

SENATE BILL NO. 288  
INTRODUCED BY T. SCHMIDT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT OR OUTDOOR RESIDENTIAL PROGRAMS; REQUIRING A LICENSE FOR PROGRAMS; PROVIDING FOR A PROVISIONAL LICENSE; PROVIDING FOR BACKGROUND INVESTIGATION OF CERTAIN EMPLOYEES AND MANAGERS AND ALLOWING A WAIVER OF THE BACKGROUND INVESTIGATION; INCREASING THE NUMBER OF BOARD MEMBERS; REQUIRING DEPARTMENT INSPECTIONS FOR LICENSURE AND ALLOWING INSPECTIONS IN RESPONSE TO COMPLAINTS; REVISING THE DEFINITION OF "PROGRAM"; REQUIRING CRITERIA FOR ENSURING PUBLIC HEALTH AND SAFETY FOR PROGRAM PARTICIPANTS; PROVIDING PENALTIES AND NOTIFICATION PROCEDURES; AMENDING SECTIONS 2-15-1745, 37-48-101, 37-48-102, AND 37-48-103, MCA; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. **Section 1. Licensure.** (1) A program must be licensed by the board.

(2) The board may issue a license that is valid for a period of between 1 year and 2 years or may issue a provisional license as provided in [section 2].

(3) A license is valid only for the program for which it is issued and may not be sold, assigned, or transferred.

(4) The board may suspend or revoke a license if the board, upon a hearing as provided in 37-1-131, determines that the program is not operated in a manner consistent with the program's plan of operation.

(5) The board may approve a modification, for good cause, of the program's plan of operation. A program may not deviate from its plan of operation without the prior approval of the board.

(6) A license terminates and the holder of the program license shall return the license to the department if:

- (a) program operations are discontinued;
- (b) ownership of the program is transferred;
- (c) the board suspends or revokes the license; or
- (d) the license expires.

(7) The program license must be displayed in a conspicuous place near the admitting office of the program.

**NEW SECTION. Section 2. Provisional license.** (1) The board may grant a provisional license to a program:

(a) that was registered with the board as of June 30, 2007; and

(b) that has submitted to the board:

(i) a completed application;

(ii) background materials, as described in [section 3], necessary to conduct background investigations on the program's managers and workers affiliated with the program; and

(iii) the required fees.

(2) A provisional license allows a program to operate for a period of up to 1 year, pending an onsite inspection of the program's facilities and the completion of background investigations on all managers and workers affiliated with the program who will have direct access to program participants.

(3) The board may terminate a provisional license by notifying the program of any of the following:

(a) the program's failure to pass the onsite inspection;

(b) the program's failure to provide timely background materials for investigation of all managers and workers affiliated with the program who have direct access to program participants; or

(c) the determination that one or more of the workers affiliated with the program with direct access to program participants is considered unsuitable, based on background information, for having direct access to program participants.

(4) If the program demonstrates good cause, the board may extend a provisional license for no more than 6 months to complete background investigations on managers and workers affiliated with the program.

(5) The board may grant only one provisional license to a program. The board may decline to grant a provisional license to a program that the board determines is substantially the same in ownership, management, and plan of operation as a program that previously had been granted a provisional license.

**NEW SECTION. Section 3. Background investigations -- waiver.** (1) The program's managers and each worker affiliated with the program who will have direct access to program participants shall provide to the board the information necessary for the board to conduct a background investigation, including a set of fingerprints as required for a fingerprint check by the Montana department of justice and the federal bureau of

investigation.

(2) For the purposes of the background investigation required by this section, each individual subject to subsection (1) must be evaluated pursuant to the provisions of Title 37, chapter 2, part 2.

(3) The board may, by rule, identify specific criminal offenses for which a conviction disqualifies a worker affiliated with the program and procedures for disqualification based upon substantiated child abuse or neglect of children.

(4) (a) The board may, by rule, waive the requirement for a background investigation for an individual who holds a professional or occupational license granted by the state that is not suspended or restricted by action of the appropriate licensing entity.

(b) The board may grant a waiver of the background investigation upon a determination that the class or type of licensure referenced in subsection (4)(a):

(i) subjects the individual to at least as rigorous a background investigation as required by this section; and

(ii) contains provisions disqualifying applicants for a professional or occupational license that are similar to the provisions in subsection (3) and that are specified by the board by rule as disqualifying an individual whose job requires direct access to a program participant.

**NEW SECTION. Section 4. Rules -- program criteria -- application evaluation.** (1) The board shall adopt rules establishing specific minimum criteria to ensure the health and safety of program participants and other rules necessary to implement this part. Those criteria may incorporate by reference appropriate standards established by other governmental entities, including:

(a) building codes for those structures used as a residence for program participants, which may take into account the number of persons being housed in the structure and the internal configuration of the structure;

(b) health and sanitation requirements; and

(c) other standards adopted by the board by rule.

(2) The board shall evaluate each application for a license to determine whether the proposed plan of operation:

(a) meets the specific minimum criteria set by rule;

(b) reasonably provides for the safety and well-being of program participants; and

(c) is consistent with the goals and objectives stated in the plan of operation.

**NEW SECTION. Section 5. Department inspection -- prior notice not required.** (1) The department may enter and inspect program premises and facilities in response to a complaint. The inspection may be for purposes of determining compliance with the provisions of this part or for other purposes provided for by rule.

(2) The department may enlist the assistance of other governmental entities in inspections, including but not limited to a county health officer or a county sanitarian.

(3) (a) Except as provided in subsection (3)(b), the department shall conduct an onsite inspection of:

- (i) each program applying for a license; and
- (ii) each licensed program at least once every 2 years.

(b) Instead of an onsite inspection of a licensed program, the department may consider verified proof of successful certification by a national or regional certifying organization approved by the board by rule.

(c) Prior to renewal of a license, a program shall provide the board with evidence of certification as provided by subsection (3)(b) or shall request an onsite inspection.

(4) Inspections may be made without prior notice to the program.

**NEW SECTION. Section 6. Penalty for failure to obtain license -- notice of violation.** (1) It is unlawful to operate a program without a license or a provisional license. A person who maintains or operates a program in violation of this section is guilty of a misdemeanor punishable under 46-18-212. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

(2) If the department receives a complaint or information alleging a violation of this part, the department may serve written notice to the program management either in person or by certified mail. The notice must inform the program management of the right to a hearing and whether injunctive action is being sought. The notice may also recommend corrective action to achieve voluntary compliance and a schedule for completing the corrective action if the program prefers to take corrective action rather than proceed to a contested case hearing.

**Section 7.** Section 2-15-1745, MCA, is amended to read:

**"2-15-1745. Board of private alternative adolescent residential or outdoor programs.** (1) There is a board of private alternative adolescent residential or outdoor programs.

(2) (a) The board consists of ~~five~~ nine members.

(b) Seven members must be appointed by the governor with the consent of the senate for staggered 3-year terms. The members serving staggered terms must include:

~~(a)~~(i) three members from a list of nominees provided by programs, as defined in 37-48-102, of various

sizes and types; and

~~(b)(ii)~~ two members ~~who must be~~ from the general public;

(iii) one member who is a physician licensed under Title 37, chapter 3, a physician assistant licensed under Title 37, chapter 20, or an advanced practice registered nurse, described in 37-8-202; and

(iv) one member who is a psychologist licensed under Title 37, chapter 17, a social worker licensed under Title 37, chapter 22, or a professional counselor licensed under Title 37, chapter 23.

(c) The membership must also include:

(i) the superintendent of public instruction or a representative of the superintendent of public instruction;

and

(ii) the director of the department of public health and human services or a representative of the director of the department of public health and human services.

(3) A vacancy on the board must be filled in the same manner as the original appointment.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

**Section 8.** Section 37-48-101, MCA, is amended to read:

**"37-48-101. Purpose.** The purpose of the board is to ~~examine the benefit of licensing~~ license and regulate private alternative adolescent residential or outdoor programs ~~as a public service~~ to monitor and maintain a high standard of care and to ensure the safety and well-being of the adolescents and parents using the programs. ~~Necessary licensure processes and safety standards for programs are best developed and monitored by the professionals that are actively engaged in providing private alternative adolescent residential care."~~

**Section 9.** Section 37-48-102, MCA, is amended to read:

**"37-48-102. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of private alternative adolescent residential or outdoor programs provided for in 2-15-1745.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Direct access" means that an individual has or will likely have person-to-person spoken contact or physical contact with or access to a program participant.

(4) "Manager" means an individual who exercises day-to-day supervision or control over the operations of a program.

(5) "Plan of operation" means the operational structures and parameters describing the program as

identified in 37-48-103 and as required by the board by rule.

~~(3)(6)~~ (a) "Program" means a private alternative adolescent residential school 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 24-hour supervised group living environment for four or more individuals unrelated to the owner or manager. A program offers room or board and one or more additional services, including specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for a program participant with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependency. The term may include but is not limited to the following schools or programs unless excluded under subsection (6)(b):

(i) an outdoor behavioral program;

(ii) a boarding school; or

(iii) a residential program that represents that it provides supervision and structure for youth.

(b) The term does not include:

(i) any school or program that is required to be licensed or regulated by the state under Title 50, 52, or 53; or

(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, or summer youth camps that serve groups of youth for periods of less than 2 weeks.~~

(7) "Program participant" means an adolescent enrolled in or participating in a program, other than an adolescent serving as an employee of the program.

(8) "Worker affiliated with the program" means any owner, partner, member, employee, or contractor providing professional or occupational services to a program."

**Section 10.** Section 37-48-103, MCA, is amended to read:

**"37-48-103. Powers and duties of board -- registration Licensing requirements -- fees.** (1) The board shall ~~develop and implement a process for registration of~~ license programs and ~~to~~ set fees to carry out its

duties under this ~~section part~~. Fees may be set on a sliding scale based on the average daily number of program participants.

~~(2)~~ The board shall:

- ~~— (a) examine data gathered from the registration process;~~
- ~~— (b) examine current regulations and standards applicable to these programs;~~
- ~~— (c) determine additional regulations and standards that are needed;~~
- ~~— (d) examine the quality of child care available in the various programs, any aspects of existing programs that need improvement, and the positive contributions to or negative interactions with local communities;~~
- ~~— (e) determine the need for the continued existence of the board and its duties or responsibilities; and~~
- ~~— (f) report to the economic affairs interim committee detailing the board's findings, recommendations, and proposed legislation, if any, by September 15, 2006.~~

~~(3)~~(2) The board shall require the following information to ~~be provided for registration of license~~ programs. ~~The information includes but is not limited to:~~

- (a) a description of the program and facility;
- (b) a description of the goals and objectives of the program for program participants;
- ~~(b)~~(c) a description of the population served by the program, including the maximum number of program participants to be served and the gender;
- ~~(e)~~(d) the location and contact information for each program, including the person responsible for the conduct of the program;
- ~~(d)~~(e) a list of professional and supervisory employees and relevant credentials and other qualifications;
- ~~(e)~~(f) the average daily ~~census~~ number of program participants;
- ~~(f)~~(g) a copy of program policies and procedures on:
  - (i) admission;
  - (ii) behavior management;
  - (iii) communication with family members;
  - (iv) the availability of routine and emergency medical and psychological care; and
  - (v) medication management;
- (h) any information that the board may require to facilitate a fingerprint and background check by the Montana department of justice and the federal bureau of investigation of a manager or a worker affiliated with the program with direct access to program participants, including information pertaining to criminal convictions;  
and

(i) any other related information specified by the board by rule.

~~(4) The board shall adopt rules to determine any additional information necessary for registration. Registration must be updated annually. The board may set fees as provided in 37-1-134 that may be commensurate with program size.~~

(3) The board shall issue licenses upon receipt of the appropriate fees and a finding that the information provided in subsection (2) is satisfactory. The board shall make available to the public information on the name, address, and contact information for each registered licensed program.

~~(5) The board is exempt from the provisions in 37-1-105, 37-1-136, 37-1-137, 37-1-138, 37-1-141, and Title 37, chapter 1, parts 2 and 3."~~

NEW SECTION. Section 11. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 37, chapter 48, part 1, and the provisions of Title 37, chapter 48, part 1, apply to [sections 1 through 6].

NEW SECTION. Section 12. Effective dates. (1) [Sections 3 through 5 and 11 and this section] are effective July 1, 2007.

(2) [Sections 1, 2, and 6 through 10] are effective January 1, 2008.

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