

SENATE BILL NO. 267

INTRODUCED BY D. SANDS

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A BILL FOR AN ACT ENTITLED: "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:

NEW SECTION. **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.

NEW SECTION. **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

1 or in less-structured traditional settings.

2 (b) The term does not include:

3 (i) any program that is otherwise required to be licensed or regulated by the state under Title 50, 52, or
4 53, except that a program that holds itself out as providing primary, inpatient chemical dependency treatment
5 must ensure that the treatment program is provided by a public or private chemical treatment facility approved
6 by the department under 53-24-208.

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

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

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

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

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

13 (7) "Program participant" means any adolescent to whom services are being provided by the program.
14

15 **NEW SECTION. Section 3. Duties of department.** The department shall:

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

17 (2) adopt rules prescribing the conditions and minimum standards upon which licenses are issued under
18 [sections 1 through 11];

19 (3) adopt other rules necessary to implement [sections 1 through 11], including rules setting forth
20 reasonable licensing fees; and

21 (4) make available to the public information on the name, address, and contact information for each
22 licensee.
23

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

28 (2) The department:

29 (a) may issue a license that remains in effect for a period not to exceed 3 years; and

30 (b) may charge a reasonable fee commensurate with administrative costs to issue a license, as set forth

1 by rule.

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

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

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

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

14 (2) In developing minimum standards for licensed programs, the department may adopt rules that pertain
15 to:

16 (a) character, suitability, credentials, training, experience, and other qualifications of all persons
17 associated with the program who have direct access to program participants;

18 (b) the number of individuals or staff required for adequate supervision and care of program participants;

19 (c) practices and policies necessary to ensure the health, safety, safety in transportation, development,
20 education, and well-being of program participants;

21 (d) adequacy of admission policies;

22 (e) adequacy and appropriateness of behavior management practices and policies;

23 (f) adequacy of physical facilities and equipment;

24 (g) general financial ability and competence of an applicant to provide necessary care and maintain
25 prescribed minimum standards; and

26 (h) any other rules consistent with the purposes of [sections 1 through 11].

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

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

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5 **NEW SECTION. Section 8. Denial, cancellation, reduction, revocation, and nonrenewal of**
6 **licenses -- fair hearing.** (1) The department, after written notice to the applicant or licensee may deny, suspend,
7 cancel, reduce, modify, or revoke a license upon finding that:

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

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

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

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

16
17 **NEW SECTION. Section 9. Licensees and applicants to maintain records, furnish reports, and**
18 **permit inspections.** Every applicant for a license and every licensee shall give the right of entrance to and
19 inspection of premises to representatives of the department at reasonable times, keep and maintain records as
20 the department may prescribe, permit inspection of these records, and report to the department facts that may
21 be required on forms furnished by the department.

22
23 **NEW SECTION. Section 10. Periodic visits to facilities by department -- investigations --**
24 **consultation with licensees and registrants.** (1) The department or its authorized representative shall make
25 periodic visits to all licensed programs to ensure that minimum standards are maintained.

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

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

29 (a) each program applying for a license; and

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

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

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

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

14 (b) The department may institute any action necessary to enforce compliance with [sections 1 through
15 11] or any order or rule of the department under [sections 1 through 11] or to obtain a judicial interpretation of any
16 of the foregoing.

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

20
21 **NEW SECTION. Section 12. Transition.** (1) Existing licenses granted by the board of private
22 alternative adolescent residential and outdoor programs shall be accepted and administered by the department
23 of public health and human services until those licenses expire or are canceled, reduced, modified, or revoked
24 by the department.

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

28
29 **NEW SECTION. Section 13. Repealer.** The following sections of the Montana Code Annotated are
30 repealed:

- 1 2-15-1745. Board of private alternative adolescent residential or outdoor programs.
2 37-48-101. Purpose.
3 37-48-102. Definitions.
4 37-48-103. Registration and licensing requirements -- fees.
5 37-48-106. Licensure.
6 37-48-107. Provisional license.
7 37-48-108. Background investigations -- waiver.
8 37-48-113. Rules -- program criteria -- application evaluations.
9 37-48-115. Department or board inspection.
10 37-48-118. Penalty for failure to obtain license -- notice of violation.

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

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

17 - END -