

HOUSE BILL NO. 412**IN THE LEGISLATURE OF THE STATE OF ALASKA****EIGHTEENTH LEGISLATURE - SECOND SESSION****BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR****Introduced: 1/28/94****Referred: Health, Education & Social Services, Finance****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to facilities for the care of children; to child placement
 2 agencies; to maternity homes; to certain residential facilities for adults; and to
 3 foster homes for adults; and providing for an effective date."

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

5 * Section 1. AS 44.47.305(b) is amended to read:

6 (b) To qualify for a grant under (a) or (d) of this section, the child care facility
 7 must

8 (1) be currently licensed under AS 47.35 [AS 47.35.010 - 47.35.075]
 9 and applicable municipal licensing requirements;

10 (2) participate in the day care assistance program under AS 44.47.250 -
 11 44.47.310;

12 (3) provide care under a payment system as provided in (g) of this
 13 section.

14 * Sec. 2. AS 44.47.310(2) is amended to read:

1 (2) "child care facility" means an establishment licensed under
2 AS 47.35 [AS 47.35.010 - 47.35.075]; including [BUT NOT LIMITED TO] day care
3 centers, family day care homes, and schools for preschool age children, which provides
4 care for children not related by blood, marriage, or legal adoption to the owner,
5 operator, or manager of the facility;

6 * Sec. 3. AS 44.47.310(4) is amended to read:

7 (4) "day care facility" means a center or home licensed in accordance
8 with the provisions of AS 47.35 [AS 47.35.010 - 47.35.075] or recognized by the
9 federal government for the care of children;

10 * Sec. 4. AS 44.62.330(a)(24) is amended to read:

11 (24) Department of Health and Social Services, relating to denial,
12 involuntary conditioning, or revocation of a license issued under AS 47.35, or
13 suspension of operations or admissions or assessment of an administrative fine
14 under AS 47.35 [RELATING TO BOARDING AND FOSTER HOMES FOR
15 CHILDREN];

16 * Sec. 5. AS 47.35 is amended by adding a new section to read:

17 **CHAPTER 35. COMMUNITY CARE LICENSING [PRIVATE INSTITUTIONS].**

18 Sec. 47.35.005. PURPOSE; APPLICABILITY. (a) The purpose of this
19 chapter is to establish and maintain standard levels for services offered to children in
20 child care facilities, foster homes, and residential child care facilities; services offered
21 by child placement agencies; and services offered to pregnant individuals in maternity
22 homes. The legislature recognizes the responsibility of parents to select and monitor
23 caregivers for their children in order to assure a reasonably safe and developmentally
24 appropriate child care environment. The community care licensing procedures in this
25 chapter are intended to reduce predictable risk of harm to children and to provide
26 support services to those providing child care or services.

27 (b) This chapter and regulations adopted under this chapter apply to facilities
28 and agencies

29 (1) for which licensure is required by or under AS 47.35.015; and

30 (2) that are exempt under AS 47.35.015 from licensure but for which
31 a license is issued under AS 47.35.015(g).

1 * Sec. 6. AS 47.35.010 is amended to read:

2 Sec. 47.35.010. POWERS OF DEPARTMENT. (a) The department may

3 (1) license and supervise [~~BOARDING HOMES,~~] foster homes, child
4 care facilities, residential child care facilities, child placement agencies, and
5 maternity homes [GROUP HOMES, NURSERIES, INSTITUTIONS CARING FOR
6 CHILDREN AND FOSTER HOMES, GROUP HOMES AND INSTITUTIONS
7 CARING FOR DEPENDENT ADULTS];

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

11 (3) adopt regulations to implement the provisions of this chapter,
12 including regulations establishing licensure and renewal procedures, standards,
13 and fees; establishing requirements for operation of facilities or agencies licensed
14 under this chapter; and distinguishing between types of child care facilities
15 [ENFORCE THE STANDARDS ESTABLISHED BY IT];

16 (4) enter into agreements [CONTRACT] with private entities,
17 municipalities, or individuals [OR MUNICIPAL AGENCIES] to investigate and
18 make recommendations to the department for the licensing and supervision of
19 [~~BOARDING HOMES,~~] foster homes, child care facilities, residential child care
20 facilities, child placement agencies, and maternity homes [GROUP HOMES,
21 NURSERIES, INSTITUTIONS CARING FOR CHILDREN AND FOSTER HOMES,
22 GROUP HOMES AND INSTITUTIONS CARING FOR DEPENDENT ADULTS]
23 under procedures and standards of operation established by the department[;
24 CONTRACTS WITH PRIVATE AGENCIES UNDER THIS PARAGRAPH ARE
25 GOVERNED BY AS 36.30 (STATE PROCUREMENT CODE)].

26 (b) The department shall, within 90 days after receiving a written request that
27 it do so, delegate its powers relating to child care facilities [NURSERIES] under this
28 chapter [SECTION AND UNDER AS 47.35.040 - 47.35.060] to a municipality that
29 has adopted an ordinance providing for child [DAY] care licensing under home rule
30 powers under AS 29.10.010 or as authorized under AS 29.35.200 - 29.35.210. A
31 municipality to which these powers have been delegated may adopt, by ordinance,

1 additional requirements for child care facilities operating within its boundaries
2 if the requirements meet or exceed the requirements adopted [WAIVE OR
3 MODIFY ANY REGULATION OR STANDARD ESTABLISHED] by the department
4 [UNDER THE AUTHORITY OF AS 47.35.010 - 47.35.075 AS IT APPLIES TO
5 NURSERIES OR THE APPLICATION OF ANY SUCH REGULATION OR
6 STANDARD AS IT APPLIES TO A PARTICULAR DAY CARE LICENSEE BUT
7 MUST NOTIFY THE DEPARTMENT OF ANY WAIVER].

8 * Sec. 7. AS 47.35 is amended by adding new sections to read:

9 Sec. 47.35.015. LICENSE REQUIRED; EXEMPTIONS. (a) A person may
10 not operate a child care facility without a license issued under this chapter unless that
11 facility is exempt from licensure. The following facilities are exempt:

12 (1) a facility in which child care is regularly provided and each child's
13 parent is on the premises within reasonable proximity and accessibility to the child;

14 (2) a facility located on a United States military installation;

15 (3) a recreational program in which the children are allowed to attend
16 and in which the program assumes no responsibility for their care;

17 (4) a daytime therapeutic program of supervised, educational, and
18 rehabilitative services for children with special needs or behavioral problems;

19 (5) a program that asserts exemption as primarily educational and that
20 either

21 (A) is certified as a pre-elementary school under Department of
22 Education regulations adopted under AS 14.07.020; or

23 (B) serves children three years of age or older and is exempt
24 from Department of Education regulation;

25 (6) a temporary facility providing care for less than five continuous
26 weeks;

27 (7) a facility regularly providing child care to four or fewer children.

28 (b) A person may not operate a foster home without a license issued under this
29 chapter unless that facility provides care only

30 (1) for relatives and the department does not require licensure under an
31 agreement for services;

1 (2) for one or more children nine years of age or older placed by a
2 parent with either

3 (A) authorization for emergency medical care; or

4 (B) a consent to temporary custody;

5 (3) for one or more exchange students placed by a sponsoring agency
6 in a home evaluated and approved by that sponsoring agency;

7 (4) for one or more children who are the subject of a petition for
8 adoption filed by the caregiver pending a final decree of adoption, if a home study has
9 been completed, or provides care only for children placed for adoption by a child
10 placement agency licensed under this chapter;

11 (5) for a child for up to 72 hours in a nonsecure attendant care setting
12 authorized by the department; or

13 (6) for a child on a 24-hour basis for a period of no more than 30 days
14 in a licensed child care facility meeting requirements for nighttime care adopted by the
15 department by regulation.

16 (c) A person may not operate a residential child care facility without a license
17 issued under this chapter unless that facility

18 (1) is a juvenile facility operated by the state under AS 47.10.150;

19 (2) is a medical facility licensed by the department under AS 18.20; or

20 (3) is a recreational camp providing recreational experiences of no more
21 than one month's duration for a child; or

22 (4) is exempt from licensure for a reason set out in (b)(5) or (6) of this
23 section.

24 (d) A person may not operate a maternity home without a license issued under
25 this chapter.

26 (e) A person may not arrange foster home, residential child care facility,
27 adoptive home, or guardianship placements without a child placement agency license
28 issued under this chapter. The requirement for licensure does not apply to

29 (1) state, federal, or municipal governments;

30 (2) school districts;

31 (3) an Indian organization, as defined in 25 U.S.C. 1903(7), that is

1 authorized to make placement decisions under 23 U.S.C. 1918 or 1919; or

2 (4) a person who places children for adoption by relatives.

3 (f) In addition to facilities and agencies that, under this section, are exempt
4 from licensure, the department, by regulation, may provide for additional exemptions
5 as the department considers appropriate.

6 (g) A person may apply for a license for a facility or agency that is exempt
7 from licensure under this section. The department may issue a license to an applicant
8 under this subsection if the applicant meets the requirements of this chapter and
9 regulations adopted under this chapter.

10 Sec. 47.35.017. APPLICATION FOR LICENSE. (a) Application for a license
11 to operate a foster home, child care facility, residential child care facility, child
12 placement agency, or maternity home, shall be made to the department on a form
13 provided by the department, and shall be accompanied by any applicable fees
14 established by the department under AS 47.35.010(a)(3).

15 (b) An application submitted under this section shall contain at least the
16 following information:

17 (1) the name and address of the applicant, and if the applicant is an
18 agency, corporation, partnership, association, or any other form of organization, the
19 name, address, and title of all individuals who have an ownership or management
20 interest in the facility;

21 (2) the name, physical location, and mailing address of the facility or
22 agency for which the license is sought;

23 (3) the name and address of the administrator of the facility or agency,
24 if any;

25 (4) evidence that the administrator or foster parent is an adult with
26 sufficient experience, training, or education to fulfill the duties of an administrator or
27 foster parent;

28 (5) a release for the administrator or foster parent and for each other
29 person, as specified by the department by regulation, who will have contact with
30 individuals served by the facility or agency, authorizing the department to review all
31 federal, state, and municipal law enforcement, medical, licensing, and protective

1 services records, identified in regulations adopted under this chapter, that are relevant
2 to the person who is the subject of the release and to the type of license for which the
3 application has been submitted;

4 (6) for a facility, the number of individuals that will be served in the
5 facility;

6 (7) the type of facility or agency for which the license is sought;

7 (8) copies of all inspection reports and approvals required by state fire
8 prevention and environmental health and safety authorities for operation of the facility
9 or agency, including any variances granted by such an authority;

10 (9) a plan of operation, as required by the department by regulation;

11 (10) a staffing plan that describes the number of people who will work
12 at the facility or agency, staff qualifications, a description of each person's
13 responsibilities, and, for a facility other than a maternity home, a supervision schedule
14 for the children in care that meets the requirements established by the department by
15 regulation;

16 (11) evidence that the applicant has completed any orientation or
17 training required by the department, by regulation, for holders of the type of license
18 for which the application was submitted; and

19 (12) any other information required by the department, by regulation,
20 in order to monitor compliance with this chapter and regulations adopted under this
21 chapter.

22 * Sec. 8. AS 47.35 is amended by adding new sections to read:

23 Sec. 47.35.023. PROVISIONAL LICENSE; BIENNIAL LICENSE. (a) The
24 department shall issue a provisional license to a new facility or agency that applies
25 under AS 47.35.017 if, after inspection and investigation, the department determines
26 that the application and plan of operation for the facility or agency meet the
27 requirements of this chapter and regulations adopted under this chapter. A provisional
28 license is valid for a period not to exceed one year. The department may extend a
29 provisional license for one additional period not to exceed one year.

30 (b) Before expiration of a provisional license, the department shall inspect and
31 investigate the facility or agency in order to determine whether the facility or agency

1 is operating under the provisional license in compliance with this chapter and
2 applicable regulations.

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

11 (d) The issuance of a license by the department does not obligate the
12 department to place or maintain an individual in the facility or through the agency, or
13 to support the facility or agency financially.

14 Sec. 47.35.025. DENIAL OF LICENSE; RIGHT TO APPEAL. (a) If the
15 department denies an application for a license or decides not to issue a biennial
16 license, the department shall hand deliver to the prospective licensee, or mail to the
17 prospective licensee by certified mail, return receipt requested, a notice of denial of
18 licensure. The notice must contain a summary of the department's reasons for denial
19 of the license and a form for requesting a hearing under (b) of this section.

20 (b) A prospective licensee who was denied licensure may appeal the
21 department's decision by requesting a hearing, on the form provided by the
22 department, within 15 days after receipt of the notice of denial of licensure.

23 Sec. 47.35.027. VARIANCES. (a) The department may grant to an applicant
24 for a license under this chapter, or to a licensee, a variance from a requirement of this
25 chapter or a regulation adopted under this chapter if that person submits to the
26 department, on a form provided by the department, a complete variance request as
27 required by this section. A variance may be granted if

28 (1) the applicant or licensee proposes an alternative means, acceptable
29 to the department, to satisfy the intent of the requirement for which the variance is
30 requested; and

31 (2) the health and safety of children is adequately protected.

1 (b) A request for a variance must contain the following information:

- 2 (1) the statute or regulation from which the variance is sought;
3 (2) the reasons why the variance is needed;
4 (3) the period of time for which the variance is requested;
5 (4) the proposed alternative means of satisfying the intent of the
6 requirement for which the variance is requested;

7 (5) a statement as to how the health and safety of children will be
8 protected during the period of the variance; and

9 (6) assurance that the conditions of the facility or agency do not present
10 an imminent danger to the health or safety of individuals served by the facility or
11 agency.

12 (c) To evaluate a request for a variance, the department shall take one or more
13 of the following actions:

- 14 (1) investigate the statements in the request;
15 (2) inspect the facility or agency;
16 (3) schedule a conference with the applicant or licensee regarding the
17 variance request.

18 (d) The department's decision approving or denying a variance must be in
19 writing, and the department shall provide a copy of the decision to the person
20 requesting the variance. If the department grants the variance, the decision must state
21 the term of and conditions of the variance.

22 (e) If an applicant or licensee violates a condition of a variance granted under
23 this section, the variance is void.

24 Sec. 47.35.029. CONTENT OF LICENSE; POSTING. (a) A license issued
25 under this chapter must state

- 26 (1) the period of time during which the license is in effect;
27 (2) the name of the facility or agency;
28 (3) the type of facility or agency;
29 (4) the name of the licensee;
30 (5) the location and mailing address of the facility or agency;
31 (6) for a facility other than a maternity home, the number and age

1 range of children that the facility may have in care at any time;

2 (7) any conditions set by, and variances approved by, the department;
3 and

4 (8) the address and phone number of the nearest department office that
5 is responsible for administering this chapter or of the department representative
6 responsible for evaluating that facility or agency under AS 47.35.010(a)(4).

7 (b) A licensee, except a foster home licensee, shall post the license in a
8 conspicuous place in the facility or agency visible to individuals in care and their
9 families, and to facility or agency staff. A foster home licensee shall have the facility
10 license available for inspection upon request.

11 * Sec. 9. AS 47.35 is amended by adding a new section to read:

12 Sec. 47.35.033. LICENSES NOT TRANSFERABLE. A license may be issued
13 under this chapter only for the location and person named in the application. A license
14 issued under this chapter may not be transferred to another person or location.

15 * Sec. 10. AS 47.35 is amended by adding new sections to read:

16 Sec. 47.35.037. ORIENTATION AND TRAINING. The department, by
17 regulation, may require that an applicant or licensee complete orientation or training
18 to assist that person in operating under the license.

19 Sec. 47.35.039. RECORDS REQUIRED. (a) In accordance with regulations
20 adopted by the department, a licensee shall keep the records regarding each individual
21 in its care, or that it places, that are necessary to show compliance with this chapter
22 and regulations adopted under this chapter.

23 (b) The department's licensing records, with the names of all individuals in
24 care and parents of minors in care deleted to protect the confidentiality of those
25 individuals, are available for public inspection, except for

26 (1) material made confidential by state or federal statutes or regulations;
27 (2) material that is part of an uncompleted licensing or complaint
28 investigation; or

29 (3) records that would deprive an applicant, licensee, or other person
30 of a fair and impartial hearing;

31 (4) records for which the department determines that disclosure would

1 constitute an unwarranted invasion of personal privacy.

2 (c) A government agency that provides funding to a facility or agency licensed
3 under this chapter may have access to that facility's or agency's records in order to
4 conduct an audit.

5 * Sec. 11. AS 47.35 is amended by adding new sections to read:

6 Sec. 47.35.043. MONITORING; INVESTIGATION. (a) No later than the
7 first anniversary of the effective date of a biennial license, including a renewed
8 biennial license, the licensee shall submit an annual self-monitoring report to the
9 department. The department shall specify, by regulation, the contents of the report.

10 (b) To encourage parents of children in child care facilities to become involved
11 in day-to-day monitoring of the care provided by such facilities, the department shall
12 require licensees to give to parents of children in child care in the licensee's facility
13 a summary of the regulatory requirements that apply to the facility and the
14 department's or department representative's telephone contact number for reporting a
15 concern regarding child care. The department also may provide notice of the
16 telephone contact numbers for reporting child care concerns.

17 (c) The department may conduct an investigation, including announced or
18 unannounced on-site inspections, for ongoing monitoring or to assist in its review of
19 an annual self-monitoring report.

20 Sec. 47.35.045. BIENNIAL LICENSE RENEWAL. (a) At least 90 days
21 before the expiration date of a biennial license, the licensee shall submit, on a form
22 provided by the department, an application for renewal of the license and any
23 associated variances.

24 (b) Before expiration of a biennial license, the department or its representative
25 shall inspect a facility or agency that is the subject of a renewal application.

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

27 (1) the licensee

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

1 **(B) has maintained the facility or agency in good repair and is**
2 **in compliance with all state fire safety and environmental health and safety**
3 **code requirements;**

4 **(2) the ground for revocation set out in AS 47.35.130(a)(2) does not**
5 **exist; and**

6 **(3) all applicable fees have been paid.**

7 **(d) If the licensee submits a renewal application within the time period**
8 **required by the department by regulation, but the department is unable to complete its**
9 **review before the expiration date of the biennial license, the license is automatically**
10 **extended for six months, or until the department completes its review and either**
11 **approves or denies the application, whichever occurs first.**

12 **(e) If the department decides to approve an application for renewal, but finds**
13 **that the applicant is not in compliance with a provision of this chapter, a regulation**
14 **adopted under this chapter, or a condition on the license, the department, as a**
15 **condition on the renewed biennial license, shall require the applicant to correct any**
16 **violations and provide the department with verification of compliance.**

17 **(f) If the department denies an application for renewal, it shall provide the**
18 **applicant with a notice of denial of application. The notice must contain a written**
19 **statement of the reasons for denial and a form for requesting a hearing under (g) of**
20 **this section.**

21 **(g) An applicant whose application is denied may appeal the department's**
22 **decision by requesting a hearing, on the form provided by the department, within 15**
23 **days after receipt of the notice of denial of application.**

24 **Sec. 47.35.047. NOTICE OF CHANGES. (a) A licensee shall provide the**
25 **department with written notice of a change of mailing address at least 14 days before**
26 **the effective date of the change.**

27 **(b) A licensee shall notify the department within 24 hours after having**
28 **knowledge of an indictment or charging by information or complaint of an**
29 **administrator, foster parent, member of the licensee's household, regular volunteer, or**
30 **staff person for a felony, for a misdemeanor crime of assault, reckless endangerment,**
31 **contributing to the delinquency of a minor, or misconduct involving a controlled**

1 substance, for the crime of perjury, as defined in AS 11 or the laws of another
2 jurisdiction, or for a sex crime as defined in AS 12.62.035.

3 (c) A licensee shall notify the department at least 20 days before the effective
4 date of a decision to relinquish the license.

5 (d) A licensee shall notify the department at least 20 days before the date on
6 which the licensee wishes to change the number of children in care or hours of
7 operation.

8 (e) A licensee shall notify the department no later than one day after signing
9 a contract for sale of the licensed facility or agency.

10 (f) A licensee shall notify the department at least 30 days before the licensee
11 wishes to change the location of the facility or agency.

12 * Sec. 12. AS 47.35 is amended by adding new sections to read:

13 Sec. 47.35.105. COMPLAINTS. (a) A person who believes that a provision
14 of this chapter, a regulation adopted under this chapter, or a condition of a license
15 issued under this chapter has been violated may file a verbal or written complaint with
16 the department.

17 (b) The department shall investigate all complaints filed under this section
18 unless the department reasonably concludes that the complaint is without merit.

19 (c) After an investigation under this section, the department shall prepare a
20 written report of investigation and shall mail a copy to the licensee or other person
21 who is the subject of the complaint, and to the complainant if requested. If the
22 department determines that a violation of this chapter, a regulation adopted under this
23 chapter, or a condition of a license issued under this chapter has occurred, the
24 department's report of investigation shall contain the following:

25 (1) a description of the violation;

26 (2) a citation to the provision of this chapter or the regulation that has
27 been violated, if applicable; and

28 (3) either

29 (A) a date by which the violation must be corrected and a
30 verification of compliance submitted to the department; or

31 (B) a plan of correction.

1 (d) A licensee may submit to the department a written response regarding a
2 report of investigation relating to that facility or agency. The department shall retain
3 the written response in the licensing file.

4 (e) A licensee may not take retaliatory action against a person who files a
5 complaint. A complainant against whom retaliatory action has been taken may recover
6 treble damages in a civil action upon a showing that the actions were taken in
7 retaliation for the filing of a complaint.

8 Sec. 47.35.110. INVESTIGATIONS; SEARCH WARRANTS. (a) An
9 applicant for a license, or a licensee, shall cooperate with the department for purposes
10 of licensing investigations, investigations relating to ongoing monitoring of the facility
11 or agency, or investigations under AS 47.35.105 by

12 (1) permitting representatives of the department to inspect the facility
13 or agency, review records, interview staff, and interview individuals in care; and

14 (2) providing to the department information and documentation
15 requested by the department to determine compliance with this chapter and regulations
16 adopted under this chapter.

17 (b) Following an investigation relating to ongoing monitoring of a facility or
18 agency or relating to a facility that the department believes is operating without a
19 license in violation of this chapter, the department shall prepare and distribute a written
20 report of investigation as described in AS 47.35.105(c) and the facility or agency may
21 submit a response as described in AS 47.35.105(d).

22 (c) The department may seek a search warrant to inspect a facility or agency

23 (1) if the department has probable cause to believe that the facility or
24 agency is operating without a license in violation of this chapter and the facility or
25 agency operator refuses to allow an inspection by the department; or

26 (2) if the licensee refuses to allow an inspection of the facility or
27 agency by the department.

28 Sec. 47.35.120. ENFORCEMENT ACTIONS. (a) During an investigation
29 under this chapter, the department, by written notice, may suspend operations of the
30 facility or agency if the department has reasonable cause to believe that a violation is
31 occurring that presents an imminent danger to the health or safety of the individuals

1 in care. A suspension under this subsection continues for the time period set by the
2 department, and may continue until the department issues a report of investigation
3 under AS 47.35.105(c) or 47.35.110(b).

4 (b) If, after an investigation under this chapter, the department has determined
5 that a violation of this chapter or a regulation adopted under this chapter has occurred
6 or a ground for revocation or nonrenewal set out in AS 47.35.130 exists, has issued
7 a report of investigation under AS 47.35.105(c) or 47.35.110(b), and has determined
8 that voluntary compliance or a plan of correction is not appropriate, the department
9 may take one or more of the following enforcement actions, as the department
10 considers appropriate:

11 (1) delivery of a warning notice to the licensee or other person who is
12 the subject of the investigation;

13 (2) modification of the term of an existing license or reduction of the
14 number of children for whom care can be provided;

15 (3) suspension of operations of the facility or agency for a period of
16 time set by the department;

17 (4) suspension of admissions to the facility for a period of time set by
18 the department;

19 (5) nonrenewal of the license;

20 (6) revocation of the license;

21 (7) order immediate closure of the facility or agency;

22 (8) assessment of an administrative fine of up to \$500 for each day a
23 violation continues, not to exceed a total of \$5,000 for a violation.

24 (c) The department shall provide the licensee or other person who is the
25 subject of an investigation with written notice of the department's decision under (b)
26 of this section to take enforcement action. The notice must contain a form for
27 requesting a hearing under (d) of this section and must describe

28 (1) each enforcement action that will be taken;

29 (2) the condition, if any, in the facility or agency that constitutes a
30 violation of this chapter or a regulation adopted under this chapter;

31 (3) the licensee's or other person's right to appeal the department's

1 decision to take an enforcement action described in (b)(2) - (8) of this section.

2 (d) A licensee or other person to whom a notice has been provided under (a)
3 or (c) of this section may appeal the department's decision to impose an enforcement
4 action described in (a) or (b)(2) - (8) of this section by filing a written request for a
5 hearing, on the form provided by the department, within 15 days after receipt of the
6 notice of enforcement action.

7 (e) Unless the violation that prompted enforcement action under (b) of this
8 section presents an imminent danger to the health or safety of the individuals in care,
9 an enforcement action described in a notice provided under (c) of this section may not
10 be imposed until

11 (1) the time period for requesting a hearing under (d) of this section has
12 passed without a hearing being requested; or

13 (2) the department makes a final decision following a hearing requested
14 under (d) of this section.

15 (f) If a hearing is requested under (d) of this section, the department's decision
16 following the hearing is a final administrative order.

17 (g) If a hearing is not requested under (d) of this section, the department's
18 notice of enforcement action constitutes a final administrative order, for which the
19 department may seek the court's assistance in enforcing.

20 (h) A licensee whose license was revoked or not renewed under this section
21 may not reapply for licensure under this chapter until after the time period, if any, set
22 by the department in its final administrative order. If no time period is set by the
23 department, the revocation or nonrenewal is permanent, and the former licensee may
24 not again apply for licensure under this chapter.

25 (i) Assessment of an administrative fine under this section does not preclude
26 imposition of a criminal penalty under AS 47.35.820.

27 **Sec. 47.35.130. GROUNDS FOR LICENSE REVOCATION OR**
28 **NONRENEWAL.** (a) In addition to the ground of violation of this chapter or a
29 regulation adopted under this chapter, the department may revoke, or decline to renew,
30 on one or more of the following grounds, a license issued under this chapter:

31 (1) failure to submit a timely and complete renewal application;

1 (2) the indictment or charging by information or complaint for, or a
2 criminal conviction within the last 10 years, of the licensee or facility administrator for
3 a felony; a misdemeanor crime of assault, reckless endangerment, contributing to the
4 delinquency of a minor, or misconduct involving a controlled substance; the crime of
5 perjury, as defined in AS 11 or the laws of another jurisdiction; or a sex crime as
6 defined in AS 12.62.035;

7 (3) obtaining or attempting to obtain or retain a license under this
8 chapter by fraudulent means, misrepresentation, or by submitting false information;

9 (4) failure to correct a violation noted in a report of investigation
10 provided under AS 47.35.105(c) or 47.35.110(b);

11 (5) failure to comply with a final administrative order issued by the
12 department under AS 47.35.120.

13 (b) A licensee may voluntarily relinquish the license or withdraw an
14 application for renewal.

15 * Sec. 13. AS 47.35 is amended by adding new sections to read:

16 ARTICLE 2. ADULT FACILITIES.

17 Sec. 47.35.210. POWERS OF DEPARTMENT REGARDING ADULT
18 RESIDENTIAL CARE FACILITIES. The department may

19 (1) license and supervise adult residential care facilities;

20 (2) investigate applicants, licensees, and persons that the department
21 believes are operating an adult residential care facility without a license in violation
22 of AS 47.35.210 - 47.35.250;

23 (3) adopt regulations to implement the provisions of AS 47.35.210 -
24 47.35.250, including regulations establishing licensure and operating standards;
25 application and licensure procedures and fees; license renewal procedures, standards,
26 and fees; procedures and standards for variances; and procedures regarding
27 enforcement actions and appeals;

28 (4) enter into agreements with private or municipal agencies, or with
29 individuals, to investigate and make recommendations to the department for the
30 licensing and supervision of adult residential care facilities under procedures and
31 standards of operation established by the department.

1 **Sec. 47.35.220. LICENSE REQUIRED.** A person may not operate an adult
2 residential care facility without a license issued under AS 47.35.210 - 47.35.250 unless
3 the facility is a Pioneers' Home operated by the state under AS 47.55.

4 **Sec. 47.35.230. APPLICATION FOR LICENSE; LICENSING.** (a) Except
5 as otherwise provided in regulations adopted by the department, the procedures and
6 requirements in AS 47.35.017, 47.35.023, 47.35.025, 47.35.027, 47.35.029, 47.35.033,
7 and 47.35.045 apply to application for license for and licensure of an adult residential
8 care facility.

9 **Sec. 47.35.240. RECORDS; REPORTS.** (a) As required by the department
10 by regulation, the licensee for an adult residential care facility shall

11 (1) keep records regarding adults in care in the facility; and

12 (2) submit reports to the department.

13 (b) The department's licensing records, with the names of adults in care
14 deleted, are available for public inspection, except for material described in
15 AS 47.35.039(b)(1) - (4).

16 (c) A government agency that provides funding to a facility licensed under
17 AS 47.35.210 - 47.35.250 may have access to the facility's records in order to conduct
18 an audit.

19 (d) The provisions of AS 47.35.047(a), (b), (c), (e), and (f), regarding notice
20 to the department of certain changes, apply to an adult residential care facility licensed
21 under AS 47.35.210 - 47.35.250.

22 **Sec. 47.35.250. COMPLAINTS; INVESTIGATIONS; ENFORCEMENT**
23 **ACTIONS.** Except as provided otherwise in regulations adopted by the department,
24 the provisions of AS 47.35.105, 47.35.110, 47.35.120, and 47.35.130, regarding
25 complaints, investigations, and enforcement actions, apply to an adult residential care
26 facility.

27 * **Sec. 14.** AS 47.35 is amended by adding new sections to read:

28 **Sec. 47.35.800. ADMINISTRATIVE PROCEDURE.** The administrative
29 adjudication provisions of AS 44.62 (Administrative Procedure Act) apply to an appeal
30 from a department decision under this chapter relating to denial, involuntary
31 conditioning, or revocation of a license, suspension of operations or admissions, or

1 assessment of an administrative fine.

2 **Sec. 47.35.810. IMMUNITY FROM LIABILITY. (a)** A person operating
3 under agreement with the department under AS 47.35.010(a)(4) is immune, during the
4 performance of the person's duties on behalf of the department, from civil liability that
5 might otherwise be incurred or imposed, if the person is operating within the scope of
6 the duties delegated to the person under the agreement.

7 (b) The department and its employees are not liable for civil damages as a
8 result of an act or omission in the licensing, monitoring, or supervision of a facility
9 or agency licensed under this chapter. This subsection does not preclude liability for
10 civil damages as a result of gross negligence or reckless or intentional misconduct.

11 **Sec. 47.35.820. PENALTY.** A person who violates a provision of this chapter
12 or a regulation adopted under this chapter is guilty of a class B misdemeanor.

13 * **Sec. 15.** AS 47.35.900 is repealed and reenacted to read:

14 **Sec. 47.35.900. DEFINITIONS.** In this chapter,

15 (1) "administrator" means an individual who has general administrative
16 charge and oversight of a facility or agency;

17 (2) "agency" means a child placement agency;

18 (3) "child" means an individual under 18 years of age, and includes an
19 individual who is a relative of a care provider, administrator, or foster parent;

20 (4) "child care" means, care, supervision, and provision of
21 developmental opportunities, with or without compensation, to a child whose parents
22 are not present;

23 (5) "child care facility" means a place where child care is regularly
24 provided for children under the age of 12, for periods of time that are less than 24
25 hours in duration unless nighttime care is authorized by the department;

26 (6) "child placement agency" means a person who arranges for
27 placement of a child

28 (A) in a foster home, residential child care facility, or adoptive
29 home; or

30 (B) for guardianship purposes;

31 (7) "department" means the Department of Health and Social Services;

1 (8) "facility" means the administration, program, and physical plant of
2 a foster home, child care facility, residential child care facility, or maternity home;

3
4 (9) "foster home" means a place where the adult head of household
5 provides 24-hour care on a continuing basis to one or more children who are apart
6 from their parents;

7 (10) "home study" means a written report of an investigation of the
8 prospective adoptive or foster parent or parents' ability to care for a child that has been
9 prepared in accordance with AS 25.23.100(f);

10 (11) "licensee" means a person to whom a license has been issued
11 under this chapter;

12 (12) "maternity home" means a place of residence whose primary
13 function, with or without compensation, is to give care to pregnant individuals,
14 regardless of age, before or after the individual gives birth, or that provides care, as
15 needed, to mothers and their newborn infants;

16 (13) "nonsecure attendant care setting" means an unlocked place that
17 is an alternative to an adult jail or other locked setting, where an employee, adult head
18 of household, or volunteer provides care for one or more children 10 years of age or
19 older who have been arrested and who are apart from their parents;

20 (14) "parent" means a birth or adoptive parent or a legal guardian;

21 (15) "recreational camp" means a place that provides recreational
22 opportunities to children who attend with the consent of their parent;

23 (16) "relative" means an individual who is related to another through
24 any of the following relationships, by blood, adoption, or marriage: parent,
25 grandparent, brother, sister, stepparent, stepsister, stepbrother, cousin, aunt, uncle,
26 great-aunt, great-uncle or step-grandparent;

27 (17) "residential child care facility" means a place, staffed by
28 employees, where one or more children who are apart from their parents receive 24-
29 hour care on a continuing basis.

30 * Sec. 16. AS 47.35.020, 47.35.030, 37.35.035, 47.35.040, 47.35.055, 47.35.060, 47.35.070,
31 47.35.075, 47.35.090, and 47.35.100 are repealed.

1 * **Sec. 17. APPLICABILITY; IMPLEMENTATION.** (a) ~~AS 47.35, as amended by this~~
2 **Act, applies to all foster homes, child care facilities, residential child care facilities, child**
3 **placement agencies, and maternity homes, as defined in AS 47.35.900 as repealed and**
4 **reenacted by sec. 15 of this Act, that are in operation on January 1, 1996, as well as to all**
5 **such facilities and agencies that begin operation on or after January 1, 1996.**

6 (b) A foster home, child care facility, residential child care facility, child placement
7 agency, or maternity home, as defined in AS 47.35.900 as repealed and reenacted by sec. 15
8 of this Act, that is in operation on January 1, 1996, and that was licensed by the Department
9 of Health and Social Services before January 1, 1996 may continue to operate under that
10 license until the expiration date of the license, or until a complaint is filed, whichever occurs
11 first. On the date that that license expires or a complaint is filed, whichever occurs first, the
12 procedures in AS 47.35, as amended by this Act, including license renewal procedures, first
13 apply to such a facility or agency.

14 (c) If sec. 13 of this Act takes effect, AS 47.35, as amended by this Act, applies to
15 residential facilities for dependent adults and to foster homes for adults that are in operation
16 on January 1, 1996, as well as to adult residential care facilities that begin operation on or
17 after January 1, 1996. A residential facility for dependent adults or a foster home for adults
18 that is in operation on January 1, 1996 and that was licensed by the Department of Health and
19 Social Services before that date may continue to operate under that license until the expiration
20 date of the license or until a complaint is filed, whichever occurs first. On the date that that
21 license expires or a complaint is filed, whichever occurs first, the adult residential care facility
22 procedures in AS 47.35, as amended by this Act, including license renewal procedures, first
23 apply to such a facility or foster home.

24 * **Sec. 18. TRANSITION: REGULATIONS.** Notwithstanding secs. 20 and 21 of this Act,
25 the Department of Health and Social Services may proceed to adopt regulations necessary to
26 implement the provisions of this Act. The regulations take effect under AS 44.62
27 (Administrative Procedure Act), but not before January 1, 1996.

28 * **Sec. 19.** Section 18 of this Act takes effect immediately under AS 01.10.070(c).

29 * **Sec. 20.** Sections 1 - 12 and 14 - 17 of this Act take effect January 1, 1996.

30 * **Sec. 21.** (a) Subject to (b) of this section, sec. 13 of this Act takes effect January 1,
31 1996.

1 (b) Section 13 of this Act takes effect only if a bill that provides for a licensing and
2 regulatory structure for residential facilities for adults is not enacted into law after passing the
3 second session of the Eighteenth Legislature.