



AN ACT TO TERMINATE THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS AND TO TRANSFER THE LICENSING DUTIES OF THE BOARD TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS FOR LICENSURE; PROVIDING RULEMAKING AUTHORITY; REPEALING SECTIONS 2-15-1745, 37-48-101, 37-48-102, 37-48-103, 37-48-106, 37-48-107, 37-48-108, 37-48-113, 37-48-115, AND 37-48-118, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Purpose.** The purpose of [sections 1 through 11] is to provide for the licensure and regulation of private alternative adolescent residential or outdoor programs to monitor and maintain a high standard of care and to ensure the health and safety of the adolescents and parents using the programs.

**Section 2. Definitions.** As used in [sections 1 through 11], the following definitions apply:

- (1) "Department" means the department of public health and human services provided for in 2-15-2201.
- (2) "Direct access" means that an individual has or likely will have person-to-person spoken or physical contact with or access to a program participant.
- (3) "License" means a written document issued by the department that the license holder has complied with [sections 1 through 11] and the applicable standards and rules for programs.
- (4) "Licensee" means the holder of a license issued by the department in accordance with the provisions of [sections 1 through 11].
- (5) "Person associated with the program" means any owner, partner, member, employee, or contractor providing professional or occupational services to a program.
- (6) (a) "Program" means a private alternative adolescent residential or outdoor program that provides a structured, private, alternative residential setting for youth who are experiencing emotional, behavioral, or learning problems and who have a history of failing in academic, social, moral, or emotional development at home

or in less-structured traditional settings.

(b) The term does not include:

(i) any program that is otherwise required to be licensed or regulated by the state under Title 50, 52, or 53, except that a program that holds itself out as providing primary, inpatient chemical dependency treatment must ensure that the treatment program is provided by a public or private chemical treatment facility approved by the department under 53-24-208.

(ii) recreational programs such as boy scouts, girl scouts, or 4-H clubs;

(iii) organizations, boarding schools, or residential schools with a sole focus on academics;

(iv) residential training or vocational programs with a sole focus on education and vocational training;

(v) youth camps with a focus on recreation and faith-related activities; or

(vi) an organization, boarding school, or residential school that is an adjunct ministry of a church incorporated in the state of Montana.

(7) "Program participant" means any adolescent to whom services are being provided by the program.

**Section 3. Duties of department.** The department shall:

(1) exercise licensing authority over all programs under [sections 1 through 11];

(2) adopt rules prescribing the health and safety standards upon which licenses are issued under [sections 1 through 11];

(3) adopt rules setting forth reasonable licensing fees;

(4) make available to the public information on the name, address, and contact information for each licensee; and

(5) report to the children, families, health, and human services interim committee in accordance with 5-11-210 on the department's efforts related to [sections 1 through 11].

**Section 4. License required -- term of license -- fees.** (1) A person, group of persons, or corporation may not establish or maintain a program as defined in [sections 1 through 11] unless licensed to do so by the department. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(2) The department:

(a) may issue a license that remains in effect for a period not to exceed 3 years; and  
 (b) may charge a reasonable fee commensurate with administrative costs to issue a license, as set forth by rule.

(3) A 3-year license may be issued only to a program that has not received notice of any deficiencies on the licensing criteria and implementation guidelines that are provided in department rule.

**Section 5. Requirements for licensure.** (1) The department shall require applicants and licensees:

(a) to submit a set of fingerprints for each person associated with the program who has direct access to program participants for the purpose of conducting a criminal and child protection background check by the Montana department of justice and the federal bureau of investigation. This background investigation must include information pertaining to criminal convictions, reports of domestic violence, and substantiated child abuse or neglect of children.

(b) to maintain and to provide verification of policies of insurance in a form and in an adequate amount as determined by rule.

(2) In developing minimum standards for licensed programs, the department may adopt rules that pertain to ensuring the health and safety of program participants.

**Section 6. Provisional license.** The department may issue a provisional license for a period not to exceed 6 months if it finds that a licensee or applicant does not meet all standards established by the department, as long as the licensee or applicant is attempting to meet the minimum standards.

**Section 7. Renewal license.** If a licensed program desires to renew a license, the request for renewal shall be made at least 30 days prior to the expiration of its license.

**Section 8. Denial, cancellation, reduction, revocation, and nonrenewal of licenses -- fair hearing.**

(1) The department, after written notice to the applicant or licensee may deny, suspend, cancel, reduce, modify, or revoke a license upon finding that:

(a) any of the applicable conditions set forth in [sections 1 through 11] and the rules adopted pursuant to [sections 1 through 11] as prerequisites for the issuance of a license no longer exist;

(b) the licensee is no longer in compliance with the minimum standards prescribed by the department;  
or

(c) the license was issued upon fraudulent or untrue representation.

(2) The applicant or licensee by written request may invoke the opportunity for hearing on the department's action by requesting a hearing within 10 days of notice of department action. The hearing must be conducted according to the department's rules.

**Section 9. Licensees and applicants to maintain records, furnish reports, and permit inspections.**

Every applicant for a license and every licensee shall give the right of entrance to and inspection of premises to representatives of the department at reasonable times, keep and maintain records as the department may prescribe, permit inspection of these records, and report to the department facts that may be required on forms furnished by the department.

**Section 10. Periodic visits to facilities by department -- investigations -- consultation with licensees and registrants.** (1) The department or its authorized representative shall make periodic visits to all licensed programs to ensure that minimum standards are maintained.

(2) The department may investigate and inspect the conditions and qualifications of any program seeking or holding a license under the provisions of [sections 1 through 11].

(3) The department shall conduct an onsite inspection of:

(a) each program applying for a license; and

(b) each licensed program at least once every 3 years.

(4) Upon request of the department, the state fire prevention and investigation section of the department of justice shall inspect any program for which a license is applied for or issued and shall report its findings to the department.

**Section 11. Penalty -- remedies.** (1) A person who establishes or maintains a program or assists in conducting or maintaining a program without first obtaining a license from the department as provided for in [sections 1 through 11] is guilty of a misdemeanor and upon conviction is punishable by a fine not to exceed \$500.

(2) (a) If the department is advised or has reason to believe that a program is operating without a license, it shall make an investigation to ascertain the facts. If the department finds that the program is being or has been operated without a license, it may report the results of its investigation to the attorney general or the county attorney of the county where the program is being operated for prosecution and request that an injunction be issued against the program until a license is issued.

(b) The department may institute any action necessary to enforce compliance with [sections 1 through 11] or any order or rule of the department under [sections 1 through 11] or to obtain a judicial interpretation of any of the foregoing.

(c) The department may, by its own attorney, any county attorney, or the attorney general, initiate an action in the justice's court, city court, municipal court, or district court of the appropriate jurisdiction and be represented by that representative on appeal to the district court and supreme court of Montana, as applicable.

**Section 12. Transition.** (1) Existing licenses granted by the board of private alternative adolescent residential and outdoor programs shall be accepted and administered by the department of public health and human services until those licenses expire or are canceled, reduced, modified, or revoked by the department.

(2) The department shall apply and administer the existing rules of the board of private alternative adolescent residential and outdoor programs to the extent those rules do not conflict with [sections 1 through 11] until it adopts its own rules to implement [sections 1 through 11].

**Section 13. Repealer.** The following sections of the Montana Code Annotated are repealed:

- 2-15-1745. Board of private alternative adolescent residential or outdoor programs.
- 37-48-101. Purpose.
- 37-48-102. Definitions.
- 37-48-103. Registration and licensing requirements -- fees.
- 37-48-106. Licensure.
- 37-48-107. Provisional license.
- 37-48-108. Background investigations -- waiver.
- 37-48-113. Rules -- program criteria -- application evaluations.
- 37-48-115. Department or board inspection.

37-48-118. Penalty for failure to obtain license -- notice of violation.

**Section 14. Codification instruction.** [Sections 1 through 11] are intended to be codified as an integral part of Title 52, chapter 2, and the provisions of Title 52, chapter 2, apply to [sections 1 through 11].

**Section 15. Effective date.** [This act] is effective July 1, 2019.

- END -

I hereby certify that the within bill,  
SB 0267, originated in the Senate.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

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Secretary of the Senate

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

SENATE BILL NO. 267

INTRODUCED BY D. SANDS, M. MACDONALD, J. POMNICHOWSKI

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