CS FOR HOUSE BILL NO. 124(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 4/19/01
Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES HALCRO, Hayes, Dyson, Stevens, Kohring

A BILL

FOR AN ACT ENTITLED

"An Act relating to criminal background checks that must be performed by nursing facilities and assisted living homes; prohibiting nursing facilities from employing persons with certain criminal backgrounds; prohibiting assisted living homes from employing or allowing the residence of persons with certain criminal backgrounds, with exceptions; relating to liability for acts or omissions in the licensing, monitoring, or supervision of assisted living homes; relating to assisted living homes and nursing facilities; and providing for an effective date."

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

*** Section 1.** AS 18.20.302 is amended to read:

Sec. 18.20.302. Criminal background check [FOR EMPLOYEES]. (a) A nursing facility may not employ an individual**, including an administrator** [IN A PAID POSITION THAT THE DEPARTMENT HAS DETERMINED IS COVERED BY THIS SECTION, ACCORDING TO ITS REGULATIONS], unless the individual,

before beginning employment,

(1) provides to the facility a sworn statement as to whether the individual has been convicted of an offense described in (c) of this section **or of an offense in which the victim was a resident of a nursing facility or assisted living home at the time of the offense; in this paragraph, "assisted living home" means an entity required to be licensed under AS 47.33 or an entity located outside the state that would be required to be licensed under AS 47.33 if it were located inside the state**;

(2) provides to the facility the results of a name-check criminal background investigation that was completed by the Department of Public Safety no more than 30 days before the individual **begins employment** [IS HIRED]; and

(3) submits to the facility two full sets of the individual's fingerprints.

(b) Within 30 days after employing **an individual** [AN INDIVIDUAL IN A PAID POSITION], a nursing facility shall submit to the Department of Public Safety the fingerprints obtained under (a)(3) of this section. The Department of Public Safety shall submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check **and shall provide the results to the Department of Health and Social Services**. When the results are received, the **Department of Health and Social Services** [DEPARTMENT] shall advise the facility of

[(1) THE DATE ON WHICH THE FINGERPRINT BACKGROUND CHECK WAS COMPLETED; AND

(2)] whether the check shows that the individual has committed an offense described in (c) of this section.

(c) A nursing facility may not **employ an individual** [HIRE OR RETAIN AN EMPLOYEE] who has been convicted

(1) of an unclassified felony, a class A felony, or an offense under the laws of another jurisdiction that would have been, if it had been committed in this state at that time, an unclassified felony or class A felony;

(2) under AS 11.51.200 or 11.51.210 or of a criminal offense in another jurisdiction with elements substantially similar to the elements of an offense under AS 11.51.200 or 11.51.210;

(3) within the previous 10 years, of a class B felony or an offense under the laws of another jurisdiction that would have been, if it had been committed in this state at that time, a class B felony;

(4) within the previous five years, of a class C felony, an offense under AS 11.56.840 or AS 11.61.130, or an offense under the laws of another jurisdiction that would have been, if it had been committed in this state at that time, a class C felony or an offense under AS 11.56.840 or AS 11.61.130; or

(5) of an offense listed in the department's regulations as being an offense **for which an individual should be prohibited access to a nursing facility** [COVERED BY THIS SECTION].

*** Sec. 2.** AS 18.20.302 is amended by adding a new subsection to read:

(d) A nursing facility administrator shall provide safeguards to ensure that contractors, volunteers, new employees who were nonresidents of the state at the time they were initially hired, and other persons entering the nursing facility do not abuse, neglect, or exploit a resident of the facility.

*** Sec. 3.** AS 47.33.010(a) is amended to read:

(a) Except as provided in (b) of this section, this chapter applies to residential facilities operated in the state that serve three or more adults who are not related to the owner of the facility by blood or marriage **and to residential facilities in the state that receive state or federal payment for services, regardless of the number of adults that the facility serves. The department shall consider a facility as a residential facility if the facility** [BY]

(1) **provides** [PROVIDING] housing and food service to its residents; and

(2) **provides** [PROVIDING] or **obtains** [OBTAINING], or **offers** [OFFERING] to provide or obtain**,** for its residents

(A) assistance with the activities of daily living;

(B) personal assistance; or

(C) a combination of services under (A) and (B) of this paragraph.

*** Sec. 4.** AS 47.33.100 is amended to read:

Sec. 47.33.100. Criminal background checks [CHECK FOR EMPLOYEES]. (a) An assisted living home may not employ **or allow to reside in the home** an individual**, including an administrator** [IN A PAID POSITION THAT THE APPLICABLE LICENSING AGENCY HAS DETERMINED IS COVERED BY THIS SECTION, ACCORDING TO ITS REGULATIONS], unless the individual, before beginning employment **or residence in the home**,

(1) provides to the home a sworn statement as to whether the individual has been convicted of an offense described in (c) of this section **or of an offense in which the victim was a resident of a nursing facility or assisted living home at the time of the offense; in this paragraph,**

(A) "assisted living home" means an entity required to be licensed under this chapter or an entity located outside the state that would be required to be licensed under this chapter if it were located in the state;

(B) "nursing facility" has the meaning given in AS 18.20.390; [AND]

(2) provides to the home the results of a name-check criminal background investigation that was completed by the Department of Public Safety no more than 30 days before the individual **begins employment or residence in the home** [IS HIRED]; and

(3) submits to the home two full sets of the individual's fingerprints.

(b) Within 30 days after employing **or allowing an individual to reside in the home** [AN INDIVIDUAL IN A PAID POSITION], an assisted living home shall submit to the Department of Public Safety the fingerprints obtained under (a)(3) of this section. The Department of Public Safety shall submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check **and shall provide the results to the applicable licensing agency**. When the results are received, the **applicable licensing agency** [DEPARTMENT] shall advise the home of

[(1) THE DATE ON WHICH THE FINGERPRINT BACKGROUND CHECK WAS COMPLETED; AND

(2)] whether the check shows that the individual has committed an

offense described in (c) of this section.

(c) An assisted living home may not **employ or allow to reside in the home an individual** [HIRE OR RETAIN AN EMPLOYEE] who has been convicted

(1) of an unclassified felony, a class A felony, or an offense under the laws of another jurisdiction that would have been, if it had been committed in this state at that time, an unclassified felony or class A felony;

(2) under AS 11.51.200 or 11.51.210 or of a criminal offense in another jurisdiction with elements substantially similar to the elements of an offense under AS 11.51.200 or 11.51.210;

(3) within the previous 10 years, of a class B felony or an offense under the laws of another jurisdiction that would have been, if it had been committed in this state at that time, a class B felony;

(4) within the previous five years, of a class C felony, an offense under AS 11.56.840 or AS 11.61.130, or an offense under the laws of another jurisdiction that would have been, if it had been committed in this state at that time, a class C felony or an offense under AS 11.56.840 or AS 11.61.130; or

(5) of an offense listed in the regulations of the applicable licensing agency as being an offense **for which an individual should be prohibited access to an assisted living home; in this paragraph, "assisted living home" has the meaning given in (a)(1)(A) of** [COVERED BY] this section.

*** Sec. 5.** AS 47.33.100 is amended by adding new subsections to read:

(d) This section does not apply to an individual

(1) who is a resident of the assisted living home and is receiving residential services from the home under a contract made under this chapter;

(2) residing in the assisted living home who is under 16 years of age; or

(3) who is not a care provider and who is

(A) residing in the home for less than 14 days in a calendar year; and

(B) in the close physical proximity of the staff of the assisted living home while visiting.

(e) The administrator of an assisted living home shall provide safeguards to ensure that contractors, volunteers, new employees who were nonresidents of the state at the time they were initially hired, and other persons entering the home do not abuse, neglect, or exploit a resident of the home.

*** Sec. 6.** AS 47.33.300(a) is amended to read:

(a) Subject to (c) of this section, a resident of an assisted living home has the right to

(1) live in a safe and sanitary environment;

(2) be treated with consideration and respect for personal dignity, individuality, and the need for privacy, including privacy in

(A) a medical examination or health-related consultation;

(B) the resident's room or portion of a room;

(C) bathing and toileting, except for any assistance in those activities that is specified in the resident's assisted living plan; and

(D) the maintenance of personal possessions and the right to keep at least one cabinet or drawer locked;

(3) possess and use personal clothing and other personal property, unless the home can demonstrate that the possession or use of certain personal property would be unsafe or an infringement of the rights of other residents;

(4) engage in private communications, including

(A) receiving and sending unopened correspondence;

(B) having access to a telephone, or having a private telephone at the resident's own expense; and

(C) visiting with persons of the resident's choice, subject to visiting hours established by the home;

(5) close the door of the resident's room at any time, including during visits in the room with guests or other residents;

(6) at the resident's own expense unless otherwise provided in the residential services contract, participate in and benefit from community services and activities to achieve the highest possible level of independence, autonomy, and interaction with the community;

(7) manage the resident's own money;

(8) participate in the development of the resident's assisted living plan;

(9) share a room with a spouse if both are residents of the home;

(10) have a reasonable opportunity to exercise and to go outdoors at regular and frequent intervals, when weather permits;

(11) exercise civil and religious liberties;

(12) have access to adequate and appropriate health care and health care providers of the resident's own choosing, consistent with established and recognized standards within the community;

(13) self-administer the resident's own medications, unless specifically provided otherwise in the resident's assisted living plan;

(14) receive meals that are consistent with religious or health-related restrictions;

(15) receive the prior notice of relocation of the home or the home's intent to terminate the residential services contract of the resident required by AS 47.33.080**,** [AND] 47.33.360, **and 47.33.370** [RESPECTIVELY];

(16) present to the home grievances and recommendations for change in the policies, procedures, or services of the home;

(17) at the resident's own expense unless otherwise provided in the residential services contract, have access to and participate in advocacy or special interest groups;

(18) at the resident's own expense unless otherwise provided in the residential services contract, intervene or participate in, or refrain from participating in, adjudicatory proceedings held under this chapter, unless provided otherwise by other law; and

(19) reasonable access to home files relating to the resident, subject to the constitutional right of privacy of other residents of the home.

*** Sec. 7.** AS 47.33.360(a) is amended to read:

(a) An assisted living home may not terminate a residential services contract with a resident of the home against the resident's will, except **as provided in AS 47.33.370 or unless**

(1) **the resident engages** [FOR MEDICAL REASONS;

(2) FOR ENGAGING] in a documented pattern of conduct that is harmful to the resident, other residents, or staff of the home;

(2) the resident violates [(3) FOR VIOLATION OF] the terms of the residential services contract, including failure to pay costs incurred under the contract;

(3) [(4) WHEN EMERGENCY TRANSFER OUT OF THE HOME IS ORDERED BY THE RESIDENT'S PHYSICIAN;

(5) WHEN] the home is closing; or

(4) [(6) WHEN] the home can no longer provide or arrange for services in accordance with the resident's needs and the resident's assisted living plan.

*** Sec. 8.** AS 47.33.360(b) is amended to read:

(b) At least 30 days before terminating the residential services contract with a resident under [(a)(2), (3), (5), OR (6) OF] this section, the assisted living home shall provide written notice of the proposed contract termination to the resident or the resident's representative, [AND TO] the resident's service coordinator**,** if any**, the applicable licensing agency, and the long-term care ombudsman**. The notice must state the

(1) basis for the termination; and

(2) resident's right to contest the termination in the manner provided in the contract, which must include an offer by the home to participate in a case conference as described in (c) of this section.

*** Sec. 9.** AS 47.33.360(c) is amended to read:

(c) Before terminating the residential services contract with a resident under [(a)(2), (3), (5), OR (6) OF] this section, the assisted living home shall participate in a case conference if requested by the resident or the resident's representative. The case conference must include the resident, the resident's representative, if any, the resident's advocate, if any, the resident's service coordinator, if any, the home administrator, and appropriate care providers who **shall** [MAY] discuss the **justification for, and the** appropriateness of**,** the contract termination.

*** Sec. 10.** AS 47.33 is amended by adding a new section to article 3 to read:

Sec. 47.33.370. Emergency involuntary termination of contract. (a) An

assisted living home may terminate a residential services contract with a resident of the home against the resident's will and with less than 30 days' notice if at least one of the following emergency reasons exists and is supported by written documentation in the resident's file in the home:

(1) a medical reason;

(2) an emergency transfer from the home is ordered by the resident's physician;

(3) imminent danger to the resident or others in the home because the home is unable to meet the resident's needs or assure the health and safety of others, for purposes of this paragraph, "imminent danger to the resident or others" includes imminent danger

(A) to the resident caused by the resident's self-destructive behavior; and

(B) of serious physical assault by the resident;

(4) the intentional damage or destruction of property in excess of $300.

(b) A resident's refusal or failure to take prescribed medication or otherwise follow the resident's assisted living plan does not constitute a medical or other reason for emergency involuntary termination of a residential services contract unless the resident's conduct constitutes a reason for termination under (a)(3) or (4) of this section.

(c) An assisted living home that proposes to terminate a residential services contract for any reason listed in (a) of this section shall provide written notice of the proposed contract termination not less than 72 hours before termination to the resident, the resident's representative, if any, the resident's service coordinator, if any, the applicable licensing agency, and the long-term care ombudsman. If the resident does not have a service coordinator, notice under this subsection shall also be given to adult protective services personnel of the Department of Administration. The notice must state the following:

(1) the reason under (a) of this section for the proposed termination of the residential services contract and the specific facts on which proposed termination is based;

(2) the alternatives to termination of the residential contract that have been attempted by the home;

(3) the location to which the resident will be discharged, if known;

(4) the date and time proposed for termination of the contract and discharge of the resident;

(5) the resident's right to request a case conference that must be held, if requested, before termination of the contract.

(d) After the notice is provided under (c) of this section, the assisted living home shall participate in a case conference if requested by the resident, the resident's representative, if any, the resident's advocate, if any, or the resident's service coordinator, if any. If the resident does not have a service coordinator and a case conference is requested by the resident or the resident's representative or advocate, adult protective services personnel assigned by the Department of Administration shall be requested by the assisted living home to participate in the conference. If the request for a case conference is received before termination of the resident's contract, the assisted living home may not terminate the contract until the case conference has been held. A case conference requested under this subsection shall be held by the assisted living home within 72 hours of the request and must include the resident, the resident's representative, if any, the resident's advocate, if any, the home administrator, and appropriate care providers who shall discuss the justification for, and the appropriateness of, the proposed contract termination.

*** Sec. 11.** AS 47.33.410 is amended by adding a new subsection to read:

(g) A licensing agency under (a) and (b) of this section, its officers, its employees, and the state are not liable for civil damages as a result of an act or omission in the licensing, monitoring, or supervision of an assisted living home under this chapter. This subsection does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

*** Sec. 12.** AS 47.33.550(a) is amended to read:

(a) A licensing agency may revoke an assisted living home license, deny renewal of an assisted living home license, suspend operations of an assisted living home, suspend the ability of an assisted living home to take in new residents, place

conditions on the ability of an assisted living home to take in new residents, restrict the type of care that an assisted living home may provide to residents, or assess an administrative fine, as the agency considers appropriate, on one or more of the following grounds:

(1) a violation of a provision of this chapter, a regulation adopted under this chapter, an order in a notice of violation issued under this chapter, or a term of a license issued under this chapter;

(2) a criminal conviction of an administrator of an assisted living home if the conviction is

(A) for an offense involving a resident of the home;

(B) a felony; [OR]

(C) a misdemeanor involving alcohol, a controlled substance, an imitation controlled substance, or physical or sexual abuse; **or**

(D) an offense described in AS 47.33.100(c);

(3) obtaining, retaining, or attempting to obtain or retain a license under this chapter by fraud or misrepresentation.

*** Sec. 13.** AS 47.33.550(f) is amended to read:

(f) If an assisted living home requests a hearing under (d) of this section**,** the hearing shall be held within **120** [60] days after the licensing agency receives the request. The department's decision following a hearing under this section is a final administrative order.

*** Sec. 14.** AS 47.33.550 is amended by adding new subsections to read:

(j) A licensing agency may summarily suspend operations of an assisted living home before a final hearing is held or during an appeal if the licensing agency finds that the home poses a clear and imminent danger to the public health and safety. The assisted living home is entitled to a hearing before the licensing agency to appeal the summary suspension within 10 days after the order of suspension is issued. To request a hearing, the assisted living home must notify the licensing agency of the request within 24 hours, excluding weekends and holidays, after the order of suspension was received. The assisted living home may appeal, to a court of competent jurisdiction, an adverse decision of the licensing agency on an appeal of a

summary suspension.

(k) If a license is suspended or revoked under this section, the facility may not be operated or maintained as an assisted living home and may not house or provide assisted living services to a facility resident.

*** Sec. 15.** AS 47.33 is amended by adding a new section to read:

Sec. 47.33.563. Court-ordered temporary administration and receivership. (a) If the licensing agency determines that the health or safety of the residents of an assisted living home is imminently jeopardized as the result of the assisted living home's failure or refusal to comply with a state or federal statute or regulation or local ordinance, the licensing agency may petition the superior court for an order for appointment of temporary administration to oversee the operation of the assisted living home in order to ensure the health and safety of the residents of the assisted living home while orderly closure of the assisted living home occurs or the deficiencies necessitating temporary administration are corrected.

(b) The licensing agency may petition the superior court for establishment of a receivership for an assisted living home if the licensing agency finds that one of the following conditions exists and the owner, operator, or administrator of the home has demonstrated an inability or unwillingness to take action necessary to immediately correct the following alleged conditions:

(1) the assisted living home is operating without a license;

(2) the health, safety, or welfare of the residents of the assisted living home is imminently jeopardized;

(3) the assisted living home demonstrates a pattern and practice of violating state or federal statutes or regulations or local ordinances in such a way that care of residents is jeopardized.

*** Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) AS 18.20.302, as amended by secs. 1 and 2 of this Act, applies to persons employed by a nursing home on or after July 1, 2001, except that the offenses described in AS 18.20.302(a)(1) and (c) include offenses committed before, on, or after July 1, 2001.

(b) AS 47.33.100, as amended by secs. 4 and 5 of this Act, applies to employment and allowing the residence of an individual in an assisted living home on or after July 1, 2001, except that the offenses described in AS 47.33.100(a)(1) and (c), as amended by sec. 4 of this Act, include offenses committed before, on, or after July 1, 2001.

(c) AS 47.33.410(g), added by sec. 11 of this Act, applies to acts or omissions occurring on or after July 1, 2001.

(d) AS 47.33.550(a), as amended by sec. 12 of this Act, applies to an individual employed as an administrator of an assisted living home on or after July 1, 2001, except that the offenses described in AS 47.33.550(a)(2)(D) include offenses committed before, on, or after July 1, 2001.

*** Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. Notwithstanding sec. 19 of this Act, the Department of Administration and the Department of Health and Social Services may immediately proceed to adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1, 2001.

*** Sec. 18.** Section 17 of this Act takes effect immediately under AS 01.10.070(c).

*** Sec. 19.** Except as provided in sec. 18 of this Act, this Act takes effect July 1, 2001.