

**SENATE BILL NO. 12**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

**BY SENATOR DAVIS**

**Introduced: 1/21/09**

**Referred: Health and Social Services, Labor and Commerce, 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 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 who is employed by a health care facility providing  
 25 services for a school, school district, or other educational institution, when the nurse is  
 26 on duty for more than 14 consecutive hours during an occasional special event, such as  
 27 a field trip, that is sponsored by the employer;

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

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

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

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

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

17 (7) the first hour on overtime status when the health care facility is  
18 obtaining another nurse to work in place of the nurse in overtime status.

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

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

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

31 (c) If the commissioner finds that a health care facility has knowingly violated

1 an overtime provision of AS 18.20.400 - 18.20.449, the following civil penalties shall  
2 apply:

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

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

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

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

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

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

26 **Sec. 18.20.440. Enforcement against prohibition of retaliation.** The  
27 commissioner shall investigate every complaint alleging a violation of AS 18.20.430,  
28 and, within 90 days after the date of filing of the complaint, provide to the  
29 complainant, the Department of Law, and the health care facility named in the  
30 complaint a written determination as to whether the health care facility violated  
31 AS 18.20.430. If the commissioner finds a violation of AS 18.20.430, the

1 commissioner shall request that the Department of Law represent the department and  
2 the complainant and obtain from the health care facility all appropriate relief,  
3 including rehiring or reinstatement of the complainant to the complainant's former  
4 position with back pay.

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

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

16 (1) "commissioner" means the commissioner of labor and workforce  
17 development;

18 (2) "health care facility" means a private, municipal, state, or federal  
19 hospital; psychiatric hospital; independent diagnostic testing facility; residential  
20 psychiatric treatment center, as defined in AS 18.07.111; skilled nursing facility;  
21 kidney disease treatment center, including freestanding hemodialysis units;  
22 intermediate care facility; ambulatory surgical facility; Alaska Pioneers' Home or  
23 Alaska Veterans' Home administered by the Department of Health and Social Services  
24 under AS 47.55; correctional facility owned or administered by the state; juvenile  
25 detention facility, juvenile detention home, juvenile work camp, or treatment facility,  
26 as defined in AS 47.12.990; private, municipal, state, or federal facility employing one  
27 or more public health nurses; long-term care facility; or primary care outpatient  
28 facility;

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

1 hospital patient care;

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

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

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

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

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

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