

**HOUSE BILL NO. 274**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/22/95

Referred: Health, Education and Social Services, Judiciary

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the state's tuberculosis control program, including provisions  
2 for certain penalties; and providing for an effective date."

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

4 \* **Section 1.** FINDINGS. The legislature finds that tuberculosis is a disease that can be  
5 easily spread, is sometimes fatal, and constitutes a serious threat to the public health and  
6 welfare. The state medical officers of the Department of Health and Social Services, division  
7 of public health, must use every available means to ascertain the existence of, and immediately  
8 investigate all reported or suspected cases of tuberculosis in the state, and to ascertain the  
9 sources of that disease. The legislature further finds that in order to protect the public health  
10 from the few persons with tuberculosis who pose a threat to the public, it is necessary to  
11 establish a system of mandatory contact identification, treatment, hospitalization, and isolation  
12 for infectious cases and a system of voluntary care and monitoring in all other tuberculosis  
13 cases.

14 \* **Sec. 2.** AS 18.15.120 is amended to read:

1                   Sec. 18.15.120. TUBERCULOSIS CONTROL PROGRAM AUTHORIZED.

2                   The department may establish a comprehensive program for the control of tuberculosis  
3                   in the state, and may

4                               (1) arrange means by which persons in the state may be X-rayed to  
5                   determine the presence of tuberculosis;

6                               (2) establish necessary out-patient clinics for the care of tuberculosis;

7                               (3) encourage and promote the establishment of adequate **health care**  
8                   [SANATORIUM] facilities within the state to care for persons suffering from  
9                   tuberculosis and allied conditions;

10                              (4) under the provisions of AS 36.30 (State Procurement Code), obtain,  
11                   by purchase or donation from surplus federal property or otherwise, medical supplies  
12                   and equipment useful in carrying out this program and to allot or resell these supplies  
13                   and equipment to private institutions engaged by the department to carry out this  
14                   program;

15                              (5) under the provisions of AS 36.30, contract with hospitals,  
16                   associations, or **other health care facilities** [SANATORIUM] qualified and equipped  
17                   to give adequate care inside or outside the state;

18                              (6) employ necessary and trained personnel to carry out the purposes  
19                   of **AS 18.15.120 - 18.15.149** [AS 18.15.120 - 18.15.140];

20                              (7) pay the costs of care and incidental expenses for residents of the  
21                   state, in whole or in part, depending on the ability of each patient to pay, and the  
22                   temporary costs of care and transportation for nonresidents on the same basis until they  
23                   can be transferred to their residence;

24                              (8) enlist the cooperation of state, [AND] federal, **and local** agencies  
25                   operating in the state for the furtherance of this program;

26                              (9) establish standards in accordance with department procedure for the  
27                   care of **persons with tuberculosis** [TUBERCULARS] receiving treatment under  
28                   **AS 18.15.120 - 18.15.149** [AS 18.15.120 - 18.15.140];

29                              **(10) adopt regulations to implement and interpret AS 18.15.120 -**  
30                   **18.15.149.**

31                   \* **Sec. 3.** AS 18.15.130 is amended to read:

1           Sec. 18.15.130.   DEPARTMENT TO COOPERATE WITH OTHER  
2 AGENCIES. The department, in establishing [CONDUCTING] a comprehensive  
3 program for [STUDY AND CASE FINDING SURVEY OF] the control of  
4 tuberculosis in the state [PROBLEM], shall cooperate with state, [AND] federal, and  
5 local agencies operating in the state, and obtain as much information and data as  
6 possible from them.

7 \* **Sec. 4.** AS 18.15 is amended by adding new sections to read:

8           Sec. 18.15.131.   REPORTS TO STATE MEDICAL OFFICERS;  
9 DOCUMENTATION OF TREATMENT. (a) A health care provider and a laboratory  
10 administrator shall report, within five working days, to a state medical officer when  
11 that provider or administrator diagnoses a case of tuberculosis or has reasonable  
12 grounds to believe that a patient has tuberculosis, or when a patient ceases treatment  
13 for tuberculosis. A health care provider and a laboratory administrator may presume  
14 that a patient has ceased treatment if the patient fails to keep an appointment or  
15 relocates without transferring medical treatment to another health care provider. A  
16 health care provider who treats a patient with tuberculosis, and a person in charge of  
17 a health care facility that provides treatment for tuberculosis to a patient, shall maintain  
18 written documentation of the patient's adherence to the patient's treatment plan.

19           (b) A person required to report under (a) of this section shall permit a state  
20 medical officer to examine patient records, reports, and other data related to the  
21 required report.

22           Sec. 18.15.133.   EXAMINATION OF PERSONS EXPOSED TO  
23 TUBERCULOSIS. (a) A health care provider who treats a patient for tuberculosis  
24 shall

25                   (1) examine all other persons in the household who have had contact  
26 with the patient;

27                   (2) refer those persons to another health care provider for examination  
28 and notify the other health care provider and a state medical officer of the referral; or

29                   (3) refer those persons to a state medical officer for examination and  
30 promptly notify the state medical officer of the referral.

31           (b) A health care provider who examines other persons in a household under

1 (a)(1) or (2) of this section shall report to a state medical officer, within 10 days after  
2 the examination, the results of the examination.

3 (c) Under AS 18.15.135, a state medical officer may order an examination of  
4 a person to detect tuberculosis, for the purpose of directing preventive measures for  
5 the person, if the state medical officer has reasonable grounds to believe that the  
6 person is at heightened risk of exposure to tuberculosis.

7 \* **Sec. 5.** AS 18.15.135 is amended to read:

8 Sec. 18.15.135. **TUBERCULOSIS EXAMINATIONS; EXAMINATION**  
9 **ORDERS.** (a) A person shall submit to an examination to detect **tuberculosis** [AN  
10 ACTIVE CASE OF PULMONARY TUBERCULOSIS] whenever, in the opinion of  
11 a **state** medical officer [OF THE DIVISION OF PUBLIC HEALTH], an examination  
12 is necessary to preserve and protect public health.

13 (b) An examination under this section shall be by written order **issued by a**  
14 **state medical officer** that must specify the name of the person to be examined and  
15 the time and place of the examination. The person to be examined shall be personally  
16 served with a copy of the order within a reasonable period of time before the  
17 examination is to take place.

18 (c) An examination under this section shall be performed by a physician **who**  
19 **may lawfully practice** [LICENSED] in the state. The person to be examined may,  
20 under conditions specified by the **state** medical officer, choose the physician who will  
21 perform the examination.

22 \* **Sec. 6.** AS 18.15.136 is repealed and reenacted to read:

23 Sec. 18.15.136. **ADDITIONAL ORDERS TO PROTECT THE PUBLIC**  
24 **HEALTH.** (a) In addition to orders issued under AS 18.15.135, if a state medical  
25 officer determines that the public health in general, or the health of a particular person,  
26 is endangered by exposure to a person who is known to have tuberculosis, or by  
27 exposure to a person for whom there are reasonable grounds to believe has  
28 tuberculosis, a state medical officer may issue the orders that the medical officer finds  
29 necessary to protect the public from a threat to the public health. An examination  
30 ordered under this section shall be performed by a physician who may lawfully  
31 practice in the state. Under conditions specified by the state medical officer who

1 issued the order, the person to be examined may choose the physician who will  
2 perform the examination. A state medical officer may not under this section order the  
3 forcible or involuntary administration of medicine. The state medical officer, through  
4 the Department of Law, may make application to a court for enforcement of an order  
5 issued under this section.

6 (b) An order issued under (a) of this section may include

7 (1) an authorization for the removal to or admission into, a health care  
8 facility for appropriate examination for infectious tuberculosis of a person who is  
9 known to have tuberculosis, or of a person for whom there are reasonable grounds to  
10 believe that the person has tuberculosis and who is unable or unwilling to submit to  
11 an examination ordered under AS 18.15.135;

12 (2) a requirement that a person who has tuberculosis complete an  
13 appropriate treatment plan for tuberculosis and, if necessary, follow required infection  
14 control precautions for tuberculosis;

15 (3) a requirement that a person be removed to, admitted into, and  
16 subsequently detained in, a health facility, if

17 (A) the person has infectious tuberculosis, or presents a  
18 substantial likelihood of having infectious tuberculosis, based upon  
19 epidemiologic information, clinical findings, X-ray readings, or tuberculosis  
20 laboratory test results; and

21 (B) the state medical officer finds that a substantial likelihood  
22 exists that the person may transmit tuberculosis to others because of the  
23 person's inadequate separation from others;

24 (4) a requirement that a person be removed to, admitted into, and  
25 subsequently detained in, a health care facility for treatment if

26 (A) the person has infectious tuberculosis, or has been reported  
27 to a state medical officer as having infectious tuberculosis, and the state  
28 medical officer has no knowledge that the person has completed an appropriate  
29 treatment plan for tuberculosis; and

30 (B) substantial likelihood exists, based on the person's past or  
31 present behavior, that the person cannot be relied upon to participate in or

1 complete an appropriate treatment plan for tuberculosis or, if necessary, follow  
2 required infection control precautions for tuberculosis; the state medical officer  
3 may consider as indicators of unreliability the person's refusal or failure to take  
4 medication for tuberculosis, refusal or failure to keep appointments for  
5 treatment for tuberculosis, refusal or failure to complete a treatment plan for  
6 tuberculosis, or disregard for infection control precautions prescribed by a  
7 health care provider or a state medical officer;

8 (5) an authorization for isolation of a person with infectious  
9 tuberculosis through detention at the person's place of residence until the state medical  
10 officer has determined that the person no longer has infectious tuberculosis.

11 (c) A state medical officer shall issue an order under this section in writing,  
12 and in the order shall set out the following:

13 (1) the name of the person required to comply with the order, the  
14 period of time during which the order is in effect, and other terms and conditions as  
15 the state medical officer determines to be necessary to protect the public health;

16 (2) the legal authority under which the order is issued;

17 (3) an assessment of the person's circumstances or behavior constituting  
18 the basis for the issuance of the order; and

19 (4) any less restrictive treatment alternatives that were attempted and  
20 were unsuccessful, or less restrictive treatment alternatives that were considered and  
21 rejected, and the reasons for the rejection of those alternatives.

22 (d) In addition to the requirements of (c) of this section, an order for the  
23 detention of a person must include

24 (1) the purpose of the detention;

25 (2) advice to the person being detained that the person has the right to  
26 request release from detention by contacting the state medical officer at the telephone  
27 number stated on the order and that, under AS 18.15.139, in the absence of a court  
28 order authorizing the detention, the detention may not continue for more than five  
29 business days after the request for release;

30 (3) advice to the person being detained that, under AS 18.15.139, the  
31 state medical officer is required to obtain, within 60 days following the commencement

1 of detention, a court order authorizing the detention and after that must seek further  
2 court review of the detention within 90 days after the court order and within 90 days  
3 after each subsequent court review; and

4 (4) advice to the person being detained that the person has the right to  
5 arrange to be represented by counsel or, under AS 18.85.100, to have court-appointed  
6 counsel provided.

7 (e) A state medical officer is not required to obtain a court order before issuing  
8 an order under this section for detention of a person.

9 \* **Sec. 7.** AS 18.15.137 is repealed and reenacted to read:

10 Sec. 18.15.137. EMERGENCY DETENTION ORDERS. A state medical  
11 officer, through the Department of Law, may request the court to issue an order for the  
12 emergency detention of a person when the state medical officer finds that a substantial  
13 likelihood exists that the person has infectious tuberculosis in order to prevent the  
14 person from posing a threat to the public health. Upon issuance of an ex parte court  
15 order, a peace officer or a state medical officer shall take the person into custody and  
16 deliver the person to the nearest available health care facility or another location that  
17 will provide for the protection of the public health. The state medical officer, through  
18 the Department of Law, shall make application for a court order authorizing continued  
19 detention of the person within 72 hours after the issuance of an ex parte order or, if  
20 the 72-hour period ends on a Saturday, Sunday, or legal holiday, by the end of the first  
21 state working day following the Saturday, Sunday, or legal holiday. The court shall  
22 schedule a hearing within five state working days after receipt of an application for  
23 authorization of continued detention.

24 \* **Sec. 8.** AS 18.15 is amended by adding a new section to read:

25 Sec. 18.15.139. COURT AUTHORIZATION OF DETENTION. (a) If a  
26 person detained under an order issued under AS 18.15.136 requests release from  
27 detention, the state medical officer shall make an application for a court order  
28 authorizing continued detention within 72 hours after the request or, if the 72-hour  
29 period ends on a Saturday, Sunday, or legal holiday, by the end of the first state  
30 working day following the Saturday, Sunday, or legal holiday. The court shall  
31 schedule a hearing within five state working days after receipt of the state medical

1 officer's application. After a detained person requests release, detention of that person  
2 may not continue for more than five business days in the absence of a court order  
3 authorizing continued detention. However, no person may be detained under an order  
4 issued under AS 18.15.136 for more than 60 days without a court order authorizing the  
5 detention. A state medical officer, through the Department of Law, shall seek further  
6 court review of a detention within 90 days following the initial court order authorizing  
7 the detention and within 90 days after each subsequent court order authorizing  
8 detention.

9 (b) In a court proceeding to authorize or enforce a state medical officer's order  
10 under AS 18.15.136 for the detention of a person, the state medical officer must prove  
11 the circumstances constituting the necessity for the detention by clear and convincing  
12 evidence.

13 (c) A person who is subject to a detention order under AS 18.15.136 has the  
14 right to be represented by counsel or to have, under AS 18.85.100, court-appointed  
15 counsel provided.

16 \* **Sec. 9.** AS 18.15 is amended by adding a new section to read:

17 Sec. 18.15.143. RELIGIOUS TREATMENT FOR TUBERCULOSIS. If a  
18 person with infectious tuberculosis establishes that that person is being provided  
19 treatment for tuberculosis by spiritual means or establishes that the person's sincerely  
20 held religious beliefs prohibit medical treatment, a state medical officer or the court,  
21 in issuing an order under AS 18.15.136, 18.15.137, or 18.15.139, may consider the  
22 spiritual treatment or religious beliefs as well as the health of the person and may  
23 order that the person only be isolated at the person's home, or other suitable place of  
24 the person's choice, in a manner that will protect the public health.

25 (b) A person with infectious tuberculosis who is or might become subject to  
26 an order issued under AS 18.15.136, 18.15.137, or 18.15.139, at any time may request  
27 recognition and consideration of spiritual treatment or religious beliefs as described in  
28 (a) of this section.

29 (c) In this section, "spiritual means" means prayer, or a substantially similar  
30 activity, by an established practitioner of a recognized church or religious  
31 denomination, in accordance with the tenets and practices of that church or religious

1 denomination.

2 \* **Sec. 10.** AS 18.15.145(a) is amended to read:

3 (a) An employee of a public or private elementary or secondary school in the  
4 state shall be tested annually to detect **infectious** [ACTIVE CASES OF  
5 PULMONARY] tuberculosis. An employee who has never had a positive test result  
6 from a tuberculin skin test shall obtain a tuberculin skin test. An employee whose skin  
7 test result is positive or who has ever had a positive skin test result shall **have an**  
8 **appropriate health screening examination that may include obtaining** [OBTAIN]  
9 a chest X-ray.

10 \* **Sec. 11.** AS 18.15 is amended by adding new sections to read:

11 Sec. 18.15.147. LIMITED IMMUNITY. A person may not bring an action for  
12 damages based on the decision under AS 18.15.120 - 18.15.149 to detain or not to  
13 detain a person, unless the action is for damages caused by gross negligence or  
14 intentional misconduct.

15 Sec. 18.15.148. PENALTY. A person who violates the terms of an order  
16 issued under AS 18.15.135 - 18.15.136 is guilty of a class A misdemeanor.

17 Sec. 18.15.149. DEFINITIONS. In AS 18.15.120 - 18.15.149,

18 (1) "department" means the Department of Health and Social Services;

19 (2) "division of public health" means the division of public health in  
20 the department;

21 (3) "health care provider" means an acupuncturist, nurse, nurse  
22 practitioner, pharmacist, physician, or physician's assistant, hospital, or health clinic  
23 who may lawfully practice in this state;

24 (4) "health care facility" means a hospital, specialty hospital, long-term  
25 care facility, medical clinic, or similar facility for which a license has been issued by  
26 this state and in which inpatient or outpatient medical services for tuberculosis are  
27 provided;

28 (5) "state medical officer" means a physician employed by the division  
29 of public health;

30 (6) "tuberculosis" means a disease caused by mycobacterium  
31 tuberculosis, mycobacterium bovis, or mycobacterium africanum.

1     \* **Sec. 12.** AS 18.85.100(a) is amended to read:

2             (a) An indigent person who is being detained by a law enforcement officer in  
3             connection with a serious crime, or is under formal charge of having committed, or is  
4             being detained under a conviction of a serious crime, or is on probation or parole, or  
5             is entitled to representation under the Supreme Court Delinquency or Child in Need  
6             of Aid Rules, **or is detained under an order issued under AS 18.15.120 - 18.15.149**  
7             or against whom commitment proceedings for mental illness have been initiated, is  
8             entitled

9                     (1) to be represented by an attorney to the same extent as a person  
10             retaining an attorney is entitled; and

11                     (2) to be provided with the necessary services and facilities of this  
12             representation, including investigation and other preparation.

13     \* **Sec. 13.** AS 18.15.138 is repealed.

14     \* **Sec. 14.** The Department of Health and Social Services may immediately proceed to  
15     adopt regulations to implement the changes made by this Act. The regulations take effect  
16     under AS 44.62 (Administrative Procedure Act), but not before July 1, 1995.

17     \* **Sec. 15.** Section 14 of this Act takes effect immediately under AS 01.10.070(c).

18     \* **Sec. 16.** Except as provided in sec. 15 of this Act, this Act takes effect July 1, 1995.