

HOUSE CS FOR CS FOR SENATE BILL NO. 81(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/27/18

Referred: Rules

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

A BILL

FOR AN ACT ENTITLED

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

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

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

11 (A) a public home care provider described in AS 47.05.017;
12 (B) a provider of home and community-based waiver services
13 financed under AS 47.07.030(c);
14 (C) a case manager to coordinate community mental health

1 services under AS 47.30.530;

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

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

12 * **Sec. 2.** AS 17.38.200(a) is amended to read:

13 (a) Each application or renewal application for a registration to operate a
 14 marijuana establishment shall be submitted to the board. A renewal application may be
 15 submitted up to 90 days before the expiration of the marijuana establishment's
 16 registration. When filing an application for a new registration under this subsection,
 17 the applicant shall submit the applicant's fingerprints and the fees required by the
 18 Department of Public Safety under AS 12.62.160 for criminal justice information and
 19 a national criminal history record check. When filing an application for renewal of
 20 registration, an applicant shall submit the applicant's fingerprints and the fees
 21 required by the Department of Public Safety under AS 12.62.160 for criminal
 22 justice information and a national criminal history record check every five years.
 23 The board shall forward the fingerprints and fees to the Department of Public Safety to
 24 obtain a report of criminal justice information under AS 12.62 and a national criminal
 25 history record check under AS 12.62.400.

26 * **Sec. 3.** AS 44.62.330(a)(41) is amended to read:

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

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

30 (b) The department may not issue or renew a license or a certification for an
 31 entity or an individual that is in violation of (a) of this section or that would be in

1 violation based on the information received as part of the application process.

2 * **Sec. 5.** AS 47.05.310(d) is amended to read:

3 (d) An entity or an individual shall provide to the department a release of
 4 information authorization for a criminal history check under this section for each
 5 [AN] individual who is not a recipient of services from the entity, who is not in the
 6 custody of the department, and, after the entity applies for or has been issued a
 7 license, license renewal, certification, or certification renewal by the department,

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

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

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

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

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

20 (e) An individual for whom a release of information authorization has been
 21 provided to the department shall submit the individual's fingerprints to the department,
 22 with the fee established under AS 12.62.160, for a report of criminal justice
 23 information under AS 12.62 and for submission by the Department of Public Safety to
 24 the Federal Bureau of Investigation for a national criminal history record check. The
 25 Department of Public Safety shall provide the report of criminal justice information
 26 and the results of the national criminal history record check to the department for its
 27 use in considering an application for a license, license renewal, certification, or
 28 certification renewal, or in considering other approval or selection regarding an entity
 29 or individual, for compliance with the standards established in this section. [FOR
 30 PURPOSES OF OBTAINING ACCESS TO CRIMINAL JUSTICE INFORMATION
 31 MAINTAINED BY THE DEPARTMENT OF PUBLIC SAFETY UNDER AS 12.62,

1 THE DEPARTMENT IS A CRIMINAL JUSTICE AGENCY CONDUCTING A
 2 CRIMINAL JUSTICE ACTIVITY.] The department may waive the requirement for
 3 fingerprint submission if an individual is unable to provide fingerprints due to a
 4 medical or physical condition that is documented by a licensed physician.

5 * **Sec. 7.** AS 47.05.310(f) is amended to read:

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

9 * **Sec. 8.** AS 47.05.310(h) is repealed and reenacted to read:

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

19 * **Sec. 9.** AS 47.05.310 is amended by adding a new subsection to read:

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

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

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

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

29 * **Sec. 10.** AS 47.05 is amended by adding a new section to read:

30 **Sec. 47.05.325. Civil history; civil history check; compliance.** (a) The
 31 department shall establish by regulation civil history standards for denial of issuance

1 or renewal of a license or certification for an individual or for an entity if the
2 individual who is applying for a license, license renewal, certification, or certification
3 renewal is

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

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

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

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

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

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

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

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

29 (1) who intends to become an owner of the entity, or an officer,
30 director, partner, member, or principal of the business organization that owns the
31 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.

(d) 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 instead 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.

(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

1 identified under AS 47.05.330.

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

5 * **Sec. 11.** AS 47.05.330 is repealed and reenacted to read:

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

10 (1) whom a court or the department has found

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

13 (B) under AS 47.32 or regulations adopted under AS 47.32, to
 14 have significantly adversely affected the health, safety, or welfare of an
 15 individual who is receiving a service from an entity licensed under AS 47.32; a
 16 finding described in this subparagraph includes a decision to revoke, suspend,
 17 or deny a license or license renewal, or the relinquishment of a license as part
 18 of a settlement agreement;

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

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

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

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

30 (6) who, in this state or another jurisdiction, for reasons related to
 31 abuse, neglect, undue influence, exploitation, or other reasons that are inconsistent

1 with standards for the protection of public health, safety, or welfare, has had a
 2 professional license, certification, or similar professional designation revoked,
 3 suspended, or denied, or has had a request for renewal of a professional license,
 4 certification, or similar professional designation denied;

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

8 (b) The information gathered under this section is not a public record under
 9 AS 40.25.110 and is not subject to public inspection or copying under AS 40.25.110 -
 10 40.25.125. However, information gathered under this section may be released to an
 11 entity, an individual who is included in a database, a governmental agency, and a
 12 political subdivision of the state in a manner provided under this section and
 13 regulations adopted under this chapter.

14 * **Sec. 12.** AS 47.05.350 is amended to read:

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

26 * **Sec. 13.** AS 47.05 is amended by adding a new section to read:

27 **Sec. 47.05.360. Variance request; final decision.** (a) An individual or entity
 28 subject to the provisions of AS 47.05.310 or 47.05.325 may request a variance from
 29 the provisions of AS 47.05.310 or 47.05.325 under procedures established by the
 30 department by regulation. The procedures must include the establishment of a variance
 31 committee to consider requests for variances. A request for a variance may include a

1 request that the department issue a written explanation of incorrect information
 2 contained in the civil history databases identified under AS 45.05.330.

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

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

10 * **Sec. 14.** AS 47.05.390(6) is amended to read:

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

14 * **Sec. 15.** AS 47.10.093(b) is amended to read:

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

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

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

22 (3) an out-of-home care provider as necessary to enable the out-of-
 23 home care provider to provide appropriate care to the child, to protect the safety of the
 24 child, and to protect the safety and property of family members and visitors of the out-
 25 of-home care provider;

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

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

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

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

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

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

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

(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.

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

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

6 (b) Investigation reports and reports of harm filed under this chapter are
 7 considered confidential and are not subject to public inspection and copying under
 8 AS 40.25.110 and 40.25.120. However, in accordance with department regulations,
 9 investigation reports, including substantiated findings under AS 47.10 or AS 47.17,
 10 may be used by appropriate governmental agencies with child-protection functions,
 11 inside and outside the state, in connection with investigations or judicial proceedings
 12 involving child abuse, neglect, or custody and in conjunction with licensing action
 13 under AS 47.32 or a similar statute in another state. A person [,] not acting in
 14 accordance with department regulations [,] who, with criminal negligence, makes
 15 public information contained in confidential reports is guilty of a class B
 16 misdemeanor.

17 * **Sec. 17.** AS 47.17.040 is amended by adding new subsections to read:

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

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

24 * **Sec. 18.** AS 47.32.010(c) is amended to read:

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

29 * **Sec. 19.** AS 47.32.070 is amended by adding a new subsection to read:

30 (c) In considering whether to deny an application for or place a condition on a
 31 license, the department shall consider the licensing history of the applicant, including

1 any enforcement action under this chapter.

2 * **Sec. 20.** AS 47.32.090 is amended by adding a new subsection to read:

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

15 * **Sec. 21.** AS 47.32.140(d) is amended to read:

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

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

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

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

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

28 (5) nonrenewal of the entity's license;

29 (6) revocation of the entity's license or, if the entity is not licensed
 30 under this chapter, revocation of the entity's ability to become licensed under this
 31 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. 22.** 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. 23.** 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. 24.** 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

1 considered confidential, in order to assist in administering the provisions of this
2 chapter.

3 * **Sec. 25.** AS 47.05.310(c), 47.05.310(i), 47.05.390(1), 47.05.390(2), and 47.05.390(3) are
4 repealed.

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

7 APPLICABILITY. This Act applies to an application or request for licensure, license
8 renewal, certification, certification renewal, or payment submitted to the Department of
9 Health and Social Services by an entity or individual subject to AS 47.05.300 - 47.05.390, as
10 amended by secs. 4 - 11 of this Act, on or after the effective date of this Act.

11 * **Sec. 27.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 REVISOR'S INSTRUCTION. The revisor of statutes is requested to change the
14 (1) heading of art. 3 of AS 47.05 from "Criminal History; Registry" to
15 "Criminal and Civil History"; and

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

18 * **Sec. 28.** This Act takes effect immediately under AS 01.10.070(c).