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Mischel
1/25/13

CS FOR HOUSE BILL NO. 16()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KELLER, Peggy Wilson

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
18 Native 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 excessive use 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, to provide an opportunity for rehabilitation, 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 establish and administer 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)
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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) In administering the
25 program established under AS 14.27.410, the department shall

26 (1) adopt testing policies and procedures that include

27 (A) a list of substances tested;

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

30 (C) a right to confirmatory testing and the procedures for
31 confirmatory testing;

1 (D) the consequences for refusal to test or retest that are
2 consistent with the provisions in AS 47.27.450;

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

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

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

14 (2) pay the cost of testing and, if the testing is performed at a location
15 other than a location of the department, the cost of transportation to and from the
16 testing center; and

17 (3) enter into contracts to conduct testing and analysis of samples
18 consistent with the requirements in AS 47.27.400 - 47.27.499 and AS 36.30 (State
19 Procurement Code).

20 (b) Sample collection and testing must

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

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

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

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

28 (5) include relevant medical information.

29 (c) A positive drug test must be confirmed using a different analytical process
30 than was used in initial testing. A positive drug test must be reported as a negative
31 result if a licensed physician verifies that the test was affected by medication

1 prescribed for the applicant or recipient tested.

2 (d) The department may not rely on a positive test result without confirmatory
3 testing.

4 **Sec. 47.27.440. Training of test administrators.** (a) The department shall
5 ensure that at least one designated employee of the department receives not less than
6 one hour of training on alcohol abuse and an additional one hour of training on the use
7 of controlled substances for the purpose of finding reasonable suspicion for testing
8 under AS 47.27.400 - 47.27.499.

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

12 (1) have received training in person and written certification of the
13 training by the test manufacturer's representative on the proper procedure for
14 administering the test; the training must include recognition of adulteration of a
15 sample collected on-site;

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

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

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

24 (2) has refused alcohol impairment or drug testing required by the
25 department.

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

31 **Sec. 47.27.499. Definition.** In AS 47.27.400 - 47.27.499, "cash assistance"

1 means

2 (1) cash assistance as defined in AS 47.27.900; and

3 (2) benefits received under Alaska Native family assistance programs
4 and grants under AS 47.27.200 and regional public assistance programs under
5 AS 47.27.300.

6 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 TRANSITION. Notwithstanding the requirements for alcohol and drug testing under
9 AS 47.27.400 - 47.27.499, added by sec. 3 of this Act, the Department of Health and Social
10 Services may not, under the program established in those sections, test more than 100 persons
11 a month during the first two fiscal years after the effective date of this Act.