

HOUSE BILL NO. 270

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/20/16

Referred:

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to criminal and civil history requirements for individuals and entities**
2 **licensed or certified by the Department of Health and Social Services; relating to the**
3 **centralized registry for certain individuals or entities that are licensed or certified by the**
4 **Department of Health and Social Services or are eligible to receive payment from**
5 **certain programs of the department; and providing for an effective date."**

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

7 * **Section 1.** AS 44.62.330(a)(45) is amended to read:

8 (45) Department of Health and Social Services relating to the
9 centralized registry under **AS 47.05.360** [AS 47.05.330 - 47.05.390];

10 * **Sec. 2.** AS 47.05.310 is repealed and reenacted to read:

11 **Sec. 47.05.310. Criminal history; criminal history check; compliance.** (a) If
12 an individual has been charged with, convicted of, found not guilty by reason of
13 insanity for, or adjudicated as a delinquent for a crime that is inconsistent with the

standards for licensure or certification established by the department by regulation, that individual may not own an entity, or be an officer, director, partner, member, or principal of the business organization that owns an entity. In addition, an entity may not

(1) allow that individual to operate the entity;

(2) hire or retain that individual at the entity as an employee, independent contractor, or volunteer of the entity;

(3) allow that individual to reside in the entity, unless that individual receives services from the entity or is in the custody of the state; or

(4) allow that individual to be present in the entity if the individual would have regular contact with an individual who receives services from the entity, unless that individual is a family member of or visitor of an individual who receives services from the entity.

(b) The department may not issue or renew a license or a certification for an entity or an individual that is in violation of (a) of this section or that would be in violation of (a) of this section based on the information received as part of the application process.

(c) An entity or an individual shall provide to the department a release of information authorization for a criminal history check under this section and a centralized registry check under AS 47.05.325 for every individual

(1) who is not a recipient of services from the entity;

(2) who is not in the custody of the department; and

(3) after the entity applied for or has been issued a license, license renewal, certification, or certification renewal by the department,

(A) who intends to become an owner of an entity or an officer, director, partner, member, employee, or principal of the business organization that owns an entity;

(B) whom the entity intends to hire or retain as the operator of the entity's business;

(C) whom the entity intends to hire or retain as an employee, independent contractor, or volunteer of the entity; or

1 (D) who will be present in the entity or at the places of
2 operation of the entity and would have regular contact with individuals who
3 receive services from the entity, but who is not a family member or visitor of
4 an individual who receives services from the entity.

5 (d) An individual for whom a release of information authorization has been
6 provided to the department shall submit the individual's fingerprints to the department,
7 with the fee established under AS 12.62.160, for a report of criminal justice
8 information under AS 12.62 and for submission by the Department of Public Safety to
9 the Federal Bureau of Investigation for a national criminal history record check. The
10 Department of Public Safety shall provide the report of criminal justice information
11 and the results of the national criminal history record check to the department for its
12 use in considering an application for a license or license renewal or a certification or
13 certification renewal, or in considering other approval or selection regarding an entity,
14 for compliance with the standards established in this section. For purposes of
15 obtaining access to criminal justice information maintained by the Department of
16 Public Safety under AS 12.62, the department is a criminal justice agency conducting
17 a criminal justice activity. The department may waive the requirement for fingerprint
18 submission if an individual is unable to provide fingerprints due to a medical or
19 physical condition that is documented by a licensed medical professional.

20 (e) The department may establish by regulation standards to grant a variance
21 from the requirements of this section.

22 (f) An individual service provider is subject to the provisions of this section as
23 if the individual service provider was an entity subject to those provisions.

24 (g) For purposes of this section, in place of nonissuance or nonrenewal of a
25 license or certification, an entity or individual service provider that is not required to
26 be licensed or certified by the department or a person wishing to become an entity or
27 individual service provider that is not required to be licensed or certified by the
28 department is ineligible to receive a payment, in whole or in part, from the department
29 to provide for the health, safety, and welfare of persons who are served by the
30 programs administered by the department if the entity, individual service provider, or
31 person is in violation of this section or would be in violation of this section based on

1 information received by the department as part of an application, approval, or
2 selection process.

3 (h) A person is presumed to be acting in good faith and is immune from civil
4 or criminal liability if the person, in making a report under this section or cooperating
5 with a review under this chapter,

6 (1) makes a report of medical assistance fraud, abuse, neglect, or
7 exploitation;

8 (2) submits information to the centralized registry; or

9 (3) fails to hire or retain an employee or volunteer because the
10 employee or volunteer is included in the centralized registry.

11 * **Sec. 3.** AS 47.05 is amended by adding a new section to read:

12 **Sec. 47.05.325. Civil history; centralized registry check; compliance.** (a)

13 The department may not issue or renew a license or certification for an individual or
14 for an entity if an individual is applying for a license, license renewal, certification, or
15 certification renewal for the entity and that individual

16 (1) is a biological or adoptive parent, guardian, custodian, or Indian
17 custodian of a child who is or was the subject of a child-in-need-of-aid petition under
18 AS 47.10; or

19 (2) is the subject of a finding described in AS 47.05.330.

20 (b) If an individual is the subject of a petition or finding described in (a) of
21 this section, or a substantially similar provision in another jurisdiction, the individual
22 may not own an entity or be an officer, director, partner, member, employee, or
23 principal of the business organization that owns an entity. In addition, an entity may
24 not

25 (1) allow that individual to operate the entity;

26 (2) hire or retain that individual at the entity as an employee,
27 independent contractor, or volunteer of the entity;

28 (3) allow that individual to reside in the entity, unless that individual
29 receives services from the entity or is in the custody of the state; or

30 (4) allow that individual to be present in the entity if the individual
31 would have regular contact with individuals who receive services from the entity,

1 unless that individual is a family member of or visitor of an individual who receives
2 services from the entity.

3 (c) The department shall require all licensed entities under AS 47.32 and
4 enrolled providers under the Medicaid program to provide the information required to
5 be on the centralized registry. The information must be in a format established by the
6 department and submitted within the time established by the department. The
7 department may also submit information necessary for the operation of the centralized
8 registry. An entity or individual that is exempt from department licensure or
9 certification and that does not receive money from the department for its services may
10 voluntarily submit information necessary for the operation of the centralized registry.

11 (d) For purposes of this section, in place of nonissuance or nonrenewal of a
12 license or certification, an entity or individual service provider that is not required to
13 be licensed or certified by the department or a person wishing to become an entity or
14 individual service provider that is not required to be licensed or certified by the
15 department is instead ineligible to receive a payment, in whole or in part, from the
16 department to provide for the health, safety, and welfare of persons who are served by
17 the programs administered by the department if the entity, individual service provider,
18 or person is in violation of this section or would be in violation of this section based
19 on information received by the department as part of an application, approval, or
20 selection process.

21 (e) The department shall by regulation identify other governmental agencies or
22 political subdivisions of the state that can request information that is required under
23 this section for a similar purpose.

24 (f) The department may establish by regulation standards for a variance from
25 the requirements of this section.

26 (g) A person is presumed to be acting in good faith and is immune from civil
27 and criminal liability if the person, in making a report under this chapter or
28 cooperating with a review under this chapter,

29 (1) makes a report of medical assistance fraud, abuse, neglect, or
30 exploitation;

31 (2) submits information to the centralized registry; or

(3) fails to hire or retain an employee or volunteer because the employee or volunteer is included in the centralized registry.

* **Sec. 4.** AS 47.05.330 is repealed and reenacted to read:

Sec. 47.05.330. Centralized registry; confidentiality. (a) The department shall by regulation provide for a centralized registry to identify and list individuals who have been found to

(1) have committed abuse, neglect, undue influence, or exploitation, or to have significantly impacted health, safety, or welfare under AS 47.32 or regulations adopted under AS 47.32;

(2) have been sanctioned by the state Medicaid program;

(3) have a license revoked or suspended under AS 47.32 or the licensee voluntarily relinquished a license as part of a settlement agreement in lieu of an enforcement action to suspend or revoke a license;

(4) have a license denied under AS 47.32 or had a nonrenewal of a current license;

(5) have a substantiated finding of child abuse or neglect under AS 47.10 or AS 47.17;

(6) be a biological or adoptive parent, guardian, custodian, or Indian custodian of a child who was found to be a child in need of aid under AS 47.10; or

(7) have been terminated from employment with the department, or would have been terminated from employment with the department if not for their resignation, for assaultive, abusive, neglectful, or exploitive behavior or actions;

(8) have been identified by another state or jurisdiction as a person identified on a centralized registry, or substantially similar registry, for reasons substantially similar to those in (1) - (7) of this subsection.

(b) The centralized registry is not a public record under AS 40.25.110. Information contained in the registry is confidential and is not subject to public inspection and copying under AS 40.25.110 - 40.25.125. However, information contained in the centralized registry may be released to entities, individual service providers, and governmental agencies or political subdivisions of the state in a manner provided under this section and regulations adopted under this chapter.

1 * **Sec. 5.** AS 47.05.350 is amended to read:

2 **Sec. 47.05.350. Use of information; immunity.** An entity or individual
3 service provider that obtains information about an employee under a criminal history
4 check under AS 47.05.310 or a civil history check under AS 47.05.325 may use that
5 information only as provided for in regulations adopted by the department under **this**
6 **chapter** [AS 47.05.320]. However, if an entity or individual service provider
7 reasonably relies on the information provided under the regulations adopted by the
8 department to deny employment to an individual who was selected for hire as an
9 employee, including during a period of provisional employment, the entity or
10 individual service provider is not liable in an action brought by the individual based on
11 the employment determination resulting from the information.

12 * **Sec. 6.** AS 47.05 is amended by adding a new section to read:

13 **Sec. 47.05.360. Variance, reconsideration, or appeal.** (a) A person or entity
14 subject to the provisions of AS 47.05.310 or 47.05.325 may request the department to
15 delete, correct, or modify information in the registry.

16 (b) If the information is correct, a person or entity subject to the provisions of
17 AS 47.05.310 or 47.05.325 may

- 18 (1) seek a variance;
19 (2) seek reconsideration by the commissioner if the variance is denied;
20 (3) if information is incorrect, request the department to delete, correct,
21 or modify the information in the registry.

22 (c) A determination under (a) or (b) of this section is a final agency decision.

23 * **Sec. 7.** AS 47.05.390(6) is amended to read:

24 (6) "entity" means an entity listed in AS 47.05.300 and
25 AS 47.32.010(b) and includes an owner, officer, director, member, or partner of the
26 entity;

27 * **Sec. 8.** AS 47.17.040 is amended to read:

28 **Sec. 47.17.040. Child protection [CENTRAL] registry; confidentiality.** (a)
29 The department shall maintain a child protection [CENTRAL] registry of all
30 investigation reports, including, substantiated findings under AS 47.10 or
31 AS 47.17, but not of the reports of harm.

(b) Investigation reports and reports of harm filed under this chapter are considered confidential and are not subject to public inspection and copying under AS 40.25.110 and 40.25.120. However, in accordance with department regulations, investigation reports, including substantiated findings under AS 47.10 or AS 47.17, may be used by appropriate governmental agencies with child-protection functions, inside and outside the state, in connection with investigations or judicial proceedings involving child abuse, neglect, or custody and in conjunction with licensing action under AS 47.32 or a similar statute in another state. A person [,] not acting in accordance with department regulations [,] who, with criminal negligence, makes public information contained in confidential reports is guilty of a class B misdemeanor.

* **Sec. 9.** AS 47.17.040 is amended by adding new subsections to read:

(c) Before a substantiated finding may be placed on the child protection registry under AS 47.17.040 and provided as part of a check under AS 47.05.325, the department must provide the applicant notice of the finding and provide the opportunity for the applicant to appeal the finding. The department shall adopt regulations to implement this section.

(d) In this section,

(1) "governmental agency" includes tribes or tribal organizations conducting child protection functions;

(2) "investigations or judicial proceedings" means any governmental agency, including school districts or educational instructors, that provides services related to the health, safety, and welfare of children.

* **Sec. 10.** AS 47.32.070 is amended by adding a new subsection to read:

(c) In considering whether to deny a license or to place a condition on a license, the department shall consider the licensing history of the applicant, including any enforcement action under this chapter.

* **Sec. 11.** AS 47.32.090 is amended by adding a new subsection to read:

(d) The department may investigate an employee, contractor, or volunteer of a licensed entity and may substantiate that an individual engaged in conduct that would significantly impact the health, safety, and welfare of a resident in care. If the conduct

is substantiated against an employee, contractor, or volunteer, the department shall issue a notice of the finding and that the person shall be placed on the centralized registry under AS 47.05.330. Before a substantiated finding against an employee, contractor, or volunteer may be placed on the centralized registry and provided as part of a check under AS 47.05.325, the department shall provide the applicant notice of the finding and the ability to appeal the finding. The department shall adopt regulations under AS 44.62 to implement this section.

* **Sec. 12.** AS 47.32.150(b) is amended to read:

(b) Upon receipt of a timely request for a hearing by an entity regarding an enforcement action under AS 47.32.070 or 47.32.140(d)(1), (2), (4), (8), (10), (11), (12), or (f) [(13)], the department shall conduct a hearing in front of an officer appointed by the commissioner. A hearing under this subsection may be conducted on the record, in an informal manner, and may not be conducted under AS 44.62 or AS 44.64. The appointed hearing officer may be a state employee.

* **Sec. 13.** AS 47.32.180 is amended by adding a new subsection to read:

(c) Notwithstanding any other provision of law, if a law enforcement agency is investigating a crime that is also the subject of a licensing investigation, the department may share all information with the law enforcement agency upon request.

* **Sec. 14.** AS 47.32.190 is amended to read:

Sec. 47.32.190. Access to information. Notwithstanding any contrary provision of law, the divisions of the department assigned to implement this chapter [PUBLIC HEALTH AND PUBLIC ASSISTANCE FUNCTIONS] shall have access to any information compiled or retained by other divisions within the department, regardless of the nature of the information or whether the information is considered confidential, in order to assist in administering the provisions of this chapter.

* **Sec. 15.** AS 47.05.390(1) and AS 47.32.140(d)(13) are repealed.

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

APPLICABILITY. This Act applies whether the criminal or civil conduct occurred before, on, or after the effective date of this Act.

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

1 read:

2 REVISOR'S INSTRUCTION. The revisor of statutes is requested to change the

3 (1) heading of art. 3 of AS 47.05 from "Criminal History; Registry" to
4 "Criminal and Civil History; Registry"; and

5 (2) catch line for AS 47.32.140 from "Enforcement actions" to "Notice; plan
6 of correction; allegation of compliance; enforcement action."

7 * **Sec. 18.** This Act takes effect immediately under AS 01.10.070(c).