

HOUSE BILL NO. 51

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE GARDNER

Introduced: 1/20/09

Referred: Health and Social Services, Finance

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

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

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

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

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

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

23 (1) a nurse who is employed by a health care facility providing
 24 services for a school, school district, or other educational institution, when the nurse is
 25 on duty for more than 14 consecutive hours during an occasional special event, such as
 26 a field trip, that is sponsored by the employer;

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

31 (3) a nurse on duty in overtime status because of an unforeseen

1 emergency situation that could jeopardize patient safety; in this paragraph,
 2 "unforeseen emergency situation" means an unusual, unpredictable, or unforeseen
 3 situation caused by an act of terrorism, disease outbreak, natural disaster, weather,
 4 major disaster as defined in 42 U.S.C. 5122, or disaster emergency under
 5 AS 26.23.020 or 26.23.140, but does not include a situation in which a health care
 6 facility has reasonable knowledge of increased patient volume or inadequate staffing
 7 because of some other cause, if that cause is foreseeable;

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

10 (5) a nurse voluntarily working overtime so long as the work is
 11 consistent with professional standards and safe patient care and does not exceed 14
 12 consecutive hours;

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

16 (7) a nurse at a residential psychiatric treatment center who agrees to
 17 work under a contract that requires the employer to provide full-time pay and benefits
 18 equivalent to the pay and benefits for a 40-hour workweek if the nurse works a
 19 weekend schedule of four eight-hour shifts with not more than 16 consecutive hours
 20 on duty without a break of at least eight hours; in this paragraph, a "weekend" means
 21 the period that begins Friday at 5:00 p.m. and ends Monday at 8:00 a.m.;

22 (8) the first hour on overtime status when the health care facility is
 23 obtaining another nurse to work in place of the nurse in overtime status.

24 **Sec. 18.20.410. Health care facility complaint process for overtime work**
 25 **by nurses.** A health care facility shall provide for an anonymous process by which a
 26 patient or a nurse may make a complaint about staffing levels and patient safety that
 27 relate to overtime work by nurses and to limitations on overtime work by nurses under
 28 AS 18.20.400.

29 **Sec. 18.20.420. Enforcement, offenses, and penalties.** (a) The commissioner
 30 shall administer AS 18.20.400 - 18.20.449 and adopt regulations for implementing and
 31 enforcing AS 18.20.400 - 18.20.449.

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

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

8 (1) for a first violation of AS 18.20.400 - 18.20.449, the commissioner
9 shall reprimand the health care facility;

10 (2) for a second violation of AS 18.20.400 - 18.20.449 within 12
11 months, the commissioner shall reprimand the health care facility and assess a penalty
12 of \$500;

13 (3) for a third violation of AS 18.20.400 - 18.20.449 within 12 months,
14 the commissioner shall reprimand the health care facility and assess a penalty of not
15 less than \$2,500 but not more than \$5,000;

16 (4) for each violation of AS 18.20.400 - 18.20.449 after a third
17 violation of AS 18.20.400 - 18.20.449 within 12 months, the commissioner shall
18 reprimand the health care facility and assess a penalty of not less than \$5,000 but not
19 more than \$25,000.

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

27 **Sec. 18.20.430. Prohibition of retaliation.** A health care facility may not
28 discharge, discipline, threaten, discriminate against, penalize, or file a report with the
29 Board of Nursing against a nurse for exercising rights under AS 18.20.400 - 18.20.449
30 or for the good faith reporting of an alleged violation of AS 18.20.400 - 18.20.449.

31 **Sec. 18.20.440. Enforcement of prohibition against retaliation.** The

1 commissioner shall investigate every complaint alleging a violation of AS 18.20.430,
 2 and, within 90 days after the date of filing of the complaint, provide to the
 3 complainant, the Department of Law, and the health care facility named in the
 4 complaint a written determination as to whether the health care facility violated
 5 AS 18.20.430. If the commissioner finds a violation of AS 18.20.430, the
 6 commissioner shall request that the Department of Law represent the department and
 7 the complainant and obtain from the health care facility all appropriate relief,
 8 including rehiring or reinstatement of the complainant to the complainant's former
 9 position with back pay.

10 **Sec. 18.20.445. Report requirements.** A health care facility shall file with the
 11 division of labor standards and safety, Department of Labor and Workforce
 12 Development, a semiannual report. The report for the six-month period ending June 30
 13 must be filed before the following August 1, and the report for the six-month period
 14 ending December 31 must be filed before the following February 1. The report must
 15 include, for each nurse employed by the health care facility or under contract with the
 16 health care facility, the number of overtime hours worked, the number of overtime
 17 hours that were mandatory, the number of overtime hours that were voluntary, the
 18 number of on-call hours, the number of on-call hours that were mandatory, and the
 19 number of on-call hours that were voluntary.

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

21 (1) "commissioner" means the commissioner of labor and workforce
 22 development;

23 (2) "health care facility" means a private, municipal, state, or federal
 24 hospital; psychiatric hospital; independent diagnostic testing facility; residential
 25 psychiatric treatment center; skilled nursing facility; kidney disease treatment center,
 26 including freestanding hemodialysis units; intermediate care facility; ambulatory
 27 surgical facility; Alaska Pioneers' Home or Alaska Veterans' Home administered by
 28 the Department of Health and Social Services under AS 47.55; correctional facility
 29 owned or administered by the state; juvenile detention facility, juvenile detention
 30 home, juvenile work camp, or treatment facility, as defined in AS 47.12.990; private,
 31 municipal, state, or federal facility employing one or more public health nurses; long-

1 term care facility; or primary care outpatient facility;

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

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

8 (5) "overtime" means the hours worked in excess of a predetermined
9 and regularly scheduled shift that is agreed to by a nurse and a health care facility;

10 (6) "residential psychiatric treatment center" has the meaning given in
11 AS 18.07.111.

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

14 **APPLICABILITY.** The first report required to be filed under AS 18.20.445, enacted in
15 sec. 2 of this Act, shall be filed before February 1, 2010, for the period July 1, 2009, through
16 December 31, 2009.

17 * **Sec. 4.** AS 18.20.445, enacted in sec. 2 of this Act, and sec. 3 of this Act take effect
18 July 1, 2009.

19 * **Sec. 5.** Except as provided in sec. 4 of this Act, this Act takes effect January 1, 2010.