

HOUSE BILL NO. 16

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE KELLER

Introduced: 1/7/13

Referred: Prefiled

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to citizenship requirements and an alcohol impairment and drug**
2 **testing program for applicants for and recipients of specified cash assistance."**

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

4 *** Section 1.** AS 47.25.120 is amended by adding a new subsection to read:

5 (b) A person must be a citizen of the United States or a legal alien as described
6 in 8 U.S.C. 1181 - 1186 and not otherwise precluded from eligibility under state or
7 federal law to be eligible for assistance under AS 47.25.120 - 47.25.300.

8 *** Sec. 2.** AS 47.27.200(e) is amended to read:

9 (e) An organization's plan for operation of the Alaska Native family assistance
10 grant must

11 (1) be designed to facilitate self-sufficiency of assistance recipients in
12 the region specified in the federally approved tribal family assistance plan by
13 addressing the conditions specific to that region;

14 (2) provide for a reasonable pattern of service delivery from all

1 providers serving that region;

2 (3) serve a specified region that consists of a geographically cohesive
3 group of communities that share similar interests, resources, and traditions;

4 (4) establish the same maximum number of months of benefits as is
5 established for the state program under AS 47.27.015(a)(1); [AND]

6 (5) provide for administration of the grant money received under this
7 section to establish a program in accordance with the plan accepted by the department
8 and in compliance with other requirements of this section; the program must include
9 the following standards for providing assistance to eligible families:

10 (A) only families with at least one dependent child or a woman
11 in the last trimester of pregnancy are eligible for assistance paid from an
12 Alaska Native family assistance grant;

13 (B) amounts for assistance provided from an Alaska Native
14 family assistance grant to eligible families may not exceed the amounts
15 specified under AS 47.27.025(b) when combined with assistance provided
16 under the federally approved tribal family assistance grant;

17 (C) to remain eligible for assistance paid from an Alaska Native
18 family assistance grant, a minor parent of a dependent child must meet
19 the requirements of AS 47.27.027;

20 (D) families receiving assistance paid from an Alaska Native
21 family assistance grant shall comply with the provisions of AS 47.27.035(a)
22 regarding participation in work activities;

23 (E) families receiving assistance paid from Alaska Native
24 family assistance grant money shall comply with the provisions of (l) - (n) of
25 this section regarding assignment of support rights and cooperation with the
26 child support services agency;

27 (F) the organization has an impartial appeals process to allow
28 affected families in the region of the state covered by the plan accepted by the
29 department to have a fair hearing;

30 **(6) establish an alcohol and drug testing program as required**
31 **under AS 47.27.400 - 47.27.499.**

* **Sec. 3.** AS 47.27 is amended by adding new sections to read:

Article 4A. Alcohol and Drug Testing.

Sec. 47.27.400. Alcohol impairment and drug testing; legislative findings

and purpose. The legislature finds that a statewide threat to public safety exists with regard to the use of cash assistance for the purchase of alcohol and illegal drugs. The purpose of the testing program established under AS 47.27.400 - 47.27.499 is to reduce that risk and to protect the residents of the state.

Sec. 47.27.410. Alcohol impairment and drug testing for eligibility; regulations; immunity. (a) The department shall implement a program consistent with AS 47.27.400 - 47.27.499 that provides for random and suspicion-based testing of recipients of cash assistance for use of alcohol that impairs a recipient's ability to work or seek work and of applicants for and recipients of cash assistance for the use of illegal drugs. In this subsection, "recipient of cash assistance" does not include a dependent child, a caretaker of a dependent child who is not a recipient of public assistance based on the caretaker's financial need, or a protective payee, as defined by the department in regulation.

(b) The department shall adopt regulations to implement this section. The regulations must include testing policies consistent with AS 47.27.430 and specify the type of testing to be conducted and the illegal drugs to be included in the testing program. The drug tested must have a cutoff level that yields a positive test result

(1) for initial testing of urine, as follows:

| SUBSTANCE | CUTOFF CONCENTRATION (nanograms in each milliliter) |
|-----------------------|--|
| Marijuana metabolites | 50 |
| Cocaine metabolites | 300 |
| Opiate metabolites | 2,000 |
| Phencyclidine | 1,000 |
| Amphetamines | 1,000 |

(2) for confirmatory testing of urine, as follows:

| SUBSTANCE | CUTOFF CONCENTRATION (nanograms in each milliliter) |
|-----------|--|
|-----------|--|

| | | |
|----|---|-------|
| 1 | Marijuana metabolite | 15 |
| 2 | (Delta-9-tetrahydrocannabinol-9-carboxylic acid) | |
| 3 | Cocaine metabolite (Benzoylecgonine) | 150 |
| 4 | Opiates | |
| 5 | Morphine | 2,000 |
| 6 | Codeine | 2,000 |
| 7 | 6-Acetylmorphine | 10 |
| 8 | (when morphine concentration exceeds | |
| 9 | 2,000 nanograms in each milliliter) | |
| 10 | Phencyclidine | 25 |
| 11 | Amphetamines | |
| 12 | Amphetamine | 500 |
| 13 | Methamphetamine | 500 |
| 14 | (when amphetamine concentration is | |
| 15 | greater than or equal to 200 nanograms | |
| 16 | in each milliliter) | |
| 17 | (3) for testing of alternative specimens that is consistent with the | |
| 18 | mandatory guidelines for the federal workplace drug testing program adopted by the | |
| 19 | United States Department of Health and Human Services. | |
| 20 | (c) Unless the department or an agent or employee of the department knew or | |
| 21 | should have known that the results of a test conducted under this section were false | |
| 22 | and took action that affected a person's eligibility for cash assistance based on the false | |
| 23 | test results, a person may not bring an action for damages against the department or an | |
| 24 | agent or employee of the department for | |
| 25 | (1) good faith actions taken to conduct, or as a result of, alcohol | |
| 26 | impairment or drug testing under this section; | |
| 27 | (2) failure to test for alcohol impairment or drugs or for a specific | |
| 28 | drug; | |
| 29 | (3) failure to test for or detect a specific drug or medical or | |
| 30 | psychological condition or disorder; | |
| 31 | (4) termination or suspension of an alcohol or drug prevention or | |

1 testing program or policy.

2 (d) In a claim for damages based on false test results,

3 (1) a rebuttable presumption exists that the test results were valid if the
4 department complied with this section and the regulations adopted under this section;
5 and

6 (2) the department may not be held liable for monetary damages for
7 good faith reliance and reasonable actions taken as a result of false test results.

8 (e) A person may not bring an action against the department based on the
9 failure of the department to establish a program or policy on substance abuse
10 prevention or to implement alcohol impairment or drug testing.

11 **Sec. 47.27.420. Confidentiality; liability.** (a) The results of a test conducted
12 under AS 47.27.410 are confidential, except that the results may be revealed to the
13 recipient of cash assistance who was tested and to agents and employees of the
14 department as required to determine eligibility for cash assistance.

15 (b) A person may not bring an action for defamation of character or reputation
16 as a result of disclosure of the results of an alcohol impairment or drug test under the
17 alcohol impairment or drug testing program established under AS 47.27.410 unless

18 (1) the results were disclosed to a person, other than an agent or
19 employee of the department for the purpose of the testing program or under court or
20 administrative order;

21 (2) the information disclosed included false test results;

22 (3) the information was negligently or intentionally disclosed; and

23 (4) the elements of the tort claim are met.

24 **Sec. 47.27.430. Testing policies and procedures.** (a) The department shall
25 adopt testing policies that include

26 (1) a list of substances tested;

27 (2) a description of the testing methods and collection procedures,
28 including on-site testing;

29 (3) a right to confirmatory testing and the procedures for confirmatory
30 testing;

31 (4) the consequences for refusal to test or retest that are consistent with

1 the provisions in AS 47.27.450;

2 (5) the right of an applicant for or recipient of cash assistance to
3 receive test results within five working days after the department receives the test
4 results or the written request, whichever is later, if a written request is made by the
5 applicant or recipient within six months after the test;

6 (6) the right of an applicant and a recipient, on the applicant's or
7 recipient's request, to receive, within 72 hours of the test or before an adverse action is
8 taken, whichever occurs first, a confidential explanation of the applicant's or
9 recipient's test results;

10 (7) providing the department's confidentiality and testing policies to
11 applicants for and recipients of cash assistance not less than 30 days before initiating
12 testing on the applicant or recipient.

13 (b) The department shall pay the cost of testing and, if the testing is performed
14 at a location other than a location of the department, the cost of transportation to and
15 from the testing center.

16 (c) Sample collection and testing must

17 (1) comply with scientifically accepted methods and procedures;

18 (2) be performed at a location identified by the department and
19 analyzed by a laboratory approved or certified by the Substance Abuse and Mental
20 Health Services Administration or by the College of American Pathologists;

21 (3) be conducted under reasonable, sanitary, and private conditions
22 that are consistent with reliability;

23 (4) be properly controlled, and samples must be properly labeled; and

24 (5) include relevant medical information.

25 (d) A positive drug test must be confirmed using a different analytical process
26 than was used in initial testing. A positive drug test must be reported as a negative
27 result if a licensed physician verifies that the test was affected by medication
28 prescribed for the applicant or recipient tested.

29 (e) The department may not rely on a positive test result without confirmatory
30 testing.

31 **Sec. 47.27.440. Training of test administrators.** (a) The department shall

1 ensure that at least one designated employee of the department receives not less than
2 one hour of training on alcohol abuse and an additional one hour of training on the use
3 of controlled substances for the purpose of finding reasonable suspicion for testing
4 under AS 47.27.400 - 47.27.499.

5 (b) If the department provides on-site testing for alcohol impairment or illegal
6 drug use under AS 47.27.410, the department shall employ on-site administrators who

7 (1) have received training in person and written certification of the
8 training by the test manufacturer's representative on the proper procedure for
9 administering the test and on accurate analysis of the on-site test results; the training
10 must include recognition of adulteration of a sample collected on-site;

11 (2) agree in writing to maintain confidentiality under the testing
12 policies adopted by the department.

13 **Sec. 47.27.450. Consequences of confirmatory positive testing.** (a) Except as
14 provided in (b) of this section, the department shall deny or suspend cash assistance to
15 an applicant for or recipient of the assistance who, under AS 47.27.400 - 47.27.499,

16 (1) has been tested and has received a confirmatory positive result for
17 alcohol impairment or use of illegal drugs and fails to comply with a treatment
18 program approved by the department; or

19 (2) has refused alcohol impairment or drug testing required by the
20 department.

21 (b) The department may provide cash assistance on behalf of an eligible
22 recipient who is subject to denial or suspension under (a) of this section if the
23 department has assigned a protective payee to manage the cash assistance for which
24 the recipient or the recipient's family is otherwise eligible and the third party provides
25 care, shelter, or food to the recipient or the recipient's dependent children.

26 **Sec. 47.27.499. Definition.** In AS 47.27.400 - 47.27.499, "cash assistance"
27 means

28 (1) cash assistance as defined in AS 47.27.900; and
29 (2) benefits received under Alaska Native family assistance programs
30 and grants under AS 47.27.200 and regional public assistance programs under
31 AS 47.27.300.