

**CS FOR SENATE BILL NO. 152(L&C)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 4/16/97

Referred: HESS

Sponsor(s): SENATOR LEMAN BY REQUEST

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to certified nurse aides; and providing for an effective date."**

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

3 \* **Section 1.** AS 08.01.087 is amended by adding a new subsection to read:

4 (c) Under procedures and standards of operation established by the department  
5 by regulation, and with the agreement of the appropriate agency, the department may  
6 designate appropriate state or municipal agencies to investigate reports of abuse,  
7 neglect, or misappropriation of property by certified nurse aides.

8 \* **Sec. 2.** AS 08.01.090 is amended to read:

9 **Sec. 08.01.090. Applicability of the Administrative Procedure Act.** The  
10 Administrative Procedure Act (AS 44.62) applies to regulations adopted and  
11 proceedings held under this chapter, except those under AS 08.01.087(b) **and actions**  
12 **taken under AS 08.68.333(c).**

13 \* **Sec. 3.** AS 08.68.100(a) is amended to read:

14 (a) The board shall

15 (1) adopt regulations necessary to implement this chapter, including

1 regulations pertaining to practice as an advanced nurse practitioner and a nurse  
 2 anesthetist, **and regulations necessary to implement AS 08.68.331 - 08.68.336**  
 3 **relating to certified nurse aides in order to protect the health, safety, and welfare**  
 4 **of clients served by nurse aides;**

5 (2) approve curricula and adopt standards for basic education programs  
 6 that prepare persons for licensing under AS 08.68.190;

7 (3) provide for surveys of the basic nursing education programs in the  
 8 state at the times it considers necessary;

9 (4) approve education programs that meet the requirements of this  
 10 chapter and of the board, and deny, revoke, or suspend approval of education programs  
 11 for failure to meet the requirements;

12 (5) examine, license, and renew the licenses of qualified applicants;

13 (6) prescribe requirements for competence before a former nurse may  
 14 resume the practice of nursing under this chapter;

15 (7) keep a record of its proceedings, and submit annual reports to the  
 16 governor and legislature;

17 (8) define by regulation the qualifications and duties of the executive  
 18 secretary and delegate authority to the executive secretary that is necessary to conduct  
 19 board business;

20 (9) develop reasonable and uniform standards for nursing practice;

21 (10) publish advisory opinions regarding whether nursing practice  
 22 procedures or policies comply with acceptable standards of nursing practice as defined  
 23 under this chapter.

24 \* **Sec. 4.** AS 08.68.140 is amended to read:

25 **Sec. 08.68.140. Applicability of Administrative Procedure Act. Except as**  
 26 **specified in AS 08.68.333(f), the** [THE] board shall comply with the Administrative  
 27 Procedure Act (AS 44.62).

28 \* **Sec. 5.** AS 08.68 is amended by adding new sections to read:

29 **Article 3A. Certified Nurse Aides.**

30 **Sec. 08.68.331. Certification of nurse aides.** (a) The board or the  
 31 Department of Commerce and Economic Development, as designated by the board,

1 shall issue certification as a nurse aide to qualified applicants. The board, after  
 2 consultation with affected agencies, may adopt regulations regarding the certification  
 3 of nurse aides, including

4 (1) the training, educational, and other qualifications for certification  
 5 that will ensure that the nurse aides are competent to perform the tasks of their  
 6 occupation;

7 (2) application, certification, renewal, and revocation procedures; and

8 (3) maintenance of a registry of certified nurse aides.

9 (b) The board may

10 (1) conduct hearings upon charges of alleged violations of this chapter  
 11 or regulations adopted under it; and

12 (2) invoke, or request the department to invoke, disciplinary action  
 13 under AS 08.01.075 against a certified nurse aide.

14 **Sec. 08.68.332. Use of title.** (a) A person may not use the title "certified  
 15 nurse aide" or the abbreviation "C.N.A." unless the person is certified under this  
 16 chapter.

17 (b) A person who knowingly violates this section is guilty of a class B  
 18 misdemeanor. In this subsection, "knowingly" has the meaning given in  
 19 AS 11.81.900(a).

20 **Sec. 08.68.333. Registry of certified nurse aides.** (a) The board shall  
 21 maintain a registry of certified nurse aides. At a minimum, this registry must include  
 22 the information required under federal regulations that are applicable to nurse aides  
 23 found to have committed abuse, neglect, or misappropriation of property in connection  
 24 with their employment by a facility participating in the Medicaid or Medicare program.

25 (b) If the board finds that a certified nurse aide has committed abuse, neglect,  
 26 or misappropriation of property in connection with employment as a nurse aide, the  
 27 board shall revoke the nurse aide's certification and enter the finding in the registry.

28 (c) Upon receiving a notice of a finding under AS 47.05.055 that a certified  
 29 nurse aide has committed abuse, neglect, or misappropriation of property, the board  
 30 shall immediately revoke the nurse aide's certification without a hearing, enter the  
 31 finding in the registry, and notify the nurse aide of the revocation and entry of the

1 finding. Notice is considered given when delivered personally to the nurse aide or  
2 deposited in the United States mail addressed to the nurse aide's last known mailing  
3 address on file with the board. The department shall retain proof of mailing.

4 (d) If the certified nurse aide is employed in a skilled nursing facility or a  
5 nursing facility, other than an intermediate care facility for the mentally retarded, that  
6 is participating in the Medicaid or Medicare program, only the state survey and  
7 certification agency may make, and report to the Board of Nursing, a finding that the  
8 certified nurse aide has committed abuse, neglect, or misappropriation of property in  
9 connection with the nurse aide's employment at the facility.

10 (e) The board shall establish procedures under which a finding under  
11 AS 47.05.055 that a certified nurse aide has committed abuse, neglect, or  
12 misappropriation of property and the resulting revocation of certification will be  
13 removed from the registry if the certified nurse aide requests a hearing and can  
14 establish mistaken identity or the finding has been set aside by the reporting agency  
15 or by a court of competent jurisdiction.

16 (f) AS 44.62.330 - 44.62.630 do not apply to actions taken under (c) of this  
17 section.

18 **Sec. 08.68.334. Grounds for denial, suspension, or revocation of certificate.**

19 The board may deny a certification to, or impose a disciplinary sanction authorized  
20 under AS 08.01.075 against, a person who

21 (1) has obtained or attempted to obtain certification as a nurse aide by  
22 fraud, deceit, or intentional misrepresentation;

23 (2) has been convicted of a crime substantially related to the  
24 qualifications, functions, or duties of a certified nurse aide;

25 (3) has impersonated a registered or practical nurse or other licensed  
26 health care provider;

27 (4) has intentionally or negligently engaged in conduct that has resulted  
28 in a significant risk to the health or safety of a client or in injury to a client;

29 (5) is incapable of working as a certified nurse aide with reasonable  
30 skill, competence, and safety for the public because of

31 (A) professional incompetence;

1 (B) addiction or severe dependency on alcohol or a drug that  
2 impairs the licensee's ability to practice safely;

3 (C) physical or mental disability; or

4 (D) other factors determined by the board;

5 (6) has knowingly or repeatedly failed to comply with this chapter, a  
6 regulation adopted under this chapter, or with an order of the board; or

7 (7) has misappropriated the property of, abused, or neglected a client.

8 **Sec. 08.68.335. Immunity for certain reports to the board.** A person who,  
9 in good faith, reports information to the board relating to alleged incidents of  
10 incompetent, unprofessional, or unlawful conduct of a certified nurse aide is not liable  
11 in a civil action for damages resulting from the reporting of the information.

12 **Sec. 08.68.336. Fees.** The Department of Commerce and Economic  
13 Development shall set fees under AS 08.01.065 for certified nurse aides for each of  
14 the following:

15 (1) application;

16 (2) examination;

17 (3) certification; and

18 (4) renewal of certification.

19 \* **Sec. 6.** AS 08.68.410 is amended by adding a new paragraph to read:

20 (9) "certified nurse aide" is a person who is certified as a nurse aide by  
21 the board.

22 \* **Sec. 7.** AS 44.62.330(a)(10) is amended to read:

23 (10) Board of Nursing **functions, except those related to findings of**  
24 **abuse, neglect, or misappropriation of property contained in the registry of**  
25 **certified nurse aides under AS 08.68.333;**

26 \* **Sec. 8.** AS 47.05.010 is amended by adding a new paragraph to read:

27 (15) investigate reports of abuse, neglect, or misappropriation of  
28 property by certified nurse aides in facilities licensed by the department under  
29 AS 18.20.

30 \* **Sec. 9.** AS 47.05.017(b) is amended to read:

31 (b) The department shall adopt regulations identifying actions that it will take,

1 in addition to those otherwise required under AS 47.17 and AS 47.24, when a report  
 2 of harm is made under AS 47.17 or AS 47.24 that might relate to harm caused by  
 3 actions or inactions of a public home care provider. The regulations must

4 (1) address circumstances under which the department will, or will  
 5 require a contractor or grantee to, reassign, suspend, or terminate a person alleged to  
 6 have perpetrated harm; [AND]

7 (2) include appropriate procedural safeguards to protect the due process  
 8 rights of public home care providers who may be reassigned, suspended, or terminated  
 9 under the circumstances described in (1) of this subsection; **and**

10 **(3) if the home care provider is a certified nurse aide, include**  
 11 **procedures under which the department shall notify the Board of Nursing if the**  
 12 **nurse aide is suspected of abuse, neglect, or misappropriation of property.**

13 \* **Sec. 10.** AS 47.05 is amended by adding a new section to read:

14 **Sec. 47.05.055. Certified nurse aides.** (a) If the department has reason to  
 15 believe that a certified nurse aide employed in a facility licensed by the department  
 16 under AS 18.20 has committed abuse, neglect, or misappropriation of property in  
 17 connection with the person's duties as a certified nurse aide at the facility, the  
 18 department shall investigate the matter. The department shall conduct proceedings to  
 19 determine if a finding of abuse, neglect, or misappropriation of property should be  
 20 made. These proceedings shall be conducted under regulations adopted by the  
 21 department and are exempt from AS 44.62.330 - 44.62.630. A finding under this  
 22 subsection that a certified nurse aide has committed abuse, neglect, or misappropriation  
 23 of property shall be reported by the department to the Board of Nursing.

24 (b) If the certified nurse aide is employed in a skilled nursing facility or  
 25 nursing facility, other than an intermediate care facility for the mentally retarded, that  
 26 is participating in the Medicaid or Medicare program, only the state survey and  
 27 certification agency may make, and report to the Board of Nursing, a finding that a  
 28 certified nurse aide has committed abuse, neglect, or misappropriation of property in  
 29 connection with the nurse aide's employment at the facility.

30 \* **Sec. 11.** AS 47.17.030 is amended by adding a new subsection to read:

31 (f) If an investigation under this section shows reasonable cause to believe that

1 a certified nurse aide has committed abuse, neglect, or misappropriation of property,  
2 the department shall report the matter to the Board of Nursing.

3 \* **Sec. 12.** AS 47.17.290(13) is amended to read:

4 (13) "practitioner of the healing arts" includes chiropractors, mental  
5 health counselors, dental hygienists, dentists, health aides, nurses, nurse practitioners,  
6 certified nurse aides, occupational therapists, occupational therapy assistants,  
7 optometrists, osteopaths, naturopaths, physical therapists, physical therapy assistants,  
8 physicians, physician's assistants, psychiatrists, psychologists, psychological associates,  
9 audiologists licensed under AS 08.11, hearing aid dealers licensed under AS 08.55,  
10 marital and family therapists licensed under AS 08.63, religious healing practitioners,  
11 acupuncturists, and surgeons;

12 \* **Sec. 13.** AS 47.24.010(a) is amended by adding a new paragraph to read:

13 (15) a certified nurse aide.

14 \* **Sec. 14.** AS 47.24.013 is amended by adding a new subsection to read:

15 (f) If an investigation conducted by an agency under this section shows  
16 reasonable cause to believe that a certified nurse aide has committed abuse, neglect,  
17 or misappropriation of property, the agency shall report the matter to the Board of  
18 Nursing.

19 \* **Sec. 15.** AS 47.24.015 is amended by adding a new subsection to read:

20 (g) If an investigation under this section shows reasonable cause to believe that  
21 a certified nurse aide has committed abuse, neglect, or misappropriation of property,  
22 the department shall report the matter to the Board of Nursing.

23 \* **Sec. 16.** AS 47.33.520 is amended by adding a new subsection to read:

24 (f) If the licensing agency's investigation shows reasonable cause to believe  
25 that a certified nurse aide has committed abuse, neglect, or misappropriation of  
26 property, the licensing agency shall report the matter to the Board of Nursing.

27 \* **Sec. 17.** TRANSITION: REGULATIONS. A state agency affected by this Act may  
28 proceed to adopt regulations necessary to implement changes affecting the state agency that  
29 are enacted by this Act. The regulations take effect under AS 44.62 (Administrative  
30 Procedure Act), but not before the effective date of the changes in law in this Act.

31 \* **Sec. 18.** TRANSITION: CERTIFICATIONS. (a) A person who holds a current, valid

1 certification from the Board of Nursing as a nurse aide on the day before the effective date  
2 of this bill section, subject to continued eligibility under AS 08.68 and regulations adopted  
3 under that chapter, is entitled to retain a renewable certification as a nurse aide.

4 (b) A person who, on the day before the effective date of this bill section, holds a  
5 certification from the Board of Nursing as a nurse aide that has been expired for less than two  
6 years may apply for renewal of that certification under standards to be established by the  
7 board. A certification may not be renewed under this subsection unless the person applies for  
8 the renewal before September 1, 1998.

9 \* **Sec. 19.** Section 17 of this Act takes effect immediately under AS 01.10.070(c).