

HB

180

Alaska State Legislature

Session
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Chair, House Special Committee
on Economic Development, Trade
and Tourism

Chair, Joint House and Senate
Administrative Regulation and
Review Committee

Member
Resources Committee
Rules Committee

Representative Lesil McGuire *House District 17*

SPONSOR STATEMENT

HB 180

"An Act requiring child services providers to obtain criminal background checks for child services workers."

HB 180 amends statute to require that child service providers obtain criminal background checks before allowing volunteers to serve as child service workers.

In effort to find better, more effective ways of protecting Alaska's children, precautions must be taken to ensure that they are being supervised by individuals who are responsible, committed to the positive growth of our vulnerable youth, and who will not put our children's safety in jeopardy. Requiring organizations to provide a background check before allowing individuals to volunteer is one way to prevent child abuse.

HB 180 not only protects children, but also deters those individuals who have a history of criminal misconduct, from pursuing similar behavior in the future. It is the intent of this legislation to require a criminal background check on any person who supervises children, and to ensure that children are safe; that parents can leave their children without the fear that they may be abused in some fashion.

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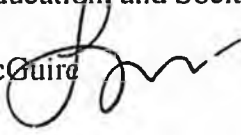
Chair, Joint House and Senate
Administrative Regulation and
Review Committee

Member
Resources Committee
Rules Committee

Representative Lesil McGuire *House District 17*

MEMORANDUM

TO: Representative Fred Dyson
Chair, House Health, Education and Social Services Committee

FROM: Representative Lesil McGuire 

DATE: April 6, 2001

RE: HB 180
"An Act requiring child services providers to obtain criminal background checks for child services workers."

I respectfully request that HB 180 be scheduled for a hearing in the House Health, Education, and Social Services Committee.

Attached are the following back up:

1. Sponsor Statement
2. HB 156

If you have any questions please feel free to contact me personally, or my staff Sue Stancliff at ext. #4695.

SECTIONAL SUMMARY

HB 180

“An Act relating to persons who provide services related to children; establishing a legislative task force on child services.”

Summary: These sections amend AS 47.35, which is a chapter of law that relates to licensing of foster homes, residential childcare facilities, semi-secure residential child care facilities, secure residential psychiatric treatment centers, child placement agencies, and maternity homes (hereinafter called “the facilities”).

Section 1: Allows DHSS to accept licenses issued for the facilities by other entities.

Section 2: Requires facility licensure for certain places that provide domiciliary services to students.

Sections 3 - 13: In general, sections 3 & 4 describe five types of criminal or child abuse backgrounds that must or can disqualify a facility from initial licensure. The five types consist of “serious crime” convictions described in AS 47.35.019(a), “less serious crime convictions in the past five years described in AS 47.35.019(b), findings of child abuse described in AS 47.35.019(c)(1), investigations or arrests for serious or less serious crimes or for child abuse described in AS 47.35.019(c)(2), and convictions for “lesser crimes” described in AS 47.35.021. Sections 5 – 13 refer back to various parts of AS 47.35.019 and 47.35.021 and describe how the various types of criminal or child abuse backgrounds will affect granting a provisional license, granting a variance, allowing a child placement, suspending a license, issuing a license after a provisional license, revoking a license, or continuing the operation of a facility that has already been licensed.

Section 3: Describes circumstances relating to criminal backgrounds, criminal charges, a child abuse findings, and child abuse complaints that require DHSS to deny initial licensure for the facilities.

Section 4: Describes circumstances relating to criminal backgrounds, criminal charges, child abuse findings, and child abuse complaints that allow DHSS to deny initial licensure for the facilities.

Section 5: Prohibits placement or continued placement of a child in a foster home under certain conditions.

Section 6: Prohibits placement or continued placement of a child in a foster home under certain conditions unless the department is satisfied there is no threat to the children.

Section 7: Pertains to emergency situations and the standards that will be used for criminal background checks for provisional foster home licenses.

Section 8: Pertains to the circumstances under which a provisional license can be turned into a biennial license.

Section 9: Pertains to granting variances.

Section 10: Pertains to renewal of biennial licenses.

Section 11: Requires facilities to notify DHSS about certain criminal convictions and charges and findings of child abuse.

Section 12: Rewrites the statute pertaining to grounds for license suspension, revocation, and nonrenewal.

Section 13: Provides an exception for continued operation of a facility even after certain offenses are committed if immediate action is taken to protect the children.

Section 14: Creates a legislative task force to research the viability of criminal background checks in the private and public sector.

Section 15 & 17: These sections allow development of regulations to begin immediately.

Section 16: Makes the provisions related to AS 47.35 effective July 1, 2002.

22-LS0642\R
Lauterbach
4/16/02

CS FOR HOUSE BILL NO. 180()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MCGUIRE, Murkowski, Dyson, Croft

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to persons who provide services related to children; establishing a
2 legislative task force on child services; and providing for an effective date."

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

4 * Section 1. AS 47.35.010(a) is amended to read:

5 (a) The department may

6 (1) license and supervise foster homes, residential child care facilities,
7 semi-secure residential child care facilities, secure residential psychiatric treatment
8 centers, child placement agencies, and maternity homes;

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

12 (3) adopt regulations to implement the provisions of this chapter,
13 including regulations establishing licensure and renewal procedures, standards, and
14 fees; establishing requirements for operation of facilities or agencies licensed under

1 this chapter; and distinguishing between types of facilities;

2 (4) enter into agreements with private entities, municipalities, or
3 individuals to investigate and make recommendations to the department for the
4 licensing and supervision of foster homes, residential child care facilities, semi-secure
5 residential child care facilities, secure residential psychiatric treatment centers, child
6 placement agencies, and maternity homes under procedures and standards of operation
7 established by the department;

8 (5) accept licenses issued by other organizations or state agencies
9 that have licensing authority under federal or state law for the facilities listed in
10 (1) of this subsection.

11 * Sec. 2. AS 47.35.015 is amended by adding a new subsection to read:

12 (h) A person, including a school district, may not provide domiciliary services
13 to students as a charter school, state boarding school, or public school unless that
14 school is licensed as a residential child care facility under this chapter.

15 * Sec. 3. AS 47.35 is amended by adding a new section to read:

16 **Sec. 47.35.019. Mandatory denial of initial license.** (a) The department
17 may not issue an initial license under this chapter if the applicant for the license who is
18 a natural person or a person who is required to submit a release under
19 AS 47.35.017(b)(5) in connection with a license has been previously convicted of any
20 of the following crimes or of violating a law or ordinance of this or another
21 jurisdiction with similar elements, or of an attempt, solicitation, or conspiracy to
22 commit any of the following crimes or to violate a law or ordinance of this or another
23 jurisdiction with similar elements:

24 (1) a crime involving domestic violence, as defined in AS 18.66.990,
25 that is a felony under AS 11;

26 (2) a crime that is an offense against the person under AS 11.41 and is
27 a felony under AS 11, except for a crime committed under AS 11.41.200 - 11.41.220
28 or 11.41.260;

29 (3) a crime that is a felony and involves a victim who was a child
30 under 18 years of age at the time of the conduct, including a crime where the
31 perpetrator was a person responsible for the child's welfare; in this paragraph, "person

1 responsible for the child's welfare" has the meaning given in AS 47.17.290;

2 (4) a crime that is arson under AS 11.46.400 or 11.46.410.

3 (b) The department may not issue an initial license under this chapter if the
4 applicant for the license who is a natural person or a person who is required to submit
5 a release under AS 47.35.017(b)(5) in connection with a license has been previously
6 convicted, within the five-year period immediately preceding the application, of any of
7 the following crimes or of violating a law or ordinance of this or another jurisdiction
8 with similar elements, or of an attempt, solicitation, or conspiracy to commit any of
9 the following crimes or to violate a law or ordinance of this or another jurisdiction
10 with similar elements:

11 (1) an assault that is a felony under AS 11.41.200 - 11.41.220;

12 (2) stalking under AS 11.41.260;

13 (3) a crime of misconduct involving controlled substances under
14 AS 11.71.010 - 11.71.060;

15 (4) a crime involving imitation controlled substances under
16 AS 11.73.010 - 11.73.040.

17 (c) In addition to the standards for denying an application or not issuing or
18 renewing a license under (a) and (b) of this section, the department may not issue an
19 initial license under this chapter if the applicant for the license who is a natural person
20 or a person who is required to submit a release under AS 47.35.017(b)(5) in
21 connection with the license

22 (1) has been found by a court or agency of this or another jurisdiction
23 to have neglected or abused a child as specified by the department in regulation; or

24 (2) is under investigation or arrest for, charged by information or
25 complaint with, or under indictment or presentment for a crime listed in (a) or (b) of
26 this section or is under investigation for, or is the respondent in a civil proceeding
27 related to, the neglect or abuse of a child, unless the department finds that issuing the
28 license does not pose a threat to the department's ability to ensure the health, safety, or
29 welfare of children receiving care under this chapter.

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

31 Sec. 47.35.021. Discretionary denial of initial license. Regardless of

1 whether the applicant for licensure has met all of the other requirements under this
2 chapter and regulations adopted under this chapter, the department may refuse to issue
3 an initial license under this chapter if the applicant for the license who is a natural
4 person or a person who is required to submit a release under AS 47.35.017(b)(5) in
5 connection with the license has been convicted, within the five-year period
6 immediately preceding the date of the application, of any of the following offenses or
7 of violating a law or ordinance of this or another jurisdiction with similar elements, or
8 of an attempt, solicitation, or conspiracy to commit any of the following offenses or to
9 violate a law or ordinance of this or another jurisdiction with similar elements:

10 (1) a crime involving domestic violence, as defined in AS 18.66.990,
11 that is a misdemeanor under AS 11;

12 (2) assault in the fourth degree under AS 11.41.230;

13 (3) contributing to the delinquency of a minor under AS 11.51.130;

14 (4) endangering the welfare of a child in the second degree under
15 AS 11.51.110;

16 (5) a serious offense as defined in AS 12.62.900, except for an offense
17 included in AS 47.35.019;

18 (6) a crime concerning operating certain vehicles, aircraft, or
19 watercraft while intoxicated under AS 28.33.030, 28.33.031, AS 28.35.030,
20 28.35.031, and 28.35.032.

21 * Sec. 5. AS 47.35.022(a) is repealed and reenacted to read:

22 (a) The department may not place or continue placement of a child for care for
23 placement under AS 47.10 in a foster home that is licensed under this chapter if the
24 licensee who is a natural person or a person who is required to submit a release under
25 AS 47.35.017(b)(5) in connection with a license has a conviction for an offense listed
26 in AS 47.35.019(a) or has been found by the court to have neglected or abused a child
27 under AS 47.35.019(c)(1).

28 * Sec. 6. AS 47.35.022(b) is repealed and reenacted to read:

29 (b) The department may not place or continue a placement of a child for foster
30 care if the applicant who is a natural person or a person who is required to submit a
31 release under AS 47.35.017(b)(5) has been previously convicted within a five-year

1 period immediately preceding the application for an offense described in
2 AS 47.35.019(b) or is in a situation described in AS 47.35.019(c)(2) unless the
3 applicant demonstrates to the satisfaction of the department that the placement or
4 continued placement does not pose a threat to the department's ability to ensure the
5 health, safety, or welfare of the children receiving care under this chapter.

6 * Sec. 7. AS 47.35.023(b) is amended to read:

7 (b) Notwithstanding (a) of this section, if an emergency exists and a child
8 must be immediately placed, the department [OR THE DEPARTMENT'S
9 DESIGNEE] may issue a provisional foster home license on an emergency basis for a
10 period of 90 days or less if the department [OR THE DEPARTMENT'S DESIGNEE]
11 determines that the applicant meets minimal requirements for emergency conditions
12 and the applicant agrees in writing to provide the fingerprint information described in
13 AS 47.35.017(b) within 30 days after [OF] the placement of a child in th. foster
14 home. The department may extend a provisional foster home license issued under this
15 subsection for one or two additional periods of up to 90 days each in order to obtain
16 the information from the national criminal background check required under
17 AS 47.35.017(b)(6). The department may not issue a license under this subsection
18 before checking state and national criminal justice information available to the
19 department under AS 12.62 and regulations adopted under AS 12.62 about the
20 administrator or foster parent and each person who is 16 years of age or older in the
21 foster home who will have contact with the child. If the department cannot obtain
22 direct access to the state and federal criminal justice information, the department shall
23 request the agency having primary law enforcement responsibility for the geographic
24 area in which the prospective foster home is located to obtain the information and
25 provide it to the department before the license is issued under this section. If the
26 criminal justice information readily available to the department shows an offense
27 about which a person would be required to notify the department under
28 AS 47.35.047(b), the department may not issue the license under this subsection. If
29 the additional criminal justice information [AVAILABLE FROM THE
30 FINGERPRINT SEARCH OR ANOTHER SOURCE AFTER THE LICENSE IS
31 ISSUED] reveals that the person has a record for an offense listed in AS 47.35.019(a)

1 or (b) or is in a situation described in AS 47.35.019(c) [ONE OR MORE OF
2 THESE OFFENSES], the department shall immediately revoke the license and move
3 the child to an appropriate placement. The department may revoke the license and
4 move the child to an appropriate placement if the criminal justice information
5 available from the fingerprint search or another source after the license is issued
6 reveals that the person has a record for an offense listed in AS 47.35.021. For
7 purposes of obtaining criminal justice information under this subsection, the
8 department is a criminal justice agency conducting a criminal justice activity under
9 AS 12.62.

10 * Sec. 8. AS 47.35.023(d) is amended to read:

11 (d) Before expiration of a provisional license, the department shall issue a
12 biennial license for the facility or agency if (1) after inspection and investigation under
13 (c) of this section, the department finds that the facility or agency is operating in
14 compliance with, and meets the licensure requirements of, this chapter and regulations
15 adopted under this chapter; (2) a [THE] ground for revocation or suspension set out
16 in AS 47.35.130(a) or (b) [AS 47.35.130(a)(2)] does not exist; and (3) all applicable
17 fees have been paid. The department shall prepare a summary report of its findings
18 and recommendations for issuance of a biennial license.

19 * Sec. 9. AS 47.35.027 is amended by adding a new subsection to read:

20 (f) Notwithstanding (a) - (e) of this section, the department may not grant a
21 variance if the criminal record review indicates that the licensee or a person required
22 to provide a release under AS 47.35.017(b)(5) has a conviction for an offense listed in
23 AS 47.35.019(a) or (b).

24 * Sec. 10. AS 47.35.045(c) is amended to read:

25 (c) The department shall renew a biennial license if the department finds that
26 (1) the licensee
27 (A) either is in compliance with this chapter and regulations
28 adopted under this chapter or is substantially in compliance and has
29 implemented a plan of correction, approved by the department, that is designed
30 to bring the facility or agency into full compliance; and
31 (B) has maintained the facility or agency in good repair and is

1 in compliance with all state fire safety and environmental health and safety
2 code requirements;

3 (2) a [THE] ground for revocation or suspension set out in
4 AS 47.35.130(a) or (b) [AS 47.35.130(a)(2)] does not exist; and

5 (3) all applicable fees have been paid.

6 * Sec. 11. AS 47.35.047(b) is repealed and reenacted to read:

7 (b) A licensee shall notify the department within 24 hours after having
8 knowledge that an administrator, foster parent, member of the licensee's household,
9 regular volunteer, or staff person has been

10 (1) convicted of, or is or has been under investigation or arrest for, has
11 been charged by information or complaint with, or is under indictment or presentment
12 for any offense listed in AS 47.35.019, 47.35.021, or a law or ordinance of this or
13 another jurisdiction with similar elements; or

14 (2) found to have neglected or abused a child as described in
15 AS 47.35.019(c)(1).

16 * Sec. 12. AS 47.35.130 is repealed and reenacted to read:

17 Sec. 47.35.130 Grounds for a license suspension, revocation, or
18 nonrenewal. (a) Except as provided in AS 47.35.140, the department shall revoke or
19 decline to renew a license issued under this chapter if the criminal record review of the
20 licensee who is a natural person or a person who is required to submit a release under
21 AS 47.35.017(b)(5) reveals a conviction for an offense listed in AS 47.35.019(a) or
22 (b).

23 (b) The department shall suspend a license issued under this chapter during
24 any period of time that the licensee who is a natural person or a person who is required
25 to submit a release under AS 47.35.017(b)(5) in connection with the license is under
26 investigation or arrest for, charged by information or complaint with, or under
27 indictment or presentment for a crime listed in AS 47.35.019(a) or (b) or is under
28 investigation for, or the respondent in a civil proceeding related to, the neglect or
29 abuse of a child, unless the department finds that not suspending the license does not
30 pose a threat to the department's ability to ensure the health, safety, or welfare of the
31 children receiving care under this chapter.

1 (c) The department may revoke, or decline to renew, a license issued under
2 this chapter on one or more of the following grounds:

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

4 (2) obtaining or attempting to obtain or retain a license under this
5 chapter by fraudulent means, by misrepresentation, or by submitting false information;

6 (3) failure to correct a violation noted in a report of investigation
7 provided under AS 47.35.105(c) or 47.35.110(b);

8 (4) failure to comply with a final administrative order issued by the
9 department under AS 47.35.120.

10 (5) if the licensee who is a natural person or a person required to
11 submit a release under AS 47.35.017(b)(5) has been the subject of, is under
12 investigation for, or is the respondent in a civil proceeding regarding the abuse or
13 neglect of a child;

14 (6) violation of this chapter or a regulation adopted under this chapter.

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

17 * Sec. 13. AS 47.35 is amended by adding a new section to read:

18 **Sec. 47.35.140. Exception for continued operation.** Notwithstanding any
19 other provision of this chapter, the department may allow a person licensed under this
20 chapter, other than as a provisional licensee under AS 47.35.023, to continue operating
21 if an employee of that facility or other agency who is required to submit a release
22 under AS 47.35.017(b)(5) discloses an offense under AS 47.35.019 or 47.35.021 if the
23 facility or agency takes immediate action to ensure the health, safety, and welfare of
24 the children residing at that facility or other agency, including notice to the department
25 and removing the person with the conviction described in AS 47.35.019 or 47.35.021
26 from contact with children at the facility or other agency.

27 * Sec. 14. The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 **TASK FORCE ON CHILD SERVICES.** (a) There is established in the legislative
30 branch the Task Force on Child Services to focus on public and governmental concerns about
31 whether there are sufficient criminal background checks conducted before individuals are

1 allowed to perform services relating to children.

2 (b) The task force shall be chaired by the chair of the House Special Committee on
3 Economic Development, Trade, and Tourism, who shall be a voting member of the task force.
4 The chair shall appoint two members of the House of Representatives, two members of the
5 Senate, and five members of the public who are child service providers to be the other voting
6 members of the task force. The commissioners of health and social services, community and
7 economic development, and education and early development, or their designees, may serve
8 on the task force as nonvoting members. The public members of the task force shall serve
9 without compensation but are entitled to per diem and travel expenses authorized for boards
10 and commissions under AS 39.20.180.

11 (c) The task force

12 (1) may begin work immediately upon the appointment of its full voting
13 membership and shall meet as frequently as the task force determines necessary to perform its
14 work;

15 (2) shall hold public hearings and may perform research related to its work;

16 (3) may meet during the interim and vote by teleconference;

17 (4) shall report its written findings and give a copy of its proposed legislation
18 and other recommendations to the legislature by January 21, 2003; and

19 (5) is terminated upon the convening of the First Regular Session of the
20 Twenty-Third Alaska State Legislature.

21 * Sec. 15. The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 TRANSITIONAL PROVISION; REGULATIONS. The Department of Health and
24 Social Services may begin the process of developing and adopting regulations to implement
25 this Act. A regulation adopted under this section takes effect under AS 44.62 (Administrative
26 Procedure Act) but not before July 1, 2002.

27 * Sec. 16. Sections 1 - 13 of this Act take effect July 1, 2002.

28 * Sec. 17. Sections 14 and 15 of this Act take effect immediately under AS 01.10.070(c).

DRAFT

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS HB 180 (HES)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
Title: BACKGROUND CHECKS FOR CHILD SERVICE PROVIDERS ERJ: Family and Youth Services
Component: Front Line Social Workers
Sponsor: MCGUIRE
Requestor: HOUSE (HES) Component Number: 2305

Expenditures/Revenue (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (0)						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--do not abbrevia						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: _____

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

For the Department of Health and Social Services, the intent of this proposed legislation is to amend AS 47.35, which governs the licensing of foster homes, residential child care facilities, child placement agencies, child treatment facilities and maternity homes.

This proposed legislation also is intended to bring the current statute into compliance with federal licensing requirements in the areas of prohibited crimes and provides standards for mandatory denial of licenses and guidelines that allow for the discretion of the department in making some licensing decisions.

Should this bill become law, the department does not anticipate any fiscal impact.

Prepared by: Theresa Tanoury, Director Phone 465-3191
Division: Family & Youth Services Date/Time 04/12/2002
Approved by: Elmer A. Lindstrom, Deputy Commissioner Date 04/16/2002
Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

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Rules Committee

Representative Lesil McGuire

House District 17

SPONSOR STATEMENT

HB 180

"An Act relating to persons who provide services related to children."

In order to continually seek ways to better protect Alaska's children in certain child care facilities, precautions must be taken in order to ensure that they are being supervised by individuals who are moral, responsible, and committed to their positive growth.

HB 180 conforms to the Adoption & Safe Families Act (ASFA) passed by Congress in 1997, which takes further steps to promote safety and permanence of children.

HB 180 brings current statutes into compliance with federal licensing requirements in the areas of prohibited crimes and provides standards for mandatory denial of licenses to foster homes, residential childcare facilities, residential psychiatric treatment centers, child placement agencies and maternity homes. HB 180 limits the State from approving or licensing any person that has been convicted of a felony involving child abuse or neglect, spousal abuse, a crime against a child, a crime involving violence and other offenses. HB 180 also requires licensed providers to notify the department if they discover that an administrator, member of their household, foster parent, volunteer or staff person has been convicted of any serious offense.

HB 180 also creates a "Task Force" to research the topic of criminal background checks for other entities that provide services to children.

Not only does HB 180 seek to shield children from those who have past records of misconduct, but also from those who could possibly be poor role models for children. HB 180 not only protects children, but also deters those individuals who have a history of misconduct from pursuing similar behavior in the future.

Summary for CS for HB 180

This bill makes amendments to AS 47.35, the department's licensing statutes and provides for a legislative task force on child services.

This proposed legislation is intended to bring the current statute into compliance with federal licensing requirements in the areas of prohibited crimes and provides standards for mandatory denial of licenses and guidelines that allow for the discretion of the department in making some licensing decisions.

Section 1 – The proposed amendment in this section of the bill would allow the department to recognize licenses issued by other entities that have state or federal licensing authority.

Examples of this are municipalities, tribes and child placement agencies. Child placement agencies currently perform all the same licensing functions as the department. The intent of this amendment is to be able to increase the number of foster homes available for children.

Section 2 – This section clarifies the requirement that school district and other educational entities that provide residential type programs for students where there is 24-hour care, are subject to licensure by the department.

Section 3 – The purpose of this new section is to bring the current statute into compliance with federal licensing requirements in the areas of prohibited crimes and provides standards for mandatory denial of licenses.

Federal law states that the state may not approve or license any prospective foster or adoptive parent, the prospective foster or adoptive parent has been convicted of a felony involving: (1) Child abuse or neglect; (2) Spousal abuse; (3) A crime against a child or children (including child pornography); or, (4) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

In addition, the state may not approve or license any prospective foster or adoptive parent if foster or adoptive parent has, within the last five years, been convicted of a felony involving: (1) Physical assault; (2) Battery; or, (3) A drug-related offense.

Section 4 –adds a new section to AS 47.35, which discusses additional offenses, not listed in the federal requirements, under which the state would have the discretion to deny or not issue a license.

Sections 5 and 6 – These sections repeal and reenact AS 47.35.022 regarding foster care placement. It essentially incorporates the proposed new sections into existing statutes.

Section 7 – This section incorporates the new AS 47.35.19 regarding denials into the guidelines for making emergency placements. In addition, the department may revoke an emergency license if background checks indicate the existence of any discretionary offenses identified in the new AS 47.35.021.

Section 8 – clarifies that before issuing a biennial license, the department needs to make sure that no situation exists that would result in a revocation or suspension of a license.

Section 9 –the department may not issue a variance if a background check indicates a conviction for a criminal offense listed in new AS. 47.35.19.

Section 10 – clarifies that before renewing a biennial license, the department needs to make sure that no situation exists that would result in a revocation or suspension of a license.

Section 11 – This section amends AS 47.35.047(b) which requires licensed providers to notify the department if they discover that an administrator, member of their household, foster parent, volunteer or staff person has been convicted of, charged with or is under investigation for any serious offense. The amendment incorporates the newly added sections AS 47.35 019 and 47.35.021.

Section 12 –covers grounds for the revocation or nonrenewal of an existing license. It restructures the existing statute by incorporating the new sections to AS 47.35 and adds suspension to the actions the department may take.

Section 13 adds a subsection to allow licensed providers to continue operating if an employee discloses a serious offense, provided the employer takes immediate

action , including notice to the department to ensure the health and safety of the children.

Section 14 – implements a legislative task force on children’s services

Section 15 - allows the department to develop and adopt any regulations necessary to implement the new statutes and allows for the new statute to take effect July 1, 2002.

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

(2) each enforcement action that will be taken;

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

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

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

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

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

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

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

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

(i) Assessment of an administrative fine under this section does not preclude imposition of a criminal penalty under AS 14.37.210. (§ 7 ch 58 SLA 1999)

Revisor's notes. — Enacted as AS 14.37.120. Renumbered in 1999, at which time, in subsection (a) "AS 14.37.150" was substituted for "AS 14.37.105"; in subsection (b) "AS 14.37.180" was substituted for "AS 14.37.130", "AS 14.37.150" was substituted for "AS 14.37.105" and "AS 14.37.160" was substituted for "AS 14.37.110"; and in subsection (i), "AS 14.37.210" was substituted for "AS 14.37.820" to reflect the 1999 renumbering of AS 14.37.105, 14.37.110, 14.37.130, and 14.37.820.

Sec. 14.37.180. Grounds for license revocation or nonrenewal. (a) In addition to the ground of violation of this chapter or a regulation adopted under this chapter, the department may revoke or decline to renew a license issued under this chapter on one or more of the following grounds:

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

(2) the indictment or charging by information or complaint, or a criminal conviction within the last 10 years, of the licensee or administrator, member of the licensee's household who is present in the facility at any time the facility is in operation, regular volunteer, or staff person for

(A) a felony;

(B) a misdemeanor crime of assault, reckless endangerment, contributing to the delinquency of a minor, or misconduct involving a controlled substance; or

(C) the crime of perjury, as defined in AS 11 or the laws of another jurisdiction;

(3) the conviction, indictment, presentment, or charging of the licensee or an administrator, member of the licensee's household who is present in the facility at any time the facility is in operation, regular volunteer, or staff person at any time for a violation or attempted violation of an offense included in the definitions of "serious offense" under AS 12.62.900;

(4) obtaining or attempting to obtain a license by fraudulent means, misrepresentation, or

(5) failure to correct a violation under AS 14.37.150(c) or 14.37.160(b);

(6) failure to comply with AS 14.37.170.

(b) A licensee may voluntarily renew. (§ 7 ch 58 SLA 1999)

Revisor's notes. — Enacted as AS 14.37.150(c) at which time "AS 14.37.150(c)" was substituted for "AS 14.37.105(c)", "AS 14.37.160(b)" was substituted for "AS 14.37.110(b)".

Sec. 14.37.190. Administrative actions. (a) A decision under this chapter to deny, suspend, or revoke a license, suspension of operation, or fine. (§ 7 ch 58 SLA 1999)

Revisor's notes. — Enacted as AS 14.37.190 at which time "AS 14.37.190" was substituted for "AS 14.37.105".

Sec. 14.37.200. Immunity. (a) A licensee or administrator who is acting in good faith and with the department under this chapter shall not be held liable for any act or omission in the performance of the person's duties if the act or omission was necessary for the person to operate within the scope of the person's duties. (b) The department and its employees shall not be held liable for any act or omission in the performance of the person's duties if the act or omission was necessary for the person to operate within the scope of the person's duties. This subsection does not apply to negligence or reckless or intentional acts.

(b) The department and its employees shall not be held liable for any act or omission in the performance of the person's duties if the act or omission was necessary for the person to operate within the scope of the person's duties. This subsection does not apply to negligence or reckless or intentional acts.

Revisor's notes. — Enacted as AS 14.37.020(a)(4) at which time, "AS 14.37.020(a)(4)" was substituted for "AS 14.37.020(a)(4)".

Sec. 14.37.210. Penalty for violation of regulation adopted under this chapter. (a) A licensee or administrator who violates a regulation adopted under this chapter shall be liable for a fine of not more than \$1,000. (b) A licensee or administrator who violates a regulation adopted under this chapter shall be liable for a fine of not more than \$1,000. (§ 7 ch 58 SLA 1999)

Revisor's notes. — Enacted as AS 14.37.210 at which time, "AS 14.37.210" was substituted for "AS 14.37.105".

Sec. 14.37.299. Definitions. (1) "administrator" means a person who has oversight of a facility;

(2) "child" means an individual who is a relative of a care provider;

(3) "child care" means, regardless of whether the care is provided with or without compensation, the care of children;

(4) "child care facility" means a facility in which children under 12 years of age are housed, unless nighttime care is authorized;

(5) "criminal justice information" means information that is used in the investigation, prosecution, or sentencing of a criminal offense;

(6) "department" means the Department of Education, Libraries, and Museums.

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

(5) failure to correct a violation noted in a report of investigation provided under AS
...14.37.150(c) or 14.37.160(b);

(6) failure to comply with a final administrative order issued by the department under
...AS 14.37.170.

(b) A licensee may voluntarily relinquish the license or withdraw an application for
...renewal. (§ 7 ch 58 SLA 1999)

Revisor's notes. — Enacted as AS 14.37.130. Re- "AS 14.37.110(b)" and "AS 14.37.170" was substituted
...numbered in 1999, at which time, in subsection (a), for "AS 14.37.120" to reflect the 1999 renumbering of
..."AS 14.37.150(c)" was substituted for "AS AS 14.37.105, 14.37.110, and 14.37.120.
...14.37.105(c)", "AS 14.37.160(b)" was substituted for

Sec. 14.37.190. Administrative procedure. The administrative adjudication provi-
...sions of AS 44.62 (Administrative Procedure Act) apply to an appeal from a department
...decision under this chapter relating to denial, involuntary conditioning, or revocation of
...a license, suspension of operations or admissions, or assessment of an administrative
...fine. (§ 7 ch 58 SLA 1999)

Revisor's notes. — Enacted as AS 14.37.800. Re-
...numbered in 1999.

Sec. 14.37.200. Immunity from liability. (a) A person operating under agreement
...with the department under AS 14.37.020(a)(4) is immune from civil liability that might
...otherwise be incurred or imposed for acts or omissions that occurred during the
...performance of the person's duties on behalf of the department if the person was
...operating within the scope of the duties delegated to the person under the agreement.

(b) The department and its employees are not liable for civil damages as a result of an
...act or omission in the licensing, monitoring, or supervision of a facility licensed under this
...chapter. This subsection does not preclude liability for civil damages as a result of gross
...negligence or reckless or intentional misconduct. (§ 7 ch 58 SLA 1999)

Revisor's notes. — Enacted as AS 14.37.810. Re- 14.37.010(a)(4)" to reflect the 1999 renumbering of AS
...numbered in 1999, at which time, in subsection (a), 14.37.010.
..."AS 14.37.020(a)(4)" was substituted for "AS

Sec. 14.37.210. Penalty. A person who violates a provision of this chapter or a
...regulation adopted under this chapter is guilty of a class B misdemeanor. (§ 7 ch 58 SLA
...1999)

Revisor's notes. — Enacted as AS 14.37.820. Re-
...numbered in 1999.

Sec. 14.37.299. Definitions. In this chapter,
...(1) "administrator" means an individual who has general administrative charge and
...oversight of a facility;

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

(3) "child care" means, care, supervision, and provision of developmental opportuni-
...ties, with or without compensation, to a child who does not have a parent present;

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

(5) "criminal justice information" has the meaning given in AS 12.62.900;

(6) "department" means the Department of Education and Early Development;

Background Checks/Screening

1999 Enactments

AL 1999 Ala. Acts, Act 361

Establishes a comprehensive system for criminal background checks on current and prospective employees of public and private schools.

AR 1999 Ark. Acts, Act 328

Requires criminal history records checks for prospective adoptive and foster parents, in accordance with Adoption and Safe Families Act (ASFA).

CO 1999 Colo. Sess. Laws, Chap. 293

Adds certain convictions to grounds for denying licenses to family child care homes and certification of family foster homes. Requires all child care applicants, owners and employees to obtain a criminal background record check. Exempts certain providers, but requires them to sign a statement affirming no convictions. Criminalizes a false statement by applicants and requires a notice to be put on the application.

Sec. 10 Authorizes and funds a pilot study in three counties on background checks and requires a report to the legislature.

FL 1999 Fla. Laws, Chap. 193

Allows the department to place a child in a foster home that otherwise meets licensing requirements if the state and local records checks do not disqualify the home and the department is awaiting results from the federal criminal records check.

MS 1999 Miss. Laws, Chap. 330

Provides that the Department of Public Safety is responsible for releasing information relating to criminal history record checks to certain child residential facilities.

MO 1999 Mo. Laws, Chap. 210

Establishes the Family Care Safety Registry for child care providers and requires the registry to be publicly accessible with a toll-free number in 2001. Requires any provider or worker in a licensed or license-exempt child care home or center or receiving state or federal funds to submit to a background check. Provides a penalty. Excludes certain child care providers. Requires the registry to contain certain background information. Requires license-exempt child care facilities, such as religiously-operated centers, to conduct background checks on employees. Limits the state fee for conducting a background check. Allows for an appeal process. Requires an annual report to the legislature.

NV 1999 Nev. Stats., Chap. 440

Establishes a revolving account within the state general fund to investigate the backgrounds of volunteers who work with children.

NH 1999 N.H. Laws, Chap. 326

Requires that individuals who have regular contact with children in a child care program submit background information to the state. Outlines compliance licensing and enforcement process for convictions of crimes that could pose a threat to a child.

NY 1999 N.Y. Laws, Chap. 7

Sess. 7, 54 Specifies requirements for criminal history records checks on prospective foster and adoptive parents, in accordance with ASFA.

ND 1999 N.D. Sess. Laws, Chap. 282

Secs. 21-24 Adopts requirements for fingerprinting and background screening of foster parents, legal guardians and adoptive parents.

OK 1999 Okla. Sess. Laws, Chap. 2

Secs. 1-3 Replaces iecriminal history investigation: with icriminal history records search.la Authorizes department and child placement agencies to place a child in a home pending the completion of a background search under certain conditions. Authorizes the department to make an exception to fingerprinting requirement if a severe physical condition of the applicant prevents it.

UT 1999 Utah Laws, Chap. 77

Requires a family child care provider caring for more than five but fewer than eight children to obtain a state certificate to screen for child abuse or neglect.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

2000 Enactments

2000 Ala. Acts, SB 273, Act 775

Requires a criminal history background check on employee applicants, employees and volunteers of child care facilities, child placing agencies, foster parents, parent applicants for child adoptive placement and state officials who work with children. Specifies crimes that make someone unsuitable for such approval.

2000 Ala. Acts, HB 243, Act 743

Revises the state protocol for criminal background checks for those people and applicants, whether paid or volunteer, who provide unsupervised care to or are responsible for the safety and well-being of children in child care facilities, foster homes and adoptive homes.

2000 Ariz. Sess. Laws, SB 1183, Chap. 77

Prohibits a person who is awaiting trial or who has been convicted of crimes against children from child care employment. Allows those awaiting trial or convicted of non-child-related crimes to work in a child care capacity if they have a required fingerprint clearance card and are registered.

2000 Colo. Sess. Laws, SB 62, Chap. 349

Allows child care and child placement services to request conviction or pending indictment information about providers and volunteers. Specifies offenses, including child abuse, violent acts, and sexual offenses. Authorizes the Colorado Bureau of Investigation and local law enforcement agencies to provide such information. Sets rule-making authority and makes an appropriation.

2000 Hawaii Sess. Laws, HB 2098

Requires providers of mental health services for children to undergo criminal record checks. Requires private schools, in cooperation with the Hawaii Criminal Justice Data Center, to conduct criminal history verifications of applicants for employment in positions that require working closely with children.

2000 Hawaii Sess. Laws, HB 2506, Act 108

Requires prospective adoptive parents to submit to a criminal history record check, which includes fingerprinting. Requires the department to obtain criminal history record information for all prospective adoptive parents.

2000 Idaho Sess. Laws, SB 1477, Chap. 191

Requires owners, operators and employees of private kindergartens or preschools to comply with criminal history background checks.

2000 Iowa Acts, SB 228

Authorizes school districts and non-public schools to conduct background record checks on volunteers and employees.

2000 Ky. Acts, HB 706, Chap. 308

Sec. 18, 19, 25 Denies child care licenses or certification to providers who have been convicted of a violent crime or sex crime, or those who have been found to have abused or neglected a child. Prohibits a subsidy payment to a child care provider who has contact with minors and is convicted of a violent crime or sex crime or is found to have abused or neglected a child.

1999 La. Acts, HB 1618, Act 1144

Sec. 2 Adds those living in a registered family child care home to the list of categories about which specific officials may request certain criminal history information. Allows family child care homes to request certain violent or sexual criminal history information. Prohibits family child care homes from

employing or housing those convicted of certain violent or sex crimes. Requires that family child care homes pay for cost of background check.

1999 La. Acts, SB 1113, Act 816

Authorizes use of the National Crime Information Center to conduct background checks. Allows certain organizations to require people who apply for positions that involve contact with children to undergo background checks and/or training on child abuse. Changes penalty for unauthorized acquisition of criminal history information.

1999 Me. Public Laws, LD 741, Chap. 791

Requires all applicants for public school employment to undergo fingerprinting and criminal background checks.

2000 Md. Laws, SB 527, Chap. 284

Requires a parent or guardian of a child who is committed to a local department of social services (DSS) and placed in an out-of-home placement within the past year and any adult residing in the home of the parent or guardian to obtain a criminal history records check if requested by a local department. Requires local DSS reimbursement for any criminal history records check by any adult residing in the home of the parent or guardian.

1999 Mass. Acts, HB 3965, Chap. 3

Requires the state to conduct a review of any misdemeanor offense discovered through a criminal offender record check on a prospective foster parent. Requires the state to develop a plan for conducting nationwide criminal offender record information checks on prospective foster parents.

2000 Miss. Laws, HB 969, Chap. 434

Requires background checks for owners and operators of child residential facilities.

1999 N.J. Laws, AB 2640, Chap. 432

Authorizes criminal background checks for youth agency employees and volunteers.

2000 N.J. Laws, SB 1170, Chap. 77

Requires background checks on child care center employees. Authorizes state refusal of a license for noncompliance. Disqualifies staff or potential staff if convicted of certain violent crimes and crimes against children. Allows for employment of rehabilitated offenders in certain circumstances. Requires a report to the governor and Legislature on the effectiveness of criminal record checks in the screening of applicants. Requires that the state pay for the criminal history background and fingerprint checks.

1999 N.Y. Laws, S 1031

Requires a criminal history search as a condition for teacher and school administrator licensure or certification; requires fingerprinting of prospective nonprofessional employees of school districts, charter schools and boards of cooperative educational services and the review of such employees' criminal histories by the commissioner of education. Authorizes the release of certain information relating to a criminal prosecution to school administrators when the proceedings are terminated in favor of a defendant who is a school employee.

2000 N.Y. Laws, SB 7892, Chap. 145

Allows the state to approve an application for a foster parent license, notwithstanding conviction of certain crimes, if the prospective foster parent can demonstrate that denial of a license will not create an

unreasonable risk of harm to a child and that approval of the application will not jeopardize the safety of a child. Requires a safety assessment if a criminal history check on an approved foster parent or a prospective adoptive parent reveals a conviction for any crime.

Opts out of criminal history check provision of ASFA.

2000 Ohio Laws, HB 448

Makes changes and clarifications to the law governing criminal records checks of those seeking to be foster caregivers or adoptive parents, or those responsible for a child's care in out-of-home care. Subjects those age eighteen and older to criminal record checks if they reside with a prospective foster caregiver. Requires foster caregivers to notify the agency recommending foster home certification if a person between the ages of 12 and 18, residing with the foster caregiver, has been convicted of or pled guilty to certain offenses or has been adjudicated a juvenile delinquent for committing certain acts.

2000 R.I. Pub. Laws, HB 6824, Chap. 107

Allows a nationwide criminal record check for prospective foster parents.

2000 S.C. Acts, SB 181, Act 219

Permits foster parent fingerprinting and granting of temporary foster care licenses after favorable fingerprint review.

2000 Utah Laws, HB 181, Chap. 24

Allows state to maintain a separate file of fingerprints for those applying for an educator's license. Requires drug or sexual offenses to be reported to the state Office of Education.

Specifies deadlines for responses to requests for searches of the central registry on prospective school employees.

2000 Va. Acts, SB 603, Chap. 860

Adds section on national criminal background checks by businesses and organizations regarding employees or volunteers who provide care to children.

2001 Enactments

2001 Ark. Acts, HB 1919, Act 1211

Clarifies background check requirements regarding people in a licensed child welfare agency.

2000 Cal. Stats., SB 2161, Chap. 0421

Requires the state department of justice and local criminal justice agencies to furnish criminal history information on foster home applicants to county child welfare personnel. Amends provisions relating to fingerprint clearance checks of unlicensed care providers. Specifies purposes for which a local child welfare agency may obtain criminal history information.

2001 Colo. Sess. Laws, SB 0014, Chap. 0220

Adds to the list of offenses that disqualify a person from obtaining a license to operate a family child care home, a foster care home, a child care center, a residential child care facility, a secure residential child care facility or a child placement agency.

2001 Conn. Acts, Special Session HB 7503, PA 01-2

Expands criminal record check requirement applicable to child care facilities, foster homes and residential treatment facilities to include any person identified on a license application in addition to the applicant.

2001 Ind. Acts, SB 0083, PL 0036

Authorizes individual access to child abuse registry information about a potential child care provider or someone residing with a provider who may have contact with a child. Authorizes access to registry information about individuals residing with providers indicating whether a child was in need of services, criminal charges were filed, or an arrest warrant was issued, based on an abuse or neglect report.

2001 Me. Public Laws, LD 1070, Chap. 0052

Requires that all non-biological prospective adoptive parents submit to a background check by state law enforcement and the FBI.

2001 Mont. Laws, SB 0116, Chap. 0311

Requires applicants for a foster home license to submit to criminal and child protection background checks.

2001 Neb. Laws, LB 0214

Sec. 1 Provides access to child abuse records to specified state officials for purposes of licensing child care providers.

2000 Ohio Laws, SB 0187

Requires the development of best practice recommendations for organizations that provide services to children that include criminal background checks of volunteers who have access to children.

2001 S.D. Sess. Laws, HB 1023, Chap. 0140

Requires that all employees and volunteers in the Juvenile Division of the Department of Corrections or other adolescent treatment program be screened against the state's central registry for abuse and neglect.

2001 S.D. Sess. Laws, HB 1274, Chap. 0136

Prohibits any person convicted of child abuse or a sex offense or whose name appears on the central

registry of child abuse and neglect from operating a family child care home.

2001 Texas Laws, SB 0053, Chap. 6691

Expands the list of people about whom criminal background information may be obtained.

2001 Va. Acts, HB 2013, Chap. 0321

Specifies deadlines for responding to requests for a search of the central child abuse registry.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CS HB 180 (HES)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
 Title: BACKGROUND CHECKS FOR CHILD SERVICE PROVIDERS BRU: Family and Youth Services
 Component: Front Line Social Workers

Sponsor: MCGUIRE
 Requestor: HOUSE (HES) Component Number: 2305

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (0)						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Othe (Specify Type--do not abbrevia						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: _____

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

For the Department of Health and Social Services, the intent of this proposed legislation is to amend AS 47.35, which governs the licensing of foster homes, residential child care facilities, child placement agencies, child treatment facilities and maternity homes.

This proposed legislation also is intended to bring the current statute into compliance with federal licensing requirements in the areas of prohibited crimes and provides standards for mandatory denial of licenses and guidelines that allow for the discretion of the department in making some licensing decisions.

Should this bill become law, the department does not anticipate any fiscal impact.

Prepared by: Theresa Tanoury, Director Phone 465-3191
 Division: Family & Youth Services Date/Time 04/12/2002
 Approved by: Elmer A. Lindstrom, Deputy Commissioner Date 04/16/2002
 Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

22-LS0642\P
Lauterbach
4/9/01

CS FOR HOUSE BILL NO. 180()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES MCGUIRE, Murkowski, Dyson

A BILL

FOR AN ACT ENTITLED

1 **"An Act requiring child services providers to obtain criminal background checks for**
2 **child services workers."**

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

4 *** Section 1. AS 47.18 is amended by adding a new section to read:**

5 **Article 4A. Child Services Workers.**

6 **Sec. 47.18.250. Criminal background check required. (a) A child services**
7 **provider may not employ, appoint, retain, or use the volunteer services of an**
8 **individual as a child services worker unless the provider has, within the previous 365**
9 **days, received a report of state criminal justice information available to an interested**
10 **person under AS 12.62.160 for the individual that was prepared by the Department of**
11 **Public Safety and the report did not show any current offender information or past**
12 **conviction information involving a serious offense.**

13 **(b) A child services provider may not request state criminal justice**
14 **information under this section unless the individual seeking to be a child services**

1 worker provides to the child services provider

2 (1) a completed application for the state criminal justice information
3 that contains the name, address, and date of birth of the individual;

4 (2) a signed statement by the individual that

5 (A) the application is that of the individual; and

6 (B) the individual has not been convicted of a serious offense,
7 or, if the individual has been convicted of a serious offense, the statement must
8 provide a description of the offense and the details of the conviction; and

9 (3) an acknowledgment that the individual has been notified by the
10 child services provider that state criminal justice information will be requested, that
11 the individual may receive a copy of the information, and that the individual may have
12 the right to challenge the information as provided in (c) of this section.

13 (c) Upon request of an individual who is the subject of a report of state
14 criminal justice information under this section, the child services provider shall
15 provide to the individual a copy of the transcript received under this section pertaining
16 to the individual. The individual may challenge the accuracy and completeness of the
17 transcript in the manner provided in AS 12.62.

18 (d) If a child services provider holds a state license authorizing the provision
19 of child services, the state agency that issued the license shall revoke it upon a finding
20 either by a court or by the agency in a proceeding under AS 44.62 that the provider
21 violated (a) of this section.

22 (e) Notwithstanding other provisions of this section, a child services provider
23 may use the services of a volunteer without complying with (a) of this section if the
24 volunteer is

25 (1) used for teaching in the Sabbath or Sunday school of a religious
26 organization or for care of children on the premises where a religious service is held
27 while their parents are in attendance at the religious service; or

28 (2) a parent, guardian, or relative of a child who is accompanying the
29 child while the child is participating in a school-sponsored function.

30 (f) Nothing in this section exempts child services providers or volunteers from
31 laws outside of this section that may be applicable to them.

1 (g) In this section,

2 (1) "child services" means the care, treatment, education, training,
3 instruction, supervision, or recreation of children under 18 years of age;

4 (2) "child services worker" means an individual who serves with or
5 without compensation in a position in which the individual has or may have
6 unsupervised access to a minor on more than a sporadic basis;

7 (3) "current offender information" has the meaning given in
8 AS 12.62.900;

9 (4) "past conviction information" has the meaning given in
10 AS 12.62.900;

11 (5) "provider" means a business, organization, or other entity, whether
12 public, private, for profit, not for profit, or voluntary, that provides child services;

13 (6) "serious offense" has the meaning given in AS 12.62.900.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB180

() Publish Date: _____

Revision Date/Time (Note if correction): _____
 Title: Background Check of Youth Worker

Dept. Affected: Military & Veterans Affairs

BRU: Alaska National Guard

Component: AK Military Youth Academy

Sponsor: Rep. McGuire

Requester: (H) HES

Component Number: 1969

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual	11.0	7.5	7.5	7.5	7.5	7.5
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	11.0	7.5	7.5	7.5	7.5	7.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	6.6	4.5	4.5	4.5	4.5	4.5
1003 GF Match	4.4	3.0	3.0	3.0	3.0	3.0
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	11.0	7.5	7.5	7.5	7.5	7.5

Estimate of any current year (FY2001) cost: none

Check this box (X) if funding for this bill is included in the Governor's FY2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Youth Academy has 65 full-time and 14 nonperm/part-time on-call employees that work with youth, ages 16 through 18. As part of residential and post-residential phases of the program, some 300 mentors work with the youth, as well as some 30 volunteers. All 409 personnel will require background checks under this new legislation. Insuring all employees, mentors, and volunteers have no history of abuse or other adverse actions that would make them unfit to work with youth ages 16 through 18, is key to the success of the program. We are in the position to have adults influencing the life and behavior of youth enrolled at the Academy. Contracting with a private on-line service company would cost approximately \$25.00 per background check (Alaska and out-of-state), plus initial software costs (\$11,000 the first year). This would set up the software program at the academy and include background checks for all employees, mentors, and volunteers. Estimated future year costs of \$7,500 would cover a new employees, mentors and volunteers.

Prepared by: Tim Jones

Phone 384-6017

Division: Alaska Military Youth Academy

Date/Time 19-Apr-01

Approved by: Phil Oates

Date 19-Apr-01

Agency: Military & Veterans Affairs

For distribution information, call the Governor's Legislative Office

TALKING POINTS

HB 180

“Criminal Background Checks For Child Services Providers”

We would like committee to adopt CS version LS0642\P, dated 4/9/01

HB 180 requires anyone who provides child services to obtain a background check on individuals before employing, appointing, retaining or using a volunteer

The cost associated with state criminal background check is \$20

Bill requires in state background checks only, not FBI checks.

Payment for background check is left to the discretion of the provider.

Penalty for noncompliance, tied directly to the license. License is immediately revoked.

Exemptions include Sunday school teachers, nursery volunteers at a church, parent, guardian, or relative participating in a school sponsored function.

Have a constituent that has 4 children, 3 of those children were victims.

Changes in CS

Pg 2, line 1: Adds to the services provider purpose if for clarification

Pg 2, lines 6 & 7: Changes Serious “Crimes” to Serious “Offense” purpose is for consistency with definition section

Pg 2, Lines 18 though 21: Subsection added for violation, ties license directly to noncompliance.

Pg 2, lines 22 through 31: Subsections add for exemptions.

Suggested amendments:

#1

Pg. 1, line 11 & 12

Delete: and the report did not show any current offender information or
pas conviction information involving a serious offense.

#2

Pg. 2, line 27

Add: parent, guardian, or relative of the child

To read: while a parent, guardian, or relative of the child is in attendance at
the religious service

(purpose if for consistency with subsection (2))

22-LS0642T
Lauterbach
4/18/02

CS FOR HOUSE BILL NO. 180()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MCGUIRE, Murkowski, Dyson, Croft

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to persons who provide services related to children; establishing a
2 legislative task force on child services; and providing for an effective date."

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

4 * **Section 1.** AS 47.35.010(a) is amended to read:

5 (a) The department may

6 (1) license and supervise foster homes, residential child care facilities,
7 semi-secure residential child care facilities, secure residential psychiatric treatment
8 centers, child placement agencies, and maternity homes;

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

12 (3) adopt regulations to implement the provisions of this chapter,
13 including regulations establishing licensure and renewal procedures, standards, and
14 fees; establishing requirements for operation of facilities or agencies licensed under

1 this chapter; and distinguishing between types of facilities;

2 (4) enter into agreements with private entities, municipalities, or
3 individuals to investigate and make recommendations to the department for the
4 licensing and supervision of foster homes, residential child care facilities, semi-secure
5 residential child care facilities, secure residential psychiatric treatment centers, child
6 placement agencies, and maternity homes under procedures and standards of operation
7 established by the department;

8 (5) accept licenses issued by other organizations or state agencies
9 that have licensing authority under federal or state law for the facilities listed in
10 (1) of this subsection.

11 * Sec. 2. AS 47.35.015 is amended by adding a new subsection to read:

12 (h) A person, including a school district, may not provide domiciliary services
13 to students as a charter school, state boarding school, or public school unless that
14 school is licensed as a residential child care facility under this chapter.

15 * Sec. 3. AS 47.35 is amended by adding a new section to read:

16 **Sec. 47.35.019. Mandatory denial of initial license.** (a) The department
17 may not issue an initial license under this chapter if the applicant for the license who is
18 a natural person or a person who is required to submit a release under
19 AS 47.35.017(b)(5) in connection with a license has been previously convicted of any
20 of the following crimes or of violating a law or ordinance of this or another
21 jurisdiction with similar elements, or of an attempt, solicitation, or conspiracy to
22 commit any of the following crimes or to violate a law or ordinance of this or another
23 jurisdiction with similar elements:

24 (1) a crime involving domestic violence, as defined in AS 18.66.990,
25 that is a felony under AS 11;

26 (2) a crime that is an offense against the person under AS 11.41 and is
27 a felony under AS 11, except for a crime committed under AS 11.41.200 - 11.41.220
28 or 11.41.260;

29 (3) a crime that is a felony and involves a victim who was a child
30 under 18 years of age at the time of the conduct, including a crime where the
31 perpetrator was a person responsible for the child's welfare; in this paragraph, "person

1 responsible for the child's welfare" has the meaning given in AS 47.17.290;

2 (4) a crime that is arson under AS 11.46.400 or 11.46.410.

3 (b) The department may not issue an initial license under this chapter if the
4 applicant for the license who is a natural person or a person who is required to submit
5 a release under AS 47.35.017(b)(5) in connection with a license has been previously
6 convicted, within the five-year period immediately preceding the application, of any of
7 the following crimes or of violating a law or ordinance of this or another jurisdiction
8 with similar elements, or of an attempt, solicitation, or conspiracy to commit any of
9 the following crimes or to violate a law or ordinance of this or another jurisdiction
10 with similar elements:

11 (1) an assault that is a felony under AS 11.41.200 - 11.41.220;

12 (2) stalking under AS 11.41.260;

13 (3) a crime of misconduct involving controlled substances under
14 AS 11.71.010 - 11.71.060;

15 (4) a crime involving imitation controlled substances under
16 AS 11.73.010 - 11.73.040.

17 (c) In addition to the standards for denying an application or not issuing or
18 renewing a license under (a) and (b) of this section, the department may not issue an
19 initial license under this chapter if the applicant for the license who is a natural person
20 or a person who is required to submit a release under AS 47.35.017(b)(5) in
21 connection with the license

22 (1) has been found by a court or agency of this or another jurisdiction
23 to have neglected or abused a child as specified by the department in regulation; or

24 (2) is under investigation or arrest for, charged by information or
25 complaint with, or under indictment or presentment for a crime listed in (a) or (b) of
26 this section or is under investigation for, or is the respondent in a civil proceeding
27 related to, the neglect or abuse of a child, unless the department finds that issuing the
28 license does not pose a threat to the department's ability to ensure the health, safety, or
29 welfare of children receiving care under this chapter.

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

31 **Sec. 47.35.021. Discretionary denial of initial license.** Regardless of

1 whether the applicant for licensure has met all of the other requirements under this
2 chapter and regulations adopted under this chapter, the department may refuse to issue
3 an initial license under this chapter if the applicant for the license who is a natural
4 person or a person who is required to submit a release under AS 47.35.017(b)(5) in
5 connection with the license has been convicted, within the five-year period
6 immediately preceding the date of the application, of any of the following offenses or
7 of violating a law or ordinance of this or another jurisdiction with similar elements, or
8 of an attempt, solicitation, or conspiracy to commit any of the following offenses or to
9 violate a law or ordinance of this or another jurisdiction with similar elements:

10 (1) a crime involving domestic violence, as defined in AS 18.66.990,
11 that is a misdemeanor under AS 11;

12 (2) assault in the fourth degree under AS 11.41.230;

13 (3) contributing to the delinquency of a minor under AS 11.51.130;

14 (4) endangering the welfare of a child in the second degree under
15 AS 11.51.110;

16 (5) a serious offense as defined in AS 12.62.900, except for an offense
17 included in AS 47.35.019;

18 (6) a crime concerning operating certain vehicles, aircraft, or
19 watercraft while intoxicated under AS 28.33.030, 28.33.031, AS 28.35.030,
20 28.35.031, and 28.35.032.

21 * **Sec. 5.** AS 47.35.022(a) is repealed and reenacted to read:

22 (a) The department may not place or continue placement of a child for care for
23 placement under AS 47.10 in a foster home that is licensed under this chapter if the
24 licensee who is a natural person or a person who is required to submit a release under
25 AS 47.35.017(b)(5) in connection with a license has a conviction for an offense listed
26 in AS 47.35.019(a) or has been found by the court to have neglected or abused a child
27 under AS 47.35.019(c)(1).

28 * **Sec. 6.** AS 47.35.022(b) is repealed and reenacted to read:

29 (b) The department may not place or continue a placement of a child for foster
30 care if the applicant who is a natural person or a person who is required to submit a
31 release under AS 47.35.017(b)(5) has been previously convicted within a five-year

1 period immediately preceding the application for an offense described in
2 AS 47.35.019(b) or is in a situation described in AS 47.35.019(c)(2) unless the
3 applicant demonstrates to the satisfaction of the department that the placement or
4 continued placement does not pose a threat to the department's ability to ensure the
5 health, safety, or welfare of the children receiving care under this chapter.

6 * Sec. 7. AS 47.35.023(b) is amended to read:

7 (b) Notwithstanding (a) of this section, if an emergency exists and a child
8 must be immediately placed, the department [OR THE DEPARTMENT'S
9 DESIGNEE] may issue a provisional foster home license on an emergency basis for a
10 period of 90 days or less if the department [OR THE DEPARTMENT'S DESIGNEE]
11 determines that the applicant meets minimal requirements for emergency conditions
12 and the applicant agrees in writing to provide the fingerprint information described in
13 AS 47.35.017(b) within 30 days after [OF] the placement of a child in the foster
14 home. The department may extend a provisional foster home license issued under this
15 subsection for one or two additional periods of up to 90 days each in order to obtain
16 the information from the national criminal background check required under
17 AS 47.35.017(b)(6). The department may not issue a license under this subsection
18 before checking state [AND NATIONAL] criminal justice information available to the
19 department under AS 12.62 and regulations adopted under AS 12.62 about the
20 administrator or foster parent and each person who is 16 years of age or older in the
21 foster home who will have contact with the child. If the department cannot obtain
22 direct access to the state [AND FEDERAL] criminal justice information, the
23 department shall request the agency having primary law enforcement responsibility for
24 the geographic area in which the prospective foster home is located to obtain the
25 information and provide it to the department before the license is issued under this
26 section. If the criminal justice information readily available to the department shows
27 an offense about which a person would be required to notify the department under
28 AS 47.35.047(b), the department may not issue the license under this subsection. If
29 the additional criminal justice information [AVAILABLE FROM THE
30 FINGERPRINT SEARCH OR ANOTHER SOURCE AFTER THE LICENSE IS
31 ISSUED] reveals that the person has a record for an offense listed in AS 47.35.019(a)

1 or (b) or is in a situation described in AS 47.35.019(c) [ONE OR MORE OF
2 THESE OFFENSES], the department shall immediately revoke the license and move
3 the child to an appropriate placement. The department may revoke the license and
4 move the child to an appropriate placement if the criminal justice information
5 available from the fingerprint search or another source after the license is issued
6 reveals that the person has a record for an offense listed in A's 47.35.021. For
7 purposes of obtaining criminal justice information under this subsection, the
8 department is a criminal justice agency conducting a criminal justice activity under
9 AS 12.62.

10 * Sec. 8. AS 47.35.023(d) is amended to read:

11 (d) Before expiration of a provisional license, the department shall issue a
12 biennial license for the facility or agency if (1) after inspection and investigation under
13 (c) of this section, the department finds that the facility or agency is operating in
14 compliance with, and meets the licensure requirements of, this chapter and regulations
15 adopted under this chapter; (2) a [THE] ground for revocation or suspension set out
16 in AS 47.35.130(a) or (b) [AS 47.35.130(a)(2)] does not exist; and (3) all applicable
17 fees have been paid. The department shall prepare a summary report of its findings
18 and recommendations for issuance of a biennial license.

19 * Sec. 9. AS 47.35.027 is amended by adding a new subsection to read:

20 (f) Notwithstanding (a) - (e) of this section, the department may not grant a
21 variance if the criminal record review indicates that the licensee or a person required
22 to provide a release under AS 47.35.017(b)(5) has a conviction for an offense listed in
23 AS 47.35.019(a) or (b).

24 * Sec. 10. AS 47.35.045(c) is amended to read:

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

26 (1) the licensee

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

31 (B) has maintained the facility or agency in good repair and is

1 in compliance with all state fire safety and environmental health and safety
2 code requirements;

3 (2) a [THE] ground for revocation or suspension set out in
4 AS 47.35.130(a) or (b) [AS 47.35.130(a)(2)] does not exist; and

5 (3) all applicable fees have been paid.

6 * Sec. 11. AS 47.35.047(b) is repealed and reenacted to read:

7 (b) A licensee shall notify the department within 24 hours after having
8 knowledge that an administrator, foster parent, member of the licensee's household,
9 regular volunteer, or staff person has been

10 (1) convicted of, or is or has been under investigation or arrest for, has
11 been charged by information or complaint with, or is under indictment or presentment
12 for any offense listed in AS 47.35.019, 47.35.021, or a law or ordinance of this or
13 another jurisdiction with similar elements; or

14 (2) found to have neglected or abused a child as described in
15 AS 47.35.019(c)(1).

16 * Sec. 12. AS 47.35.130 is repealed and reenacted to read:

17 **Sec. 47.35.130. Grounds for a license suspension, revocation, or**
18 **nonrenewal.** (a) Except as provided in AS 47.35.140, the department shall revoke or
19 decline to renew a license issued under this chapter if the criminal record review of the
20 licensee who is a natural person or a person who is required to submit a release under
21 AS 47.35.017(b)(5) reveals a conviction for an offense listed in AS 47.35.019(a) or
22 (b).

23 (b) The department shall suspend a license issued under this chapter during
24 any period of time that the licensee who is a natural person or a person who is required
25 to submit a release under AS 47.35.017(b)(5) in connection with the license is under
26 investigation or arrest for, charged by information or complaint with, or under
27 indictment or presentment for a crime listed in AS 47.35.019(a) or (b) or is under
28 investigation for, or the respondent in a civil proceeding related to, the neglect or
29 abuse of a child, unless the department finds that not suspending the license does not
30 pose a threat to the department's ability to ensure the health, safety, or welfare of the
31 children receiving care under this chapter.

1 (c) The department may revoke, or decline to renew, a license issued under
2 this chapter on one or more of the following grounds:

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

4 (2) obtaining or attempting to obtain or retain a license under this
5 chapter by fraudulent means, by misrepresentation, or by submitting false information;

6 (3) failure to correct a violation noted in a report of investigation
7 provided under AS 47.35.105(c) or 47.35.110(b);

8 (4) failure to comply with a final administrative order issued by the
9 department under AS 47.35.120.

10 (5) if the licensee who is a natural person or a person required to
11 submit a release under AS 47.35.017(b)(5) has been the subject of, is under
12 investigation for, or is the respondent in a civil proceeding regarding the abuse or
13 neglect of a child;

14 (6) violation of this chapter or a regulation adopted under this chapter.

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

17 * Sec. 13. AS 47.35 is amended by adding a new section to read:

18 **Sec. 47.35.140. Exception for continued operation.** Notwithstanding any
19 other provision of this chapter, the department may allow a person licensed under this
20 chapter, other than as a provisional licensee under AS 47.35.023, to continue operating
21 if an employee of that facility or other agency who is required to submit a release
22 under AS 47.35.017(b)(5) discloses an offense under AS 47.35.019 or 47.35.021 if the
23 facility or agency takes immediate action to ensure the health, safety, and welfare of
24 the children residing at that facility or other agency, including notice to the department
25 and removing the person with the conviction described in AS 47.35.019 or 47.35.021
26 from contact with children at the facility or other agency.

27 * Sec. 14. The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 **TASK FORCE ON CHILD SERVICES.** (a) There is established in the legislative
30 branch the Task Force on Child Services to focus on public and governmental concerns about
31 whether there are sufficient criminal background checks conducted before individuals are

1 allowed to perform services relating to children.

2 (b) The task force shall be chaired by the chair of the Administrative Regulation
3 Review Committee, who shall be a voting member of the task force. The chair shall appoint
4 two members of the House of Representatives, two members of the Senate, and five members
5 of the public who are child service providers to be the other voting members of the task force.
6 The commissioners of public safety, health and social services, community and economic
7 development, and education and early development, or their designees, may serve on the task
8 force as nonvoting members. The public members of the task force shall serve without
9 compensation but are entitled to per diem and travel expenses authorized for boards and
10 commissions under AS 39.20.180.

11 (c) The task force

12 (1) may begin work immediately upon the appointment of its full voting
13 membership and shall meet as frequently as the task force determines necessary to perform its
14 work;

15 (2) shall hold public hearings and may perform research related to its work;

16 (3) may meet during the interim and vote by teleconference;

17 (4) shall report its written findings and give a copy of its proposed legislation
18 and other recommendations to the legislature by January 21, 2003; and

19 (5) is terminated upon the convening of the First Regular Session of the
20 Twenty-Third Alaska State Legislature.

21 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 **TRANSITIONAL PROVISION; REGULATIONS.** The Department of Health and
24 Social Services may begin the process of developing and adopting regulations to implement
25 this Act. A regulation adopted under this section takes effect under AS 44.62 (Administrative
26 Procedure Act) but not before July 1, 2002.

27 * **Sec. 16.** Sections 1 - 13 of this Act take effect July 1, 2002.

28 * **Sec. 17.** Sections 14 and 15 of this Act take effect immediately under AS 01.10.070(c).