is not required to be licensed or certified by the department is ineligible to receive a payment, in whole or in part, from the department to provide for the health, safety, and

welfare of persons who are served by the programs administered by the department if the entity or individual is in violation of this section or would be in violation of this section based on information received by the department as part of an application, approval, or selection process.

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

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

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

(2) submits information to a civil history database identified under AS 47.05.330; or

(3) fails to hire or retain an employee or unsupervised volunteer because the employee or unsupervised volunteer is included in a civil history database identified under AS 47.05.330.

* **Sec. 9.** AS 47.05 is amended by adding a new section to read:

Sec. 47.05.325. Civil history; civil history check; compliance. (a) The department shall establish by regulation civil history standards for denial of issuance or renewal of a license or certification for an individual or for an entity if the individual who is applying for a license, license renewal, certification, or certification renewal is

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

(2) the subject of a finding or circumstance described in AS 47.05.330(a).

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

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

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

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

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

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

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

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

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

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

26 (d) For purposes of this section, in place of nonissuance or nonrenewal of a
27 license or certification, an entity or individual that is not required to be licensed or
28 certified by the department or a person wishing to become an entity or individual that
29 is not required to be licensed or certified by the department is instead ineligible to
30 receive a payment, in whole or in part, from the department to provide for the health,
31 safety, and welfare of persons who are served by the programs administered by the

department if the entity or individual is in violation of this section or would be in violation of this section based on information received by the department as part of an application, approval, or selection process.

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

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

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

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

(2) submits information to a civil history database identified under AS 47.05.330; or

(3) fails to hire or retain an employee or unsupervised volunteer because the employee or unsupervised volunteer is included in a civil history database identified under AS 47.05.330.

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

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

Sec. 47.05.330. Identification of civil history databases for a civil history check; confidentiality. (a) The department shall by regulation identify each database the department will review when conducting a civil history check under AS 47.05.325 to identify each individual

(1) whom a court or the department has found

(A) to have committed abuse, neglect, undue influence, or exploitation of a vulnerable adult;

(B) under AS 47.32 or regulations adopted under AS 47.32, to have significantly adversely affected the health, safety, or welfare of an

individual who is receiving a service from an entity licensed under AS 47.32; a finding described in this subparagraph includes a decision to revoke, suspend, or deny a license or license renewal, or the relinquishment of a license as part of a settlement agreement;

(2) who has been subject to criminal or civil penalties for a violation of AS 09.58, AS 47.05, AS 47.07, AS 47.08, or regulations adopted under AS 09.58, AS 47.05, AS 47.07, or AS 47.08;

(3) about whom the department or a court has made a substantiated finding of child abuse or neglect under AS 47.10 or AS 47.14;

(4) who was a biological or adoptive parent, guardian, custodian, or Indian custodian of a child at the time the child was the subject of a child-in-need-of-aid petition under AS 47.10;

(5) who, in the course of employment with the state, has been terminated from employment or has had an allegation of assaultive, abusive, neglectful, or exploitive behavior or actions substantiated;

(6) who, in this state or another jurisdiction, for reasons related to abuse, neglect, undue influence, exploitation, or other reasons that are inconsistent with standards for the protection of public health, safety, or welfare, has had a professional license, certification, or similar professional designation revoked, suspended, or denied, or has had a request for renewal of a professional license, certification, or similar professional designation denied;

(7) whom another state or jurisdiction has identified on a civil registry or database substantially similar to the databases identified under this section for reasons substantially similar to the reasons identified in (1) - (6) of this subsection.

(b) The information gathered under this section is not a public record under AS 40.25.110 and is not subject to public inspection or copying under AS 40.25.110 - 40.25.125. However, information gathered under this section may be released to an entity, an individual who is included in a database, a governmental agency, and a political subdivision 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:

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

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

13 **Sec. 47.05.360. Variance request; final decision.** (a) An individual or entity
14 subject to the provisions of AS 47.05.310 or 47.05.325 may request a variance from
15 the provisions of AS 47.05.310 or 47.05.325 under procedures established by the
16 department by regulation. The procedures must include the establishment of a variance
17 committee to consider requests for variances. A request for a variance may include a
18 request that the department issue a written explanation of incorrect information
19 contained in the civil history databases identified under AS 45.05.330.

20 (b) An individual or entity that is dissatisfied with a decision by a variance
21 committee may, not more than 30 days after the committee issues the decision, apply
22 to the commissioner for reconsideration of the decision. A determination by the
23 commissioner is a final agency decision for purposes of appeal to the superior court.

24 (c) The department shall disclose information and records pertaining to a child
25 subject to AS 47.10 or AS 47.17 to a variance committee as provided under
26 AS 47.10.093(b).

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

28 (6) "entity" means an entity listed in AS 47.32.010(b) **or an individual**
29 **service provider as described in AS 47.05.300** and includes an owner, officer,
30 director, member, or partner of the entity;

31 * **Sec. 14.** AS 47.10.093(b) is amended to read:

1 (b) A state or municipal agency or employee shall disclose appropriate
2 confidential information regarding a case to

3 (1) a guardian ad litem appointed by the court;

4 (2) a person or an agency requested by the department or the child's
5 legal custodian to provide consultation or services for a child who is subject to the
6 jurisdiction of the court under AS 47.10.010 as necessary to enable the provision of
7 the consultation or services;

8 (3) an out-of-home care provider as necessary to enable the out-of-
9 home care provider to provide appropriate care to the child, to protect the safety of the
10 child, and to protect the safety and property of family members and visitors of the out-
11 of-home care provider;

12 (4) a school official as necessary to enable the school to provide
13 appropriate counseling and support services to a child who is the subject of the case, to
14 protect the safety of the child, and to protect the safety of school students and staff;

15 (5) a governmental agency as necessary to obtain that agency's
16 assistance for the department in its investigation or to obtain physical custody of a
17 child;

18 (6) a law enforcement agency of this state or another jurisdiction as
19 necessary for the protection of any child or for actions by that agency to protect the
20 public safety;

21 (7) a member of a multidisciplinary child protection team created
22 under AS 47.14.300 as necessary for the performance of the member's duties;

23 (8) the state medical examiner under AS 12.65 as necessary for the
24 performance of the duties of the state medical examiner;

25 (9) a person who has made a report of harm as required by
26 AS 47.17.020 to inform the person that the investigation was completed and of action
27 taken to protect the child who was the subject of the report;

28 (10) the child support services agency established in AS 25.27.010 as
29 necessary to establish and collect child support for a child who is a child in need of aid
30 under this chapter;

31 (11) a parent, guardian, or caregiver of a child or an entity responsible

for ensuring the safety of children as necessary to protect the safety of a child;

(12) a review panel, including a variance committee established under AS 47.05.360, established by the department for the purpose of reviewing the actions taken by the department in a specific case;

(13) the University of Alaska under the Alaska higher education savings program for children established under AS 47.14.400, but only to the extent that the information is necessary to support the program and only if the information released is maintained as a confidential record by the University of Alaska;

(14) a child placement agency licensed under AS 47.32 as necessary to provide services for a child who is the subject of the case; and

(15) a state or municipal agency of this state or another jurisdiction that is responsible for delinquent minors, as may be necessary for the administration of services, protection, rehabilitation, or supervision of a child or for actions by the agency to protect the public safety; however, a court may review an objection made to a disclosure under this paragraph; the person objecting to the disclosure bears the burden of establishing by a preponderance of the evidence that disclosure is not in the child's best interest.

* **Sec. 15.** AS 47.17.040 is amended to read:

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

(b) Investigation reports and reports of harm filed under this chapter are considered confidential and are not subject to public inspection and copying under AS 40.25.110 and 40.25.120. However, in accordance with department regulations, investigation reports, including substantiated findings under AS 47.10 or AS 47.17, may be used by appropriate governmental agencies with child-protection functions, inside and outside the state, in connection with investigations or judicial proceedings involving child abuse, neglect, or custody and in conjunction with licensing action under AS 47.32 or a similar statute in another state. A person [,] not acting in accordance with department regulations [,] who₂ with criminal negligence₂ makes

public information contained in confidential reports is guilty of a class B misdemeanor.

* **Sec. 16.** AS 47.17.040 is amended by adding new subsections to read:

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

(d) In this section, "governmental agency" includes a tribe or tribal organization conducting child protection functions and a school district;

* **Sec. 17.** AS 47.32.010(c) is amended to read:

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

* **Sec. 18.** AS 47.32.070 is amended by adding a new subsection to read:

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

* **Sec. 19.** AS 47.32.090 is amended by adding a new subsection to read:

(d) The department may investigate an employee, contractor, or volunteer of a licensed entity and may substantiate that the individual engaged in conduct that would significantly affect the health, safety, or welfare of an individual who is receiving a service from the entity. If the conduct is substantiated against an employee, contractor, or volunteer, the department shall issue a notice of the finding to the person and include the person in the appropriate civil history database identified under AS 47.05.330. Before a substantiated finding against an employee, contractor, or volunteer may be included in a civil history database and provided as part of a check under AS 47.05.325, the department shall provide the applicant notice of the finding and an opportunity to appeal the finding. The department shall adopt regulations to implement this subsection. For the purposes of this subsection, "volunteer" includes an individual placed in a facility for training, educational, or internship purposes.

* **Sec. 20.** AS 47.32.140(d) is amended to read:

(d) The department may take one or more of the following enforcement actions under this section:

(1) delivery of a warning notice to the licensed entity and to any additional person who was the subject of the investigation or inspection;

(2) modification of the term or scope of the entity's existing license, including changing a biennial license to a provisional license or adding a condition to the license;

(3) suspension of the entity's operations for a period of time set by the department;

(4) suspension of or a ban on the entity's provision of services to individuals not already receiving services from the entity for a period of time set by the department;

(5) nonrenewal of the entity's license;

(6) revocation of the entity's license or, if the entity is not licensed under this chapter, revocation of the entity's ability to become licensed under this chapter;

(7) issuance of an order requiring closure, immediate or otherwise, of the entity regardless of whether the entity is licensed or unlicensed;

(8) denial of payments under AS 47.07 for the entity's provision of services to an individual not already receiving services from the entity;

(9) assumption of either temporary or permanent management of the entity or pursuit of a court-ordered receiver for the entity;

(10) reduction of the number of individuals receiving services from the entity under the license;

(11) imposition of a penalty authorized under law;

(12) inclusion in a civil history database identified [THE REGISTRY ESTABLISHED] under AS 47.05.330 [;

(13) REQUIREMENT THAT THE ENTITY PREPARE AND SUBMIT A PLAN OF CORRECTION].

* **Sec. 21.** AS 47.32.150(b) is amended to read:

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

* **Sec. 22.** AS 47.32.180 is amended by adding a new subsection to read:

(c) Notwithstanding any other provision of law, the department may, upon request, share information with a law enforcement agency that is investigating a crime that is also the subject of a licensing investigation obtained during a current investigation.

* **Sec. 23.** AS 47.32.190 is amended to read:

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

* **Sec. 24.** AS 47.05.310(c), 47.05.310(i), 47.05.390(1), 47.05.390(2), and 47.05.390(3) are repealed.

* **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to an application or request for licensure, license renewal, certification, certification renewal, or payment submitted to the Department of Health and Social Services by an entity or individual subject to AS 47.05.300 - 47.05.390, as amended by secs. 3 - 10 of this Act, on or after the effective date of this Act.

* **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to read:

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

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

1 "Criminal and Civil History"; and

2 (2) catch line of AS 47.32.140 from "Enforcement actions" to "Notice of
3 violation; compliance, and enforcement proceedings."

4 * **Sec. 27.** This Act takes effect immediately under AS 01.10.070(c).