

**CS FOR SENATE BILL NO. 28(HES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 4/18/07

Referred: Labor and Commerce, Finance

Sponsor(s): SENATOR DAVIS

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to limitations on mandatory overtime for registered nurses and**  
2 **licensed practical nurses in health care facilities; and providing for an effective date."**

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

4 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
5 to read:

6 **LEGISLATIVE FINDINGS AND INTENT.** The legislature finds that

7 (1) it is essential that registered nurses and licensed practical nurses providing  
8 direct patient care be available to meet the needs of patients;

9 (2) quality patient care is jeopardized by registered nurses and licensed  
10 practical nurses who work unnecessarily long hours in health care facilities;

11 (3) registered nurses and licensed practical nurses are leaving their profession  
12 because of workplace stresses, long work hours, and depreciation of their essential role in the  
13 delivery of quality and direct patient care;

14 (4) it is necessary to safeguard the efficiency, health, and general well-being

1 of registered nurses and licensed practical nurses, and the health and general well-being of the  
 2 persons receiving care from registered nurses and licensed practical nurses in health care  
 3 facilities;

4 (5) it is necessary that registered nurses and licensed practical nurses be made  
 5 aware of their rights, duties, and remedies concerning hours worked and patient safety; and

6 (6) health care facilities should provide adequate and safe nurse staffing  
 7 without the need for or use of mandatory overtime.

8 \* **Sec. 2.** AS 18.20 is amended by adding new sections to read:

9 **Article 4. Overtime Limitations for Nurses.**

10 **Sec. 18.20.400. Limitations on nursing overtime.** (a) Except as provided in  
 11 (c) of this section, a nurse in a health care facility may not be required or coerced,  
 12 directly or indirectly,

13 (1) to work beyond a predetermined and regularly scheduled shift that  
 14 is agreed to by the nurse and the health care facility;

15 (2) to work beyond 80 hours in a 14-day period; or

16 (3) to accept an assignment of overtime if, in the judgment of the  
 17 nurse, the overtime would jeopardize patient or employee safety.

18 (b) Except as provided by (c) of this section, after working a predetermined  
 19 and regularly scheduled shift that is agreed to by the nurse and the health care facility  
 20 as authorized by (a)(1) of this section, a nurse in a health care facility shall be allowed  
 21 not less than 10 consecutive hours of off-duty time immediately following the end of  
 22 that work.

23 (c) Subsection (a) of this section does not apply to

24 (1) a nurse voluntarily working overtime on an aircraft in use for  
 25 medical transport, so long as the shift worked is allowable under regulations adopted  
 26 by the Board of Nursing based on accreditation standards adopted by the Commission  
 27 on Accreditation of Medical Transport Systems;

28 (2) a nurse on duty in overtime status because of an unforeseen  
 29 emergency situation that could otherwise jeopardize patient safety; in this paragraph,  
 30 "unforeseen emergency situation" means an unusual, unpredictable, or unforeseen  
 31 situation caused by an act of terrorism, disease outbreak, natural disaster, or a declared

1 national, state, or local emergency, but does not include a situation in which a health  
 2 care facility has reasonable knowledge of increased patient volume or inadequate  
 3 staffing because of some other cause, if that cause is foreseeable;

4 (3) a nurse fulfilling on-call time that is agreed upon by the nurse and a  
 5 health care facility before it is scheduled;

6 (4) a nurse voluntarily working overtime so long as the work is  
 7 consistent with professional standards and safe patient care and does not exceed 14  
 8 consecutive hours;

9 (5) a nurse voluntarily working beyond 80 hours in a 14-day period so  
 10 long as the nurse does not work more than 14 consecutive hours without a 10-hour  
 11 break and the work is consistent with professional standards and safe patient care;

12 (6) the first hour on overtime status when the health care facility is  
 13 obtaining another nurse to work in place of the nurse in overtime status.

14 **Sec. 18.20.410. Prohibition of retaliation.** A health care facility may not  
 15 discharge, discipline, threaten, discriminate against, penalize, or file a report with the  
 16 Board of Nursing against a nurse for exercising rights under AS 18.20.400 - 18.20.449  
 17 or for the good faith reporting of an alleged violation of AS 18.20.400 - 18.20.449.

18 **Sec. 18.20.420. Health care facility complaint process for overtime work**  
 19 **by nurses.** A health care facility shall provide for an anonymous process by which a  
 20 patient or a nurse may make a complaint about staffing levels and patient safety that  
 21 relate to overtime work by nurses and to limitations on overtime work by nurses under  
 22 AS 18.20.400.

23 **Sec. 18.20.430. Enforcement, offenses, and penalties.** (a) The commissioner  
 24 shall administer AS 18.20.400 - 18.20.449 and adopt regulations for implementing and  
 25 enforcing AS 18.20.400 - 18.20.449.

26 (b) A complaint alleging a violation of AS 18.20.400 - 18.20.449 must be filed  
 27 with the commissioner within 30 days after the date of the alleged violation. The  
 28 commissioner shall provide a copy of the complaint to the health care facility named  
 29 in the filing within three business days after receiving the complaint.

30 (c) If the commissioner finds that a health care facility has knowingly violated  
 31 an overtime provision of AS 18.20.400 - 18.20.449, the following civil penalties shall

1 apply:

2 (1) for a first violation of AS 18.20.400 - 18.20.449, the health care  
3 facility shall receive a reprimand;

4 (2) for a second violation of AS 18.20.400 - 18.20.449 within 12  
5 months, the health care facility shall receive a reprimand and shall be assessed a  
6 penalty of \$500;

7 (3) for a third violation of AS 18.20.400 - 18.20.449 within 12 months,  
8 the health care facility shall receive a reprimand and shall be assessed a penalty of not  
9 less than \$2,500 but not more than \$5,000;

10 (4) for each violation of AS 18.20.400 - 18.20.449 after a third  
11 overtime violation of AS 18.20.400 - 18.20.449 within 12 months, the health care  
12 facility shall receive a public reprimand and shall be assessed a penalty of not less than  
13 \$5,000 but not more than \$25,000.

14 (d) As an employer, a health care facility violates an overtime provision of  
15 AS 18.20.400 - 18.20.449 "knowingly" when the facility is either aware that its  
16 conduct is of a nature prohibited by the overtime provision or aware that the  
17 circumstances described in the overtime prohibition exist; however, when knowledge  
18 of the existence of a particular fact is required in order to establish that the violation  
19 was knowing, that knowledge exists when the facility is aware of a substantial  
20 probability of its existence, unless the facility reasonably believes it does not exist.

21 (e) In this section, "commissioner" means the commissioner of labor and  
22 workforce development.

23 **Sec. 18.20.440. Report requirements.** A health care facility shall file a  
24 semiannual report with the section in the Department of Labor and Workforce  
25 Development responsible for research and analysis. The report for the six-month  
26 period ending June 30 must be filed before the following August 1, and the report for  
27 the six-month period ending December 31 must be filed before the following  
28 February 1. The report must include, for each nurse employed by the health care  
29 facility or under contract with the health care facility, the number of overtime hours  
30 worked, the number of overtime hours that were mandatory, the number of overtime  
31 hours that were voluntary, the number of on-call hours, the number of on-call hours

1 that were mandatory, and the number of on-call hours that were voluntary.

2 **Sec. 18.20.449. Definitions.** In AS 18.20.400 - 18.20.449,

3 (1) "health care facility" means a private, municipal, state, or federal  
4 hospital; psychiatric hospital; independent diagnostic testing facility; residential  
5 psychiatric treatment center; skilled nursing facility; kidney disease treatment center  
6 (including freestanding hemodialysis units); intermediate care facility; ambulatory  
7 surgical facility; Alaska Pioneers' Home or Alaska Veterans' Home administered by  
8 the Department of Health and Social Services under AS 47.55; correctional facility  
9 administered by the Department of Corrections or the Department of Health and  
10 Social Services; private, municipal, state, or federal facility employing one or more  
11 public health nurses; long-term care facility; or primary care outpatient facility;

12 (2) "nurse" means an individual licensed to practice registered nursing  
13 or practical nursing under AS 08.68 who provides nursing services through direct  
14 patient care or clinical services and includes a nurse manager when delivering in-  
15 hospital patient care;

16 (3) "on-call" means a status in which a nurse must be ready to report to  
17 the health care facility and may be called to work by the health care facility;

18 (4) "overtime" means the hours worked in excess of a predetermined  
19 and regularly scheduled shift that is agreed to by a nurse and a health care facility.

20 \* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to  
21 read:

22 **APPLICABILITY.** The first report required to be filed under AS 18.20.440, enacted in  
23 sec. 2 of this Act, shall be filed before February 1, 2008, for the period July 1, 2007, through  
24 December 31, 2007.

25 \* **Sec. 4.** AS 18.20.440, enacted in sec. 2 of this Act, and sec. 3 of this Act take effect  
26 July 1, 2007.

27 \* **Sec. 5.** Except as provided in sec. 4 of this Act, this Act takes effect January 1, 2008.