

HOUSE BILL NO. 259

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES KELLER AND GATTO, Kelly

Introduced: 1/19/10

Referred: Health and Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to citizenship requirements and an alcohol impairment and drug
2 testing program for applicants for and recipients of adult public assistance."

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

4 * **Section 1.** AS 47.25.430(a) is amended to read:

5 (a) Financial assistance shall be given under AS 47.25.430 - 47.25.615, so far
6 as practicable under appropriations made by law, to every aged, blind, or disabled
7 needy resident who has not made a voluntary assignment or transfer of property to
8 qualify for assistance. In this subsection, "resident" means a person who is

9 **(1) a citizen of the United States or a legal alien as described in 8**
10 **U.S.C. 1181 - 1186;**

11 **(2)** living in the state voluntarily with the intention of making the state
12 the person's home; and

13 **(3)** [WHO IS] not living in the state for a temporary purpose.

14 * **Sec. 2.** AS 47.25.430(b) is amended to read:

1 (b) The department shall determine the amount of assistance with regard to the
 2 resources and needs of the person and the conditions existing in each case. Assistance
 3 shall be in an amount that will provide the applicant with reasonable subsistence
 4 compatible with decency and health in accordance with standards established by the
 5 department and with the standards established under 42 U.S.C. 1381 - 1383 (Title
 6 XVI, Social Security Act Supplemental Security Income Program). Direct payments
 7 for medical services and remedial care may not be considered in determining the
 8 maximum amount payable. When benefit amounts under 42 U.S.C. 1381 - 1383 are
 9 increased as a result of an increase in the cost of living, the state shall pass along the
 10 increase to recipients and, **to the extent federal funds are provided for the federal**
 11 **benefit**, shall increase the amount of the state contribution to recipients, other than
 12 those receiving a personal needs allowance, by a percentage of the state contribution
 13 equal to the percentage increase in the benefit amounts under 42 U.S.C. 1381 - 1383 if
 14 the legislature has appropriated money specifically for the purpose of increasing the
 15 state contribution because of an increase in federal benefit amounts under 42 U.S.C.
 16 1381 - 1383; this increase in the state contribution takes effect on the same day that
 17 the corresponding federal increase in benefits under 42 U.S.C. 1381 - 1383 takes
 18 effect.

19 * **Sec. 3.** AS 47.25 is amended by adding new sections to read:

20 **Sec. 47.25.461. Alcohol impairment and drug testing; legislative findings**
 21 **and purpose.** The legislature finds that a statewide threat to public safety exists with
 22 regard to the use of adult public assistance for the purchase of alcohol and illegal
 23 drugs. The purpose of the testing program established under AS 47.25.463 - 47.25.467
 24 is to reduce that risk and to protect the residents of the state.

25 **Sec. 47.25.463. Alcohol impairment and drug testing for eligibility;**
 26 **regulations; immunity.** (a) The department shall implement a program consistent
 27 with AS 47.25.463 - 47.25.467 that provides for random and suspicion-based testing
 28 of recipients of adult public assistance for use of alcohol that impairs a recipient's
 29 ability to work or to seek work and of applicants for and recipients of adult public
 30 assistance for the use of illegal drugs.

31 (b) The department shall adopt regulations to implement this section. The

1 regulations must include testing policies consistent with AS 47.25.465 and specify the
 2 type of testing to be conducted and the illegal drugs to be included in the testing
 3 program. The drug tested must have a cutoff level that yields a positive test result
 4 established, as of November 1, 2004, by the United States Department of Health and
 5 Human Services under 69 C.F.R. 19644.

6 (c) Unless the department or an agent or employee of the department knew or
 7 should have known that the results of a test conducted under this section were false
 8 and took action that affected a person's eligibility for adult public assistance based on
 9 the false test results, a person may not bring an action for damages against the
 10 department or an agent or employee of the department for

11 (1) good faith actions taken to conduct, or as a result of, alcohol
 12 impairment or drug testing under this section;

13 (2) failure to test for alcohol impairment or drugs or for a specific
 14 drug;

15 (3) failure to test, or if the test was undetected, failure to detect a
 16 specific drug or medical or psychological condition or disorder;

17 (4) termination or suspension of an alcohol or drug prevention or
 18 testing program or policy.

19 (d) In a claim for damages based on false test results,

20 (1) a rebuttable presumption exists that the test results were valid if the
 21 department complied with this section and the regulations adopted under this section;
 22 and

23 (2) the department may not be held liable for monetary damages for
 24 good faith reliance and reasonable actions taken as a result of false test results.

25 (e) A person may not bring an action against the department based on the
 26 failure of the department to establish a program or policy on substance abuse
 27 prevention or to implement alcohol impairment or drug testing.

28 **Sec. 47.25.464. Confidentiality; liability.** (a) The results of a test conducted
 29 under AS 47.25.463 are confidential, except that the results may be revealed to the
 30 recipient of adult public assistance who was tested and to agents and employees of the
 31 department as required to determine eligibility for adult public assistance.

1 (b) A person may not bring an action for defamation of character or reputation
 2 as a result of disclosure of the results of an alcohol impairment or drug test under the
 3 alcohol impairment or drug testing program established under AS 47.25.463 unless

4 (1) the results were disclosed to a person, other than an agent or
 5 employee of the department for the purpose of the testing program or under court or
 6 administrative order;

7 (2) the information disclosed included false test results;

8 (3) the information was negligently or intentionally disclosed; and

9 (4) the elements of the tort claim are met.

10 **Sec. 47.25.465. Testing policies and procedures.** (a) The department shall
 11 adopt testing policies that include

12 (1) a list of substances tested;

13 (2) a description of the testing methods and collection procedures,
 14 including on-site testing;

15 (3) a right to confirmatory testing and the procedures for confirmatory
 16 testing;

17 (4) the consequences for refusal to test or retest;

18 (5) the right of an applicant for or recipient of adult public assistance
 19 to receive test results within five working days after the department receives the test
 20 results or the written request, whichever is later, if a written request is made by the
 21 applicant or recipient within six months after the test;

22 (6) the right of an applicant and a recipient, on the applicant's or
 23 recipient's request, to receive, within 72 hours or before an adverse action is taken,
 24 whichever occurs first, a confidential explanation of the applicant's or recipient's test
 25 results;

26 (7) providing the department's confidentiality and testing policies to
 27 applicants for and recipients of adult public assistance not less than 30 days before
 28 initiating testing on the applicant or recipient.

29 (b) The department shall pay the cost of testing and, if the testing is performed
 30 at a location other than a location of the department, the cost of transportation to and
 31 from the testing center.

1 (c) Sample collection and testing must

2 (1) comply with scientifically accepted methods and procedures;

3 (2) be performed at a location identified by the department and
4 analyzed by a laboratory approved or certified by the Substance Abuse and Mental
5 Health Services Administration or by the College of American Pathologists;

6 (3) be conducted under reasonable, sanitary, and private conditions
7 that are consistent with reliability;

8 (4) be properly controlled and samples must be properly labeled; and

9 (5) include relevant medical information.

10 (d) A positive drug test must be confirmed using a different analytical process
11 than was used in initial testing. A positive drug test must be reported as a negative
12 result if a licensed physician verifies that the test was affected by medication
13 prescribed for the applicant or recipient tested.

14 (e) The department may not rely on a positive test result without confirmatory
15 testing.

16 **Sec. 47.25.466. Training of test administrators.** (a) The department shall
17 ensure that not less than one designated employee of the department receives not less
18 than one hour of training on alcohol abuse and an additional one hour of training on
19 the use of controlled substances for the purpose of finding reasonable suspicion for
20 testing under AS 47.25.463 - 47.25.466.

21 (b) If the department provides on-site testing for alcohol impairment or illegal
22 drug use under AS 47.25.463, the department shall employ on-site administrators who

23 (1) have received training in person and written certification of the
24 training by the test manufacturer's representative on the proper procedure for
25 administering the test and on accurate analysis of the on-site test results; the training
26 must include recognition of adulteration of a sample collected on-site;

27 (2) agree in writing to maintain confidentiality under the testing
28 policies adopted by the department.

29 **Sec. 47.25.467. Consequences of confirmatory positive testing.** The
30 department may deny or suspend adult public assistance to an applicant for or
31 recipient of the assistance who, under AS 47.25.463 - 47.25.467, has

- 1 (1) been tested and received a confirmatory positive result for alcohol
2 impairment or use of illegal drugs; or
3 (2) refused alcohol impairment or drug testing required by the
4 department.