

SENATE BILL NO. 138

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/22/95

Referred: HES, FIN

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.