

CS FOR SENATE BILL NO. 138(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 4/19/95
Referred: Finance

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the state's tuberculosis control program; and providing for
2 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 allot or resell these supplies and
13 equipment to private institutions engaged by the department to carry out this program;

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

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

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

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

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

28 **(10) adopt regulations to implement and interpret AS 18.15.120 -**
29 **18.15.149** [AS 18.15.120 - 18.15.140].

30 * **Sec. 3.** AS 18.15.130 is amended to read:

31 Sec. 18.15.130. DEPARTMENT TO COOPERATE WITH OTHER

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

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

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

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

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

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

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

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

30 (b) A health care provider who examines other persons in a household under
31 (a)(1) or (2) of this section shall report to a state medical officer, within 10 days after

1 the examination, the results of the examination.

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

6 * **Sec. 5.** AS 18.15.135 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (B) substantial likelihood exists, based on the person's past or
30 present behavior, that the person cannot be relied upon to participate in or
31 complete an appropriate treatment plan for tuberculosis or, if necessary, follow

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

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

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

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

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

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

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

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

23 (1) the purpose of the detention;

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

29 (3) advice to the person being detained that, under AS 18.15.139, the
30 state medical officer is required to obtain, within 60 days following the commencement
31 of detention, a court order authorizing the detention and after that must seek further

1 court review of the detention within 90 days after the court order and within 90 days
2 after each subsequent court review;

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

6 (5) advice to the person being detained that the person has the right to
7 elect whether a proceeding providing court review is open or closed to the public.

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

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

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

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

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

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

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

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

17 (d) A person who is the subject of a court proceeding initiated under
18 AS 18.15.136 or 18.15.137 may elect to have the hearing open or closed to the public.

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

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

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

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

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

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

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

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

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

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

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

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

26 (4) "health care provider" means an acupuncturist, nurse, nurse
27 practitioner, pharmacist, physician, or physician's assistant, hospital, or health clinic
28 who may lawfully practice in this state;

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

31 (6) "tuberculosis" means a disease caused by mycobacterium

1 tuberculosis, mycobacterium bovis, or mycobacterium africanum.

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

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

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

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

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

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

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

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