

CS FOR HOUSE BILL NO. 412(HES)**IN THE LEGISLATURE OF THE STATE OF ALASKA****EIGHTEENTH LEGISLATURE - SECOND SESSION****BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE****Offered: 3/23/94****Referred: Finance****Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR****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 11.61.195(a) is amended to read:

6 (a) A person commits the crime of misconduct involving weapons in the
7 second degree if the person knowingly

8 (1) possesses a firearm during the commission of an offense under
9 AS 11.71.010 - 11.71.040; or

10 (2) violates AS 11.61.200(a)(1) and is within the grounds of or on a
11 parking lot immediately adjacent to

12 (A) a public or private preschool, elementary, junior high, or
13 secondary school without the permission of the chief administrative officer of
14 the school or district or the designee of the chief administrative officer; or

1 (B) a center, other than a private residence, licensed under
2 AS 47.35 [AS 47.35.010 - 47.35.075] or recognized by the federal government
3 for the care of children.

4 * Sec. 2. AS 11.61.220(a) is amended to read:

5 (a) A person commits the crime of misconduct involving weapons in the fifth
6 degree if the person

7 (1) knowingly possesses a deadly weapon, other than an ordinary
8 pocketknife or a defensive weapon, that is concealed on the person;

9 (2) knowingly possesses a loaded firearm on the person in any place
10 where intoxicating liquor is sold for consumption on the premises;

11 (3) being an unemancipated minor under 16 years of age, possesses a
12 firearm without the consent of a parent or guardian of the minor;

13 (4) knowingly possesses a firearm

14 (A) or a defensive weapon within the grounds of or on a
15 parking lot immediately adjacent to a public or private preschool, elementary,
16 junior high, or secondary school without the permission of the chief
17 administrative officer of the school or district or the designee of the chief
18 administrative officer, except that a person 21 years of age or older may
19 possess

20 (i) an unloaded firearm in the trunk of a motor vehicle
21 or encased in a closed container in a motor vehicle;

22 (ii) a defensive weapon; or

23 (B) within the grounds of or on a parking lot immediately
24 adjacent to a center, other than a private residence, licensed under AS 47.35
25 [AS 47.35.010 - 47.35.075] or recognized by the federal government for the
26 care of children; or

27 (5) possesses or transports a switchblade or a gravity knife.

28 * Sec. 3. AS 18.50.950(4) is amended to read:

29 (4) "child adoption agency" means a child adoption agency licensed
30 under AS 47.35 [AS 47.35.100];

31 * Sec. 4. AS 25.23.185(c) is amended to read:

1 (c) A child adoption agency licensed under ~~AS 47.35~~ [AS 47.35.100] shall
2 maintain records of the information required to be furnished to the court under this
3 section or under regulations of the commissioner implementing this section. If a child
4 adoption agency ceases to place persons for adoption, it shall transfer its records to the
5 commissioner.

6 * Sec. 5. AS 44.21.240(2) is amended to read:

7 (2) "long term care facility" means a [FOSTER HOME OR OTHER]
8 residential facility for [DEPENDENT] adults that is required to be licensed under
9 AS 47.35 and a nursing home as defined in AS 08.70.180;

10 * Sec. 6. AS 44.47.305(b) is amended to read:

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

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

15 (2) participate in the day care assistance program under AS 44.47.250
16 - 44.47.310; and

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

19 * Sec. 7. AS 44.47.310(2) is amended to read:

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

25 * Sec. 8. AS 44.47.310(4) is amended to read:

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

29 * Sec. 9. AS 44.62.330(a)(24) is amended to read:

30 (24) Department of Health and Social Services, relating to denial,
31 involuntary conditioning, or revocation of a license issued under AS 47.35, or

1 suspension of operations or admissions or assessment of an administrative fine
2 under AS 47.35 [RELATING TO BOARDING AND FOSTER HOMES FOR
3 CHILDREN];

4 * Sec. 10. AS 47.35 is amended by adding a new section to read:

5 Sec. 47.35.005. PURPOSE; APPLICABILITY. (a) The purpose of this
6 chapter is to establish and maintain standard levels for services offered to children in
7 child care facilities, foster homes, and residential child care facilities; services offered
8 by child placement agencies; and services offered to pregnant individuals in maternity
9 homes. The legislature recognizes the responsibility of parents to select and monitor
10 caregivers for their children in order to ensure a reasonably safe and developmentally
11 appropriate child care environment. The community care licensing procedures in this
12 chapter are intended to reduce predictable risk of harm to children and to provide
13 support services to those providing child care or services.

14 (b) This chapter and regulations adopted under this chapter apply to facilities
15 and agencies

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

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

19 * Sec. 11. AS 47.35.010 is amended to read:

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

21 (1) license and supervise [~~BOARDING HOMES,~~] foster homes, child
22 care facilities, residential child care facilities, child placement agencies, and
23 maternity [GROUP] homes [, NURSERIES, INSTITUTIONS CARING FOR
24 CHILDREN AND FOSTER HOMES, GROUP HOMES AND INSTITUTIONS
25 CARING FOR DEPENDENT ADULTS];

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

29 (3) adopt regulations to implement the provisions of this chapter,
30 including regulations establishing licensure and renewal procedures, [ENFORCE
31 THE] standards, and fees; establishing requirements for operation of facilities or

1 agencies licensed under this chapter; and distinguishing between types of child
2 care facilities [ESTABLISHED BY IT];

3 (4) enter into agreements [CONTRACT] with private entities,
4 municipalities, or individuals [OR MUNICIPAL AGENCIES] to investigate and
5 make recommendations to the department for the licensing and supervision of
6 [BOARDING HOMES,] foster homes, child care facilities, residential child care
7 facilities, child placement agencies, and maternity [GROUP] homes [, NURSERIES,
8 INSTITUTIONS CARING FOR CHILDREN AND FOSTER HOMES, GROUP
9 HOMES AND INSTITUTIONS CARING FOR DEPENDENT ADULTS] under
10 procedures and standards of operation established by the department [; CONTRACTS
11 WITH PRIVATE AGENCIES UNDER THIS PARAGRAPH ARE GOVERNED BY
12 AS 36.30 (STATE PROCUREMENT CODE)].

13 (b) The department shall, within 90 days after receiving a written request that
14 it do so, delegate its powers relating to child care facilities [NURSERIES] under this
15 chapter [SECTION AND UNDER AS 47.35.040 - 47.35.060] to a municipality that
16 has adopted an ordinance providing for child [DAY] care licensing under home rule
17 powers under AS 29.10.010 or as authorized under AS 29.35.200 - 29.35.210. A
18 municipality to which these powers have been delegated may adopt, by ordinance,
19 additional requirements for child care facilities operating within its boundaries
20 if the requirements meet or exceed the requirements adopted [WAIVE OR
21 MODIFY ANY REGULATION OR STANDARD ESTABLISHED] by the department
22 [UNDER THE AUTHORITY OF AS 47.35.010 - 47.35.075 AS IT APPLIES TO
23 NURSERIES OR THE APPLICATION OF ANY SUCH REGULATION OR
24 STANDARD AS IT APPLIES TO A PARTICULAR DAY CARE LICENSEE BUT
25 MUST NOTIFY THE DEPARTMENT OF ANY WAIVER].

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

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

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

1 (2) a facility located on a United States Department of Defense or
2 United States Coast Guard installation that is located on federal property;

3 (3) a recreational program that children are allowed to attend and in
4 which the program assumes no responsibility for care of the children;

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

7 (5) a program that asserts exemption as primarily educational and that
8 either

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

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

13 (6) a temporary facility providing care for less than five continuous
14 weeks;

15 (7) a facility regularly providing child care to four or fewer children
16 unrelated to the caregiver;

17 (8) a facility in which the caregiver is a relative of all of the children.

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

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

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

24 (A) authorization for emergency medical care; or

25 (B) a consent to temporary custody;

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

28 (4) for one or more children who are the subject of a petition for
29 adoption filed by the caregiver pending a final decree of adoption, if a home study has
30 been completed;

31 (5) for one or more children placed for adoption by a child placement

1 agency licensed under this chapter;

2 (6) for a child for up to 72 hours in a nonsecure attendant care setting
3 authorized by the department; or

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

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

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

10 (2) a medical facility licensed by the department under AS 18.20;

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

13 (4) exempt from licensure for a reason set out in (b)(6) or (7) of this
14 section.

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

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

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

22 (2) school districts;

23 (3) an Indian organization, as defined in 25 U.S.C. 1903(7), that is
24 authorized to make placement decisions under 25 U.S.C. 1918 or 1919; or

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

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

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

1 regulations adopted under this chapter.

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

7 (b) An application submitted under this section must contain at least the
8 following information:

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

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

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

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

20 (5) a release for the administrator or foster parent and for each other
21 person, as specified by the department by regulation, who will have contact with
22 individuals served by the facility or agency, authorizing the department to review all
23 federal, state, and municipal law enforcement, medical, licensing, and protective
24 services records, identified in regulations adopted under this chapter, that are relevant
25 to the person who is the subject of the release and to the type of license for which the
26 application has been submitted;

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

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

30 (8) copies of all inspection reports and approvals required by state fire
31 prevention and environmental health and safety authorities for operation of the facility

1 or agency, including any variances granted by these authorities;

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

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

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

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

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

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

22 (b) Notwithstanding (a) of this section, if an emergency exists and a child must
23 be placed immediately, the department or the department's designee may issue a
24 provisional foster home license for a period of 90 days or less if the department or the
25 department's designee determines that the applicant meets minimal requirements for
26 emergency conditions.

27 (c) Before expiration of a provisional license issued under (a) or (b) of this
28 section, the department shall inspect and investigate the facility or agency in order to
29 determine whether the facility or agency is operating under the provisional license in
30 compliance with this chapter and applicable regulations.

31 (d) Before expiration of a provisional license, the department shall issue a

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

8 (e). The issuance of a license by the department does not obligate the
9 department to place or maintain an individual in the facility or through the agency, or
10 to support the facility or agency financially.

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

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

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

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

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

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

30 (1) the statute or regulation from which the variance is sought;

31 (2) the reasons why the variance is needed;

- 1 (3) the period of time for which the variance is requested;
- 2 (4) the proposed alternative means of satisfying the intent of the
- 3 requirement for which the variance is requested;
- 4 (5) a statement as to how the health and safety of children will be
- 5 protected during the period of the variance; and
- 6 (6) assurance that the conditions of the facility or agency do not present
- 7 an imminent danger to the health or safety of individuals served by the facility or
- 8 agency.

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

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

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

19 (e) If an applicant or licensee violates a condition of a variance granted under
20 this section, the variance is terminated.

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

- 23 (1) the period of time during which the license is in effect;
- 24 (2) the name of the facility or agency;
- 25 (3) the type of facility or agency;
- 26 (4) the name of the licensee;
- 27 (5) the location and mailing address of the facility or agency;
- 28 (6) for a facility other than a maternity home, the number and age
- 29 range of children that the facility may have in care at any time;
- 30 (7) any conditions set by the department;
- 31 (8) variances approved by the department for the duration of the

1 license; and

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

5 (b) A licensee, except a foster home licensee, shall post the license in a
6 conspicuous place in the facility or agency visible to individuals in care and their
7 families, and to facility or agency staff. If the department has approved a variance that
8 is not stated on the license, the licensee, except a foster home licensee, shall post a
9 copy of the variance near the license. A foster home licensee shall have the facility
10 license available for inspection upon request.

11 * Sec. 14. 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. 15. 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;

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

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. 16. AS 47.35 is amended by adding new sections to read:

6 Sec. 47.35.043. MONITORING; INVESTIGATION. (a) By the first
7 anniversary of the effective date of a biennial license, including a renewed biennial
8 license, the licensee shall submit an annual self-monitoring report to the department.
9 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 the 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, a licensee who wishes to remain
22 licensed shall submit, on a form provided by the department, an application for
23 renewal of the license and any 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. 17. 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 must 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 if the

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

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

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

1 occurring that presents an imminent danger to the health or safety of the individuals
2 in care. A suspension under this subsection continues for the time period set by the
3 department and may continue until the department issues a report of investigation
4 under AS 47.35.105(c) or 47.35.110(b).

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

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

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

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

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

20 (5) nonrenewal of the license;

21 (6) revocation of the license;

22 (7) issuance of an order requiring immediate closure of the facility or
23 agency;

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

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

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

31 (2) the condition, if any, in the facility or agency that constitutes a

1 violation of this chapter or a regulation adopted under this chapter;

2 (3) the licensee's or other person's right to appeal the department's
3 decision to take an enforcement action described in (b)(2) - (8) of this section.

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

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

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

15 (2) department makes a final decision following a hearing requested
16 under (d) of this section.

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

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

22 (h) A licensee whose license was revoked or not renewed under this section
23 may not reapply for licensure under this chapter until after the time period, if any, set
24 by the department in its final administrative order. If a time period is not set by the
25 department, the revocation or nonrenewal is permanent, and the former licensee may
26 not again apply for licensure under this chapter.

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

29 **Sec. 47.35.130. GROUND FOR LICENSE REVOCATION OR**
30 **NONRENEWAL.** (a) In addition to the ground of violation of this chapter or a
31 regulation adopted under this chapter, the department may revoke, or decline to renew,

1 a license issued under this chapter on one or more of the following grounds:

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

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

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

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

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

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

17 **ARTICLE 2. ADULT FACILITIES.**

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

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

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

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

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

1 standards of operation established by the department.

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

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

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

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

13 (2) submit reports to the department.

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

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

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

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

28 **ARTICLE 3. MISCELLANEOUS PROVISIONS.**

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

1 conditioning, or revocation of a license, suspension of operations or admissions, or
2 assessment of an administrative fine.

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

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

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

15 * Sec. 18. AS 47.35.900 is repealed and reenacted to read:

16 Sec. 47.35.900. DEFINITIONS. In this chapter,

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

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

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

22 (4) "child care" means, care, supervision, and provision of
23 developmental opportunities, with or without compensation, to a child who does not
24 have a parent present;

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

28 (6) "child placement agency" means a person who arranges for
29 placement of a child

30 (A) in a foster home, residential child care facility, or adoptive
31 home; or

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(B) for guardianship purposes;

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

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

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

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

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

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

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

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

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

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

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

*** Sec. 19. AS 47.40.110 is amended to read:**

1 **Sec. 47.40.110. LICENSING AND SUPERVISION.** A person providing
2 services purchased by the Department of Health and Social Services under
3 AS 47.40.100 - 47.40.120 shall, if required to be licensed under AS 47.35, be licensed
4 and supervised in the same manner as foster homes and [, BOARDING HOMES,]
5 maternity homes [, AND OTHER AGENCIES AND INSTITUTIONS] under
6 AS 47.35.

7 * **Sec. 20.** AS 47.35.020, 47.35.030, 47.35.035, 47.35.040, 47.35.055, 47.35.060, 47.35.070,
8 47.35.075, 47.35.090, and 47.35.100 are repealed.

9 * **Sec. 21. APPLICABILITY; IMPLEMENTATION.** (a) AS 47.35, as amended by this
10 Act, applies to all foster homes, child care facilities, residential child care facilities, child
11 placement agencies, and maternity homes, as defined in AS 47.35.900, as amended by sec. 18
12 of this Act, that are in operation on January 1, 1996, as well as to all such facilities and
13 agencies that begin operation on or after January 1, 1996.

14 (b) A foster home, child care facility, residential child care facility, child placement
15 agency, or maternity home, as defined in AS 47.35.900, as amended by sec. 18 of this Act,
16 that is in operation on January 1, 1996, and that was licensed by the Department of Health and
17 Social Services before January 1, 1996, may continue to operate under that license until the
18 expiration date of the license, or until a complaint is filed, whichever occurs first. On the date
19 that the license expires or a complaint is filed, whichever occurs first, the procedures in
20 AS 47.35, as amended by this Act, including license renewal procedures, first apply to such
21 a facility or agency.

22 (c) If AS 47.35.210 - 47.35.250, enacted in sec. 17 of this Act, take effect, AS 47.35,
23 as amended by this Act, applies to residential facilities for dependent adults and to foster
24 homes for adults that are in operation on January 1, 1996, as well as to adult residential care
25 facilities that begin operation on or after January 1, 1996. A residential facility for dependent
26 adults or a foster home for adults that is in operation on January 1, 1996, and that was
27 licensed by the Department of Health and Social Services before that date may continue to
28 operate under that license until the expiration date of the license or until a complaint is filed,
29 whichever occurs first. On the date that the license expires or a complaint is filed, whichever
30 occurs first, the adult residential care facility procedures in AS 47.35, as amended by this Act,
31 including license renewal procedures, first apply to such a facility or foster home.

1 * **Sec. 22. TRANSITION; REGULATIONS.** Notwithstanding secs. 25 and 26 of this Act,
2 the Department of Health and Social Services may proceed to adopt regulations necessary to
3 implement the provisions of this Act. The regulations take effect under AS 44.62
4 (Administrative Procedure Act), but not before January 1, 1996.

5 * **Sec. 23.** AS 47.35.210 - 47.35.250, enacted in sec. 17 of this Act, take effect only if a
6 bill that provides for a licensing and regulatory structure for residential facilities for adults
7 other than this Act is not enacted into law after passing the Second Session of the Eighteenth
8 Alaska State Legislature.

9 * **Sec. 24.** Sections 22 and 23 of this Act take effect immediately under AS 01.10.070(c).

10 * **Sec. 25.** Except for AS 47.35.210 - 47.35.250, enacted in sec. 17 of this Act, secs. 1 -
11 21 of this Act take effect January 1, 1996.

12 * **Sec. 26.** Subject to sec. 23 of this Act, AS 47.35.210 - 47.35.250, enacted in sec. 17 of
13 this Act, take effect January 1, 1996.