

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10209 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

54

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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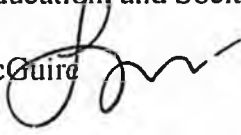
Chair, Joint House and Senate
Administrative Regulation and
Review Committee

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

Alaska State Legislature

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Review Committee

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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 14.37.160(b)"

Sec. 14.37.190. Administrative actions. (a) A licensee who is subject to a decision under this chapter for a license, suspension of operation, or fine. (§ 7 ch 58 SLA 1999)

Revisor's notes. — Enacted as AS 14.37.190 in 1999.

Sec. 14.37.200. Immunity. (a) A licensee who is subject to a decision under this chapter for a license, suspension of operation, or fine. (§ 7 ch 58 SLA 1999)

(b) The department and its employees are not liable for any act or omission in the licensure process if the act or omission is the result of negligence or reckless or intentional conduct.

Revisor's notes. — Enacted as AS 14.37.020(a)(4) in 1999, at which time, "AS 14.37.020(a)(4)" was substituted for "AS 14.37.020(a)(4)"

Sec. 14.37.210. Penalty. (a) A licensee who is subject to a decision under this chapter for a license, suspension of operation, or fine. (§ 7 ch 58 SLA 1999)

Revisor's notes. — Enacted as AS 14.37.210 in 1999.

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;

(4) "child care facility" means a facility that provides care for children under 12 years of age, unless nighttime care is authorized;

(5) "criminal justice information" means information that is used for law enforcement purposes;

(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-numbered in 1999, at which time, in subsection (a), "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)" and "AS 14.37.170" was substituted for "AS 14.37.120" to reflect the 1999 renumbering of AS 14.37.105, 14.37.110, and 14.37.120.

Sec. 14.37.190. Administrative procedure. The administrative adjudication provisions 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-numbered in 1999, at which time, in subsection (a), "AS 14.37.020(a)(4)" was substituted for "AS 14.37.010(a)(4)" to reflect the 1999 renumbering of AS 14.37.010.

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 opportunities, 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).

HB

197

22-LS0712\C
Bannister
4/23/01

CS FOR HOUSE BILL NO. 197()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HUDSON, Kerttula

A BILL
FOR AN ACT ENTITLED

1 "An Act allowing the use of certain directives relating to the health care and death of a
2 person."

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

4 * Section 1. AS 18.12.100 is amended to read:

5 **Sec. 18.12.100. Definitions.** In AS 18.12.010 - 18.12.100 [THIS CHAPTER],

6 (1) "anatomical gift" means an anatomical gift under AS 13.50;

7 (2) "attending physician" means the physician selected by, or assigned
8 to, the patient who has primary responsibility for the treatment and care of the patient;

9 (3) "cardiopulmonary resuscitation" means cardiopulmonary
10 resuscitation or a component of cardiopulmonary resuscitation;

11 (4) "declaration" means a document executed in accordance with the
12 requirements of AS 18.12.010;

13 (5) "DNR identification" means identification substantially similar to
14 that approved under AS 18.12.037;

1 (6) "do not resuscitate order" means a directive from a licensed
2 physician that emergency cardiopulmonary resuscitation should not be administered to
3 a particular person;

4 (7) "do not resuscitate protocol" means the protocol developed under
5 AS 18.12.035(b);

6 (8) "health care provider" means a person who is licensed, certified, or
7 otherwise authorized by the law of this state to administer health care in the ordinary
8 course of business or practice of a profession;

9 (9) "life-sustaining procedure" means a medical procedure or
10 intervention that, when administered to a qualified patient, will serve only to prolong
11 the dying process;

12 (10) "physician" means a person licensed to practice medicine in this
13 state or an officer in the regular medical service of the armed services of the United
14 States or the United States Public Health Service while in the discharge of their
15 official duties, or while volunteering services without pay or other remuneration to a
16 hospital, clinic, medical office, or other medical facility in the state;

17 (11) "qualified patient" means a patient who has executed a declaration
18 in accordance with AS 18.12.010 - 18.12.100 [THIS CHAPTER] and who has been
19 determined by the attending physician to be in a terminal condition;

20 (12) "terminal condition" means a progressive incurable or irreversible
21 condition that, without the administration of life-sustaining procedures, will, in the
22 opinion of two physicians, when available, who have personally examined the patient,
23 one of whom must be the attending physician, result in death within a relatively short
24 time.

25 * **Sec. 2.** AS 18.12 is amended by adding new sections to read:

26 **Article 2. Health Care and Related Directives.**

27 **Sec. 18.12.110. Health care and related directives.** Notwithstanding any
28 other provision of law and in addition to any other method allowed by law for giving
29 directives for a person's health care, death, and related issues, a person may use a form
30 that is substantially similar to the Five Wishes form for making directives related to
31 the person's health care and death, including designating another person to act as an

1 attorney-in-fact or other agent for the person when making health care decisions,
2 directing what kind of health treatment the person desires, establishing funeral wishes,
3 and expressing the person's wishes regarding donation of the person's body, or body
4 parts. In this section, "Five Wishes form" means the document entitled "Five Wishes,"
5 copyrighted by Aging with Dignity, November 2000.

6 **Sec. 18.12.120 Euthanasia not authorized.** The form that is authorized by
7 AS 18.12.110 may not be used to authorize or approve euthanasia or mercy killing.

8 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 **REVISOR'S INSTRUCTIONS.** The revisor of statutes shall substitute "AS 18.12.010
11 - 18.12.100" for "this chapter" in

12 (1) AS 18.12.010(d);

13 (2) AS 18.12.035(d);

14 (3) AS 18.12.037;

15 (4) AS 18.12.040(b);

16 (5) AS 18.12.050(b);

17 (6) AS 18.12.060;

18 (7) AS 18.12.080(a), (d), (e), and (f); and

19 (8) AS 18.12.090.



REPRESENTATIVE BILL HUDSON Alaska State Legislature

Room 502 • State Capitol, Juneau, Alaska 99801 (907)465-3744 Fax: 465-2273

Sponsor Statement HB 197

Relating to directives for personal health care services and for medical treatment

House Bill 197 offers a "comprehensive simplified" alternative to the power of attorney enacted in Alaska in 1996 relating to health care services and directives for the terminally ill patient. That was not an oxymoron. The legislation is comprehensive because it speaks to the details and instructions that patients put in place regarding their care should they become incapacitated. It is simple in that the directives speak simply to the patient's wishes (the legislation is known nationally as the Five-Wishes) as follows:

My Wish for:

1. The person I want to make care decisions for me when I can't
2. The kind of medical treatment I want or don't want
3. How comfortable I want to be
4. How I want other people to treat me
5. What I want my loved ones to know

The Five Wishes contained in this bill, will produce a document that helps you express how you want to be treated if you are seriously ill and unable to speak for yourself. It is unique among all other living will and health agent forms because it looks to all of a person's needs: medical, personal, emotional and spiritual. Five Wishes also encourages discussing your wishes with your family and physician.

Five Wishes is changing the way America talks about and plans for care at the end of life. Nearly one million copies of the document are circulating throughout the nation, and more than 1,400 organizations are distributing this revolutionary document, including churches, synagogues, hospices, hospitals, doctor and law offices, and social service agencies. Many employers are providing the document to their employees, to help them plan for themselves as well as have those delicate discussions with their aging parents.

Five Wishes speaks to people in their own language, helping families talk with their physician about a subject that is often avoided as being too hard to face.

The 15 states that Five Wishes is not legally valid in, either require a specific state form or that the person completing an advance directive be read a mandatory notice or "warning." Residents of these states can still use Five Wishes to put their wishes in writing and communicate their wishes with their family and physician. Most health care professionals understand they have a duty to listen to the wishes of their patients no matter how they are expressed.

Sponsor Statement

Subject: [Fwd: Five Wishes]

Date: Mon, 12 Mar 2001 15:50:11 -0900

From: Representative Bill Hudson <Representative_Bill_Hudson@legis.state.ak.us>

Organization: Alaska State Legislature

To: Melanie Lesh <Melanie_Lesh@legis.state.ak.us>

Subject: Five Wishes

Date: Mon, 12 Mar 2001 12:54:05 -0900

From: "Samet, Sue" <SSamet@provak.org>

To: "Rep. Bill Hudson" <Representative_Bill_Hudson@legis.state.ak.us>

Hello. I am the head of a year old organization called the Senior Advocacy Coalition. We have about twenty-five people statewide who are active in this new coalition with our numbers growing. Sioux Plummer was on line last Friday for our March meeting. She stated that you were going to be putting forth a bill so that the Five Wishes could be implemented in our state.

This is excellent news. We want you to know that we support this fine effort and that if we can be of any assistance in making this a reality, please do not hesitate to call on us. I have had to make several presentations in the last month regarding what/who the SAC is. I always have Five Wishes information with me when I do these presentations. People are most receptive and interested in the Five Wishes and hopeful our state might too become a "Five Wishes state". With your bill, this can happen.

Again, please call on us if we can help advance the need for this bill. Thank you for the hard work you are doing.

Sue H. Samet, MSW

Director Providence Horizon House and Convenor of Senior Advocacy Coalition

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ML → Bill
FEB 27 2001
FOLDW

Subject: follow-up regarding Five Wishes legislation

Date: Mon, 26 Feb 2001 18:14:14 -0900

From: Jane Demmert <jane_demmert@admin.state.ak.us>

Organization: Executive Director, Alaska Commission on Aging, Department of Administration

To: "Hudson, William" <Representative_Bill_Hudson@legis.state.ak.us>,
Melanie_Lesh@legis.state.ak.us

CC: "plummer, sioux" <twoplums@alaska.net>

AK

Hello.

A short follow-up to share with you as I go through my notes from our Commission's briefing on *Aging in Alaska* made to the House HESS Committee February 13. In the briefing I noted that the Commission supports Alaska's adoption of the Five Wishes format for advance directives. Rep. Dyson requested that as its available, he would like to see the draft legislation.

Thanks for your interest in helping make the framework for defining our wishes at the end of our lives less forbidding and more accessible. That in itself is a big step forward.

Greetings!

Jane

Jane Demmert <jane_demmert@admin.state.ak.us>
Executive Director
Alaska Commission on Aging
Department of Administration

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Initiatives

Issue 9, January 2001

Focus: Policy Leaders and End-of-Life Care—Part I

There is no doubt that America is getting older. Currently, the American elderly population stands at 34.5 million—up more than 10 percent in the past decade. In some states—such as Florida, the state with the largest per-capita population of seniors—the elderly population is increasing at nearly twice the rate of the general population. Longer life expectancies, even for those with life-limiting illnesses, are one result of advances in medical technology. “We are getting to a point at which medical science can keep us alive in terrible shape,” says U.S. Rep. Nancy Johnson (R-Conn.), just one of many legislators working to remove legal barriers to good pain management (see p. 6).

Political Leaders Rethink End-of-Life Policy

A recent Gallup Poll showed 90 percent of Americans wish to die at home, but the reality is that only 10 to 15 percent will die there, with the rest spending their final days among strangers in a hospital or nursing home. Dying people feel such loss of control keenly; fear of pain and loss of control over one’s last days contribute to depression and anxiety as death approaches. State policy makers working to improve care near the end of life believe that addressing these problems and establishing a supportive climate for palliative care would help insulate their states against efforts to secure a right to assisted suicide. “People have to feel confident that the health care



David Eulitt

A dying woman at home, cuddling her grandson. Leading policy makers are helping a greater number of Americans fulfill their wishes to die at home among family, with their pain and other symptoms managed.

system will take good care of them when they are dying,” says Assemblywoman Helen Thomson (D-Calif.—see p. 4). “Lack of faith in that system is what moves people to demand desperate measures.”

More and more policy makers are dedicating their own time and visibility and the resources of their offices to creating new policy, revising existing policy, and interpreting laws and regulations for physicians and families, who often feel unsure of how their

states govern their choices and actions. This issue is the first in a mini-series that will profile leaders with impressive track records in end-of-life care policy. This issue features three leaders, with briefer profiles on several others whose work bears watching. Clearly a political leadership exists that has found end-of-life care a positive issue with virtually no political downside, because every single constituent in these leaders’ districts benefits from good end-of-life-care policy.

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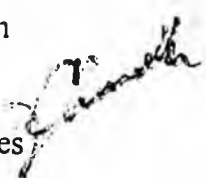
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MEMORANDUM

December 14, 2000

SUBJECT: Five Wishes draft legislation (Work Order No. 1LS-0623\A of the 21st Legislature) -- sectional analysis

TO: Representative Bill Hudson

FROM: Jack Chenoweth
Assistant Revisor of Statutes 

This sectional analysis addresses draft work order 1LS-0623A of the 21st Legislature, prepared for you in March, 1999. You have a copy of the draft and a clean copy of the text of the "Aging With Dignity -- Five Wishes" document that was the starting point for the drafting effort.

Bill section 1: Some years ago, the legislature enacted, as part of AS 13.26, the Statutory Form Power of Attorney legislation, a checklist approach for preparing a comprehensive power of attorney. One element that could be covered by the Statutory Form Power of Attorney was "health care services". The "Aging With Dignity -- Five Wishes" document was offered as a comprehensive simplified alternative to the Statutory Form Power of Attorney that focused on health care services. So, in drafting the "Five Wishes" document into bill form, bill section 1 eliminates "health care services" from the comprehensive coverage that may be addressed as an element of a power of attorney. The operative deletion is on page 2, line 26. Corresponding text in the Statutory Form Power of Attorney that substantively addresses "health care services" is repealed in AS 13.26.335(l) and 13.26.344(l), the repeals appearing in **bill section 4**.

Bill section 2: AS 18.12 (Chapter 12 of Title 18) sets out material relating to "living wills" and "do not resuscitate orders," two areas dealing with health care directives. The "Five Wishes" approach relates to that general topic. We proposed to add the "Five Wishes" material as new sections (actually, a new article) within AS 18.12. Consequently, so that the "Five Wishes" material may stand on its own unencumbered by unrelated definitions, bill section 2 serves to limit the scope of the definitions that tie to "living wills" and "do not resuscitate orders" to the material already set out in AS 18.12.010 - 18.12.100. To keep a 16 page draft from becoming still longer, **bill section 5** tells the revisor of statutes to make similar changes in the existing sections that are there listed in paragraphs (1) - (8).

Sectional Analysis

Bill section 3: The "Five Wishes" material is here set out as a statutory form power of attorney for health care services. The power of attorney is basically the model that begins on page 6, at line 3, and ends at page 16, line 12.

We prepared this language by simply working through the "Aging With Dignity -- Five Wishes" document. You should be able to lay the document and the bill down side by side and follow the course of the drafting. To the extent I was able, I captured the text of the "Five Wishes" document and simply assigned a section or subsection number. As set out --

AS 18.12.200 provides a general power of attorney for another to serve as the person's general "health care agent," enumerating alternative powers granted to that agent, giving the person the opportunity to delete provisions that should not be exercised by the agent on the person's behalf, and allowing the person making the "Five Wishes" power of attorney to add or modify any of the powers. To give effect to the document, the person may execute the power of attorney before a notary public or before witnesses.

AS 18.12.210 provides a general power of attorney that is specific to the provision of medical treatment, covering "general instructions," "life-support treatment," and alternatives in the event the person faces imminent death. Again, the person may execute this power of attorney before a notary public or before witnesses. Subsections (b) and (c) of AS 18.12.210 provide supplemental instructions as to the person's comfort, treatment, relationship to family and friends, funeral and memorial services, and expression of an expectation of death with dignity.

It is an "open" question as to whether health care providers who fail to carry out some part of what the person expresses may be charged in a civil action. The "Five Wishes" document suggests that they may not, for the concluding part of the AS 18.12.210(c) declares that the person "[does] not expect [the] wishes in this section to place *new or added legal duties* on my doctors or other health care providers." Remember that the document is intended to express the person's "wishes" for his or her treatment in health care institutions and with health care providers, not to add another level of later argument or debate before the courts.

*

In the second paragraph of the December 13 memo is a reference to "the issues of euthanasia." I'm not sure what the reference is intended to cover. Under current law (AS 13.26.344(1)(2)), a statutory power of attorney covering health care elements affirmatively withholds from the attorney any decision to terminate life-sustaining procedures unless, under AS 13.26.344(1)(3), the person has executed a living will declaration under existing AS 18.12. But those provisions are repealed by this draft and would no longer operate under a "Five Wishes" power of attorney. Moreover, AS 18.12.080(f) expressly declares its disapproval of the use of the living will declaration in conjunction with euthanasia or mercy killing.

Representative Bill Hudson

December 14, 2000

Page 3

If you are asking that this draft be expanded to incorporate a statement that in essence says that the use of a "Five Wishes" power of attorney may not be used to justify or endorse euthanasia, that could be done. I'd probably simply add language that is based on existing AS 18.12.080(f). If, by reference to "the issues of euthanasia" you have something else in mind, you'll need to let me know.

JBC:lmb

00-123.lmb

UNIFORM HEALTH-CARE DECISIONS ACT

PREFATORY NOTE

Since the Supreme Court's decision in *Cruzan v. Commissioner, Missouri Department of Health*, 497 U.S. 261 (1990), significant change has occurred in state legislation on health-care decision making. Every state now has legislation authorizing the use of some sort of advance health-care directive. All but a few states authorize what is typically known as a living will. Nearly all states have statutes authorizing the use of powers of attorney for health care. In addition, a majority of states have statutes allowing family members, and in some cases close friends, to make health-care decisions for adult individuals who lack capacity.

This state legislation, however, has developed in fits and starts, resulting in an often fragmented, incomplete, and sometimes inconsistent set of rules. Statutes enacted within a state often conflict and conflicts between statutes of different states are common. In an increasingly mobile society where an advance health-care directive given in one state must frequently be implemented in another, there is a need for greater uniformity.

The Health-Care Decisions Act was drafted with this confused situation in mind. The Act is built around the following concepts. *First*, the Act acknowledges the right of a competent individual to decide all aspects of his or her own health care in all circumstances, including the right to decline health care or to direct that health care be discontinued, even if death ensues. An individual's instructions may extend to any and all health-care decisions that might arise and, unless limited by the principal, an agent has authority to make all health-care decisions which the individual could have made. The Act recognizes and validates an individual's authority to define the scope of an instruction or agency as broadly or as narrowly as the individual chooses.

Second, the Act is comprehensive and will enable an enacting jurisdiction to replace its existing legislation on the subject with a single statute. The Act authorizes health-care decisions to be made by an agent who is designated to decide when an individual cannot or does not wish to: by a designated surrogate, family member, or close friend when an individual is unable to act and no guardian or agent has been appointed or is reasonably available; or by a court having jurisdiction as decision maker of last resort.

Third, the Act is designed to simplify and facilitate the making of advance health-care directives. An instruction may be either written or oral. A power of attorney for health care, while it must be in writing, need not be witnessed or

acknowledged. In addition, an optional form for the making of a directive is provided.

Fourth, the Act seeks to ensure to the extent possible that decisions about an individual's health care will be governed by the individual's own desires concerning the issues to be resolved. The Act requires an agent or surrogate authorized to make health-care decisions for an individual to make those decisions in accordance with the instructions and other wishes of the individual to the extent known. Otherwise, the agent or surrogate must make those decisions in accordance with the best interest of the individual but in light of the individual's personal values known to the agent or surrogate. Furthermore, the Act requires a guardian to comply with a ward's previously given instructions and prohibits a guardian from revoking the ward's advance health-care directive without express court approval.

Fifth, the Act addresses compliance by health-care providers and institutions. A health-care provider or institution must comply with an instruction of the patient and with a reasonable interpretation of that instruction or other health-care decision made by a person then authorized to make health-care decisions for the patient. The obligation to comply is not absolute, however. A health-care provider or institution may decline to honor an instruction or decision for reasons of conscience or if the instruction or decision requires the provision of medically ineffective care or care contrary to applicable health-care standards.

Sixth, the Act provides a procedure for the resolution of disputes. While the Act is in general to be effectuated without litigation, situations will arise where resort to the courts may be necessary. For that reason, the Act authorizes the court to enjoin or direct a health-care decision or order other equitable relief and specifics who is entitled to bring a petition.

The Health-Care Decisions Act supersedes the Commissioners' Model Health-Care Consent Act (1982), the Uniform Rights of the Terminally Ill Act (1985), and the Uniform Rights of the Terminally Ill Act (1989). A state enacting the Health-Care Decisions Act which has one of these other acts in force should repeal it upon enactment.

UNIFORM HEALTH-CARE DECISIONS ACT AND STATE VARIATIONS

A. Key Elements Of The Uniform Health-Care Decisions Act (UHCDA)

Adopted by the National Conference of Commissioners on Uniform State Laws, August 1993. A more detailed analysis of the Act may be found in an article: Charles P. Sabatino, "The New Uniform Health-Care Decisions Act: Paving a Health Care Decisions Superhighway?" 53 *Maryland Law Review* 101 (1994).

1. The Act is comprehensive and address topics now usually dealt with by separate statute. Act is designed to replace existing living will, power of attorney for health care, and family health-care consent statutes, topics now dealt with separately in most states.
2. The Act does not address decision making for unemancipated minors. The considerations involved in decision making for unemancipated minors differ sufficiently from those for adults and emancipated minors to justify treatment in separate legislation.
3. The Act does not attempt to legislate restrictions on the withholding or withdrawal of life-sustaining treatment. Although case law imposes limitations on the withholding or withdrawal of life-sustaining treatment attempts by the states to convert these limitations into statutory language have met with little success. The Act does not attempt to duplicate this failure.
4. The Act contains a comprehensive provision on the authority of family and close friends. The Act addresses the authority of the family and, in the absence of available family, permits health-care decisions to be made by a close friend. The authority of the family or close friend is activated if no guardian or agent has been appointed or if an appointed agent or guardian is unavailable. A priority list of relatives is established, and a health-care provider may request an affidavit substantiating the claimed relationship. Provision is made for the disqualification of family or close friends. Under the Act, a family member or close friend with authority to make health-care decisions is referred to as a "surrogate."
5. The Act extends to all health-care decisions. Unlike most living will statutes, the Act permits an individual to give instructions as to any health-care decision and not just decisions relating to withholding or withdrawal of life-support. Also, in the absence of an express limitation, an agent or surrogate has authority to make all health-care decisions. The Act clarifies that this authority extends to several areas not clearly covered by many state statutes, including life-sustaining treatment, artificial nutrition and hydration, and cardiopulmonary resuscitation.
6. The Act permits immediately effective powers. The Act authorizes a principal to make the authority of the agent effective upon some event other than loss of capacity, including immediately upon execution. However, in the absence of an express provision, the authority of the agent commences only upon a determination of incapacity.

7. The Act contains one combined form. The Act contains one combined form instead of separate living will and power of attorney for health care forms. The form also provides for organ and tissue donation and the designation of a primary physician. Use of the form is entirely optional.
8. The Act minimizes execution requirements. The optional statutory form contains space for the signature of two witnesses, but a failure to witness does not invalidate the document. A signature alone is sufficient. Formalities for a nonstatutory form are kept to a minimum. A power of attorney for health care must be signed but need not be witnessed or acknowledged. An instruction regarding health care may be either oral or written.
9. The Act binds agents and surrogates to a standard of care. Agents and surrogate are required to follow the patient's expressed wishes, if known, and must otherwise act in the patient's best interest, following consideration of the patient's personal values.
10. The Act addresses the role of guardians. The Act requires a guardian to comply with the ward's instructions regarding health care and prohibits a guardian from amending or revoking the ward's instructions or power of attorney for health care except by express order of court. Absent a court order to the contrary, a health-care decision of an agent takes precedence over that of a guardian.
11. The Act disqualifies certain health-care providers from acting as agent or surrogate. Unless related to the principal, an owner, operator or employee of a residential health-care facility at which the principal is receiving care is disqualified from acting as agent or surrogate.
12. The Act recognizes a conscience exception. Following the lead of many state statutes, the Act authorizes a health-care provider to decline to comply with a health-care decision or instruction for reason of conscience. However, a provider who refuses to comply is required to assist in the transfer of the patient.
13. The Act recognizes out-of-state advance directives. The Act validates advance health-care directives that comply with the Act, regardless of when or where executed or communicated. Given the Act's absence of execution requirements, all should qualify.
14. The Act contains a provision authorizing judicial relief. The Act authorizes the court to enjoin or order a health-care decision or direct other equitable relief. The Act limits those who may file a petition to individuals with a direct interest in the patient's care.

B. State Variations (in chronological order)

1. **NEW MEXICO** - 1995 New Mexico Laws Ch. 182 (H.B. 483), enacted April 6, 1995 and effective July 1, 1995, entitled the "Uniform Health-Care Decisions Act," and codified at N. Mex. Stat. Ann. §24-7A-1 to 24-7A-18 (1995).

New Mexico was the first state to adopt the new Uniform Health-Care Decisions Act. The following variations from the Uniform Act are noteworthy:

1. **Statutory Form:** The Act makes only a few minor changes to the model form. It eliminates the organ donation section of the form.
2. **List of Surrogates:** The New Mexico act adds a category of surrogates that appears to be modeled on the Arizona advance directive law which includes "domestic partners" as surrogates. New Mexico defines this new surrogate category as...

"an individual in a long-term relationship of indefinite duration with the patient in which the individual has demonstrated an actual commitment to the patient similar to the commitment of a spouse and in which the individual and the patient consider themselves to be responsible for each other's well-being."

The New Mexico act also adds "grandparent." The priority list of surrogates thus includes the following:

 - (1) Orally designated surrogate
 - (2) Spouse
 - (3) Long-term spouse-like relationship
 - (4) Adult Child
 - (5) Parent
 - (6) Adult Brother or Sister
 - (7) Grandparent
 - (8) Close Friend
3. **Capacity:** New Mexico's act requires that, unless otherwise specified in the patient's advance directive, capacity be determined by two professionals, the primary physician and another "qualified health care professional" (defined as physician, physician assistant, nurse practitioner, nurse, psychologist or social worker). In addition, the New Mexico act permits a patient, at any time, to challenge a determination that the individual lacks capacity.
4. **Other changes to the UHCDA** include a slightly expanded immunity provision; a notice requirement if a court grants a guardian precedence in making health care decisions over an agent; the recognition of oral instructions for health care only if made directly to the health care provider; and a definition of "medically ineffective" (defined as "treatment that would not offer the patient any significant benefit, as determined by a physician").

2. **MAINE** - 1995 Laws Ch. 378 (H.P. 182 - L.D. 230), enacted June 30, 1995, and effective October 1, 1995, entitled "Uniform Health-Care Decisions Act," codified at Me. Rev. Stat. Ann. tit. 18-A, §5-801 to §5-817.

Maine is the second state to adopt the Uniform Health-Care Decisions Act, although with a few significant alterations. Like the Uniform Act, the Maine statute is a comprehensive law that provides a multi-purpose advance health care directive covering the appointment of a power of attorney for health care, instructions for health care, and the designation of a primary physician, plus a family consent provision that applies in the absence of an advance directive.

The most significant deviation from the Uniform Act is its treatment of surrogates, i.e., individuals authorized to make health care decisions for an incapacitated patient in the absence of an appointed agent or guardian. The Uniform Act authorizes surrogates to make all health care decisions for an incapacitated patient. The Maine statute limits the authority of surrogates to decisions regarding withholding or withdrawing life-sustaining treatment when the patient is either in a terminal condition or in a persistent vegetative state. The terms "life-sustaining treatment," "persistent vegetative state," and "terminal condition" are defined terms in the Maine statute. The Uniform Act does not define those terms, since they have no operative significance in the Uniform Act.

Under these terms, a surrogate appears to have authority to make only a narrow range of end-of-life decisions. For example, a surrogate would not appear to have authority to make decisions about pain control for a terminal patient, since it is not a life-sustaining treatment. Nor would a surrogate be authorized to make a broad range of treatment, care, and placement decisions that face incapacitated patients who are chronically ill but not terminal.

The list of authorized surrogates is also modified. The Maine statute does not recognize an orally designated surrogate, recognized in Section 5(b) of the Uniform Act. At the same time, Maine adds four more classes to the priority list of surrogates after spouse, adult child, parent, and adult sibling, specifically:

1. adult grandchild
2. adult niece or nephew
3. adult aunt or uncle
4. another adult relative, related by blood or adoption, who is familiar with the patient's personal values.

Both Maine and the Uniform Act recognize a close friend as surrogate if none of the above are available. Surrogate disqualification criteria in the Maine Act vary somewhat from the Uniform Act [see 95-805(i)].

Other differences from the Uniform Act include the requirement that a written advance directive have two witnesses (the Uniform Act requires none). However, there are no witness disqualification criteria in the Maine Act. Maine also imposes some additional limitations on the decisionmaking authority of guardians and recognizes a broader range of persons with standing to seek judicial relief to challenge a health care decision.

3. **DELAWARE** - 1996 Delaware Laws Ch. 392 (S.B. 408), enacted June 26, 1996, and codified at Del. Stat. tit. 16 §§2501 to 2517, repeals most of Delaware's current living will and health care agent statute and replaces it with a comprehensive advance directive act based loosely on the Uniform Health-Care Decisions Act. Delaware is the third state to adopt some version of the Uniform Act (following New Mexico and Maine). Like the Uniform Act, the new law provides for comprehensive advance directives (which may name an agent, provide instructions of the declarant's choice, make anatomical gifts, and designate a primary physician); includes an optional form; and provides for surrogate decisionmakers in the absence of an advance directive. Also similar to the Uniform Act, the default surrogates include any person who is orally designated as a surrogate, followed by spouse, adult child, parent, adult brother or

sister, and finally (unlike the Uniform Act) adult grandchild. If none of the above are available, the act follows the current statutory trend and Uniform Act in recognizing a close friend as authorized decisionmaker, but then eliminates the significance of this option by restricting it only to such persons appointed as guardian.

Contrary to the Uniform Act, the Delaware act adds several preconditions and limitations common to many living will statutes, including the following requirements:

1. Life-sustaining procedures can be withheld or withdrawn only if the patient is incapacitated and in a "qualifying condition," i.e., in a terminal condition or permanently unconscious;
2. An advance directive must be signed in the presence of two witnesses, neither of whom is related to the declarant, nor entitled to any portion of the declarant's estate, nor a creditor of the estate, nor someone with a financial responsibility for the declarant's care, nor an owner with controlling interest in or an operator or employee of the health care institution providing care;
3. Pregnancy prevents the withholding or withdrawal of life-sustaining procedures if it is probable that the fetus will develop to viability with continued application of life-sustaining procedures;
4. The initiation of emergency treatment is presumed to represent a suspension of an advance directive.
5. The decisionmaking standard to be used by appointed agents and default surrogates is described in greater detail than in the Uniform Act.

4. ALABAMA - 1997 Al. Laws Ch. 187 (H.B. 553), approved April 15, 1997, effective immediately, and codified at Ala. Code §§ 22-8A-2 to -10 (1997), retains the existing Alabama Natural Death Act but makes fundamental changes to reconstruct the act into a comprehensive advance directive law only remotely resembling the Uniform Health-Care Decisions Act ("UHCDA"). The amended act provides for comprehensive advance directives (which can appoint an agent and provide health care instructions); includes a form which must be substantially followed; and provides for surrogate decision makers in the absence of an advanced directive.

Significant differences from the official UHCDA:

1. The declarant's instructions in the advance directive concerning providing, withholding, and withdrawing life-sustaining treatment have no effect regarding the declarant's pregnancy;
2. The designated proxy must signify an acceptance of the responsibility in writing;
3. The advance directive is required to be signed in the presence of two witnesses, neither of whom is related to the declarant, nor entitled to any portion of the declarant's estate, nor someone with financial responsibility for the declarant's care, nor an owner with controlling interest in or an operator or employee of the health care institution providing care;
4. The proxy has precedence over any instructions regarding health care decisions provided in the declarant's living will unless the declarant indicates otherwise;

or in any medical circumstances in which they lack capacity. The Act also provides for default decision-makers, called surrogates, authorized to speak on a person's behalf if there is no designated decision-maker.

The Hawaii Act varies from the Uniform Act in the following ways:

1. It includes a detailed definition of "Best Interests" (modeled on the Maryland law);
2. Execution of an advance directive requires two witnesses meeting qualifications, or in the alternative, notarization.
3. The default surrogate decision maker provisions do not follow the Uniform Act's next-of-kin/close friend hierarchy. Instead the provision essentially adopts the Colorado approach, wherein the Act defines "interested persons" and requires the primary physician to locate as many interested persons as practicable, inform them of the patient's lack of decisional capacity, and requiring an effort to reach consensus among the interested persons as to the appointment of a surrogate. If consensus is not reached, then the only option available is a guardianship petition which may be filed by an interested party or health-care provider.
4. The decision-making authority of a surrogate is the same as that of the patient's or a patient's designated agent, except that a surrogate who has not been designated by the patient may make a decision about withholding or withdrawing artificial nutrition and hydration only when the primary physician and a second independent physician certify that the provision or continuation of artificial nutrition and hydration is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future. Additional guidelines for life-support decision-making for such surrogates include prohibitions against withholding or withdrawing treatment based on the patient's preexisting, long-term mental or physical disability, or the patient's economic status, and a requirement that the surrogate attempt to inform the patient, to the extent possible, of the proposed procedure and the fact that someone else is authorized to make a decision regarding the procedure (modeled upon the Maryland advance directive law)
5. The Act requires a new review of the decisional capacity of the patient if any interested person, guardian, or the primary physician believes that the patient has regained capacity.

7. CALIFORNIA -- 1999 Cal. Legis. Serv. Ch. 658 (A.B. 891) (West), called the "Health Care Decisions Law," and signed by the Governor on October 10, 1999, replaces the state's long-standing living will law (the "Natural Death Act") and Durable Power of Attorney for Health Care Act. Effective July 1, 2000, the new law draws heavily upon features of the Uniform Health Care Decisions Act while retaining some features of former law.*

New features generally make the law more flexible and comprehensive. For example, the new law adopts the generic term "advance health care directive" or simply "advance directive" to describe any form of health care instruction or appointment of an agent to make health care decisions. Instructions may be written *or oral*, and mandatory medical prerequisites such as "terminal condition" or "permanent unconscious condition" are eliminated. Appointment of an agent must be written, but the law recognizes the oral designation of a "surrogate" to make health care decisions if the patient personally communicates the designation to a supervising

health care provider. The new law does not adopt the Uniform Act's recognition of next of kin or a close friend acting as default "surrogate" to make health care decisions. The only surrogate California recognizes is an orally-designated one.

In another nod to flexibility, the new law does away with a mandatory "Warning" to persons signing a power of attorney for health care and permits individuals to modify the statutory advance directive model form or use a different form altogether. However, the signing requirements of the old law stay substantially the same – the form must be either witnessed by two persons or notarized. Notarization is the simpler option, since witnesses must meet specific qualifications and sign mandatory witness declarations. As under the old law, if the advance directive is signed by a resident in a nursing home, special witnessing steps must be followed.

The law continues to recognize a fairly broad scope of agent authority of the old law, including the authority to make after-death decisions regarding autopsy, organ donation, and disposition of remains. The law spells out an optional sphere of decisionmaking that may be unique among the states in that it explicitly permits the individual to grant authority to make decisions relating to his or her "personal care," including "determining where the principal will live, providing meals, hiring household employees, providing transportation, handling mail, and arranging recreation and entertainment." The standard of decision making for anyone making health decisions on behalf of another is derived from the Uniform Act. The decision is to be made in accordance with the principal's individual health care instructions, if any, and other wishes to the extent known by the decisionmaker. Otherwise, the decision shall be made in accordance with the authorized decisionmaker's determination of the principal's best interest. In determining the principal's best interest, the decisionmaker is to consider the principal's personal values to the extent known.

The law includes fairly detailed standards and procedures for judicial review, although it explicitly and clearly provides that advance directives and decisions made by agent's or designated surrogates are effective without judicial approval. Finally, the law retains the state's recognition of requests to forego resuscitative measures according to procedures developed by the state EMS Authority.

Summary prepared by ABA Commission on Legal Problems of the Elderly (with UHCDA summary by Prof. David English)

HB

204



Health, Education, and Social Services Committee
Alaska State Legislature
House of Representatives

We the undersigned agree to waive House Bill 204 from our House Health, Education, and Social Services Committee:

House Bill 204, a bill creating the Alaska Advantage Program

Date: April 4, 2001

Representative Fred Dyson, Chair

Handwritten signature of Fred Dyson in cursive, written over a horizontal line.

Representative Peggy Wilson, Vice Chair

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Representative Sharon Cissna

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Representative John Coghill

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Representative Reggie Joule

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Representative Vic Kohring

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Representative Gary Stevens

Handwritten signature of Gary Stevens in cursive, written over a horizontal line.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB204
(H) Publish Date: 4/4/01

Revision Date/Time (Note if correction): 4/3/2001 10:00 Dept. Affected: Education
Title: An Act relating to the ACPE and the ASLC relating BRU: ACPE
to the student financial aid programs and the financing of those... Component: Student Loan Operations
Sponsor: Rules Committee
Requester: (H)EDU Component Number: 213

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	135.6	250.6	256.9	263.3	269.9	276.6
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	135.6	250.6	256.9	263.3	269.9	276.6

CAPITAL EXPENDITURES	135.6	250.6	256.9	263.3	269.9	276.6
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CHANGE IN REVENUES ()		4,502.0	8,440.5	12,160.0	15,957.7	22,948.8
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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)	135.6	250.6	256.9	263.3	269.9	276.6
TOTAL	135.6	250.6	256.9	263.3	269.9	276.6

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time	2	2				
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

ACPE's becoming a federal lender will bring additional revenue through loan guarantees, interest subsidies and special allowance payments. Additional revenues will be used to continue to reduce educational financing costs to our borrowers.

Costs are identified for a total of four Federal Family Education Loan Program (FFELP)-related staff; two in FY2002 and two in FY2003. These positions are critical to ensure success as a federal lender. Compliance with federal requirements is required to retain the guarantee on the FFELP portfolio and to receive reimbursements for loan losses due to death, disability, bankruptcy and default. To assure compliance, a full-time compliance specialist is needed. Entry level for this job class is a Range 18, starting in FY2002. To address AKFFELP-related programming and reporting requirements, an additional programmer/analyst will be needed. Entry level is Range 22, starting in FY2002. Starting in FY2003, an accountant will be needed to facilitate required federal and guarantor reporting. Entry level for this position is Range 16. Also in FY2003, a customer relations specialist is needed to meet

Prepared by: Sheila King, Finance Officer Phone 465-6757
Division: Finance Date/Time 4/3/01 10:00 AM
Approved by: Diane Barrans, Executive Director Date 4/3/2001
Agency: Alaska Commission on Postsecondary Education

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Analysis (continued)

growing demand for on-site financial aid and training and information dissemination at high schools and postsecondary schools around Alaska. Entry level for this position is Range 14. Salary projections include anticipated annual merit increases.

The income figures shown in the Change in Revenues line is a result of four components: 1) the Special Allowance payment provided by the U.S Department of Education (ED) to compensate the lender (ASLC) for fluctuations in interest rates during the year. This special allowance is determined by a formula, but is currently 50 basis points and is calculated based on the lenders volume of federal student loans; 2) The interest subsidy paid by ED on those federal loans whose borrowers qualify for subsidy based on their family income; 3) A 98% loan guarantee on all defaulted federal student loans serviced within the requirements established by ED; and 4) Accrual of interest during the in-school period on non-subsidized and supplemental loans.

It is important to note that these income figures are based on current FFELP rates. Because this bill provides for the ASLC to make below market rates available to its Alaska customers, the end result will be to utilize this positive financial shift as a means to reduce lending rates and allow our borrowers to benefit in the form of reduced borrowing costs.

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: 1
 Bill Version: HB 204
 (H) Publish Date: 3/22/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Education
 Title: An Act relating to the ACPE and ASLC; establishin BRU: ACPE
the Alaska Advantage Loan Program and the Alaska Supplemental Component: Student Loan Operations
 Sponsor: Rules Committee
 Requester: Governor Component Number: 213

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	135.6	250.6	256.9	263.3	269.9	276.6
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	135.6	250.6	256.9	263.3	269.9	276.6

CAPITAL EXPENDITURES	135.6	250.6	256.9	263.3	269.9	276.6
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CHANGE IN REVENUES ()		4,752.6	8,697.3	12,423.2	16,227.4	24,416.2
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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)	135.6	250.6	256.9	263.3	269.9	276.6
TOTAL	135.6	250.6	256.9	263.3	269.9	276.6

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time	2	2				
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

ACPE's becoming a federal lender will bring additional revenue through loan guarantees, interest subsidies and special allowance payments. Additional revenues will be used to continue to reduce educational financing costs to our borrowers.

Costs are identified for a total of four Alaska Federal Family Education Loan Program (AKFFELP)-related staff; two in FY2002 and two in FY2003. These positions are critical to ensure success as a federal lender. Compliance with federal requirements is required to retain the guarantee on the AKFFELP portfolio and to receive reimbursements for loan losses due to death, disability, bankruptcy and default. To assure compliance, a full-time compliance specialist is needed. Entry level for this job class is a Range 18, starting in FY2002. To address AKFFELP-related programming and reporting requirements, an additional programmer/analyst will be needed. Entry level is Range 22, starting in FY2002. Starting in FY2003, an accountant will be needed to facilitate required federal and guarantor reporting. Entry level for this position is Range 16. Also in FY2003, a

Prepared by: Sheila King, Finance Officer Phone 465-6757
 Division: Finance Date/Time 3/12/01 10:00 a.m.
 Approved by: Diane Barrans, Executive Director *Diane Barrans* Date 3/12/2001
 Agency: Alaska Commission on Postsecondary Education

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Analysis (continued)

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customer relations specialist is needed to meet growing demand for on-site financial aid training and information dissemination at high schools and postsecondary schools around Alaska. Entry level for this position is Range 14. Salary projections include anticipated annual merit increases.

TONY KNOWLES
GOVERNOR

HB 204
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 20, 2001

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Porter:

Alaska's student loan program has achieved great success in the past few years. The Commission on Postsecondary Education and the Alaska Student Loan Corporation have turned the program around -- running it in the black for the first time in history and paying a dividend back to the state. This year the dividend payment is \$2.2 million with another \$4 million expected for fiscal year 2002. All of this while serving over 90,000 Alaska student loan customers with \$615 million in loans.

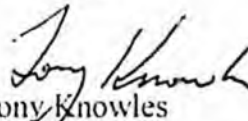
This bill I transmit today establishes the AlaskAdvantage Loan Program, the next step in continuing the growth and financial integrity of the state student loan program. Under this legislation, Alaska would participate in the federal guaranteed student loan program which brings benefits including low interest rates for borrowers and reduced risk to the state through federal loan guarantees.

This bill also creates a supplemental loan program to provide financial assistance in the event the AlaskAdvantage Loan is insufficient to cover education costs or the student does not qualify for assistance under the federal guaranteed student loan program.

This bill will create a one-stop financial aid information center and financial opportunity, guaranty the lowest possible borrowing rates, streamline aid delivery and reduce financial risk to the State through the federal guarantec. This program will also offer expanded options for borrowers with special needs in loan repayment.

At a time when access to quality education is at the forefront of our legislative agenda, I urge your prompt and favorable action on this measure.

Sincerely,


Tony Knowles
Governor