

CS FOR SENATE BILL NO. 12(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 4/15/09

Referred: 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 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 (8) a nurse who

20 (A) is employed

21 (i) at a psychiatric treatment hospital that treats only
22 adolescents and children;

23 (ii) at a residential psychiatric treatment center under
24 AS 18.07.111 or AS 47.12.990; or

25 (iii) at a secure residential psychiatric treatment center
26 under AS 47.32.900;

27 (B) voluntarily agrees to work a 16-hour shift for the period
28 between 5:00 p.m. on a Friday and 8:00 a.m. on the Monday that immediately
29 follows and receives pay and benefits for that work that are equal to or greater
30 than the pay and benefits the nurse would receive for working 20 regular hours
31 in the same position; and

1 (C) during the period described in (B) of this paragraph does
2 not work a 16-hour shift consecutive with another shift of eight hours or more
3 without an intervening break of at least eight hours.

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

9 **Sec. 18.20.420. Enforcement, offenses, and penalties.** (a) The commissioner
10 shall administer AS 18.20.400 - 18.20.469 and adopt regulations for implementing and
11 enforcing AS 18.20.400 - 18.20.469.

12 (b) A complaint alleging a violation of AS 18.20.400 - 18.20.469 must be filed
13 with the commissioner within 30 days after the date of the alleged violation. The
14 commissioner shall provide a copy of the complaint to the health care facility named
15 in the filing within three business days after receiving the complaint.

16 (c) If the commissioner finds that a health care facility has knowingly violated
17 an overtime provision of AS 18.20.400 - 18.20.469, the following civil penalties shall
18 apply:

19 (1) for a first violation of AS 18.20.400 - 18.20.469, the commissioner
20 shall reprimand the health care facility;

21 (2) for a second violation of AS 18.20.400 - 18.20.469 within 12
22 months, the commissioner shall reprimand the health care facility and assess a penalty
23 of \$500;

24 (3) for a third violation of AS 18.20.400 - 18.20.469 within 12 months,
25 the commissioner shall reprimand the health care facility and assess a penalty of not
26 less than \$2,500 but not more than \$5,000;

27 (4) for each violation of AS 18.20.400 - 18.20.469 after a third
28 violation of AS 18.20.400 - 18.20.469 within 12 months, the commissioner shall
29 reprimand the health care facility and assess a penalty of not less than \$5,000 but not
30 more than \$25,000.

31 (d) As an employer, a health care facility violates an overtime provision of

1 AS 18.20.400 - 18.20.469 "knowingly" when the facility is either aware that its
 2 conduct is of a nature prohibited by the overtime provision or aware that the
 3 circumstances described in the overtime prohibition exist; however, when knowledge
 4 of the existence of a particular fact is required to establish that the violation was
 5 knowing, that knowledge exists when the facility is aware of a substantial probability
 6 of its existence, unless the facility reasonably believes it does not exist.

7 **Sec. 18.20.430. Prohibition of retaliation.** A health care facility may not
 8 discharge, discipline, threaten, discriminate against, penalize, or file a report with the
 9 Board of Nursing against a nurse for exercising rights under AS 18.20.400 - 18.20.469
 10 or for the good faith reporting of an alleged violation of AS 18.20.400 - 18.20.469.

11 **Sec. 18.20.440. Enforcement against prohibition of retaliation.** The
 12 commissioner shall investigate every complaint alleging a violation of AS 18.20.430,
 13 and, within 90 days after the date of filing of the complaint, provide to the
 14 complainant, the Department of Law, and the health care facility named in the
 15 complaint a written determination as to whether the health care facility violated
 16 AS 18.20.430. If the commissioner finds a violation of AS 18.20.430, the
 17 commissioner shall request that the Department of Law represent the department and
 18 the complainant and obtain from the health care facility all appropriate relief,
 19 including rehiring or reinstatement of the complainant to the complainant's former
 20 position with back pay.

21 **Sec. 18.20.450. Report requirements.** A health care facility shall file with the
 22 division of labor standards and safety, Department of Labor and Workforce
 23 Development, a semiannual report. The report for the six-month period ending June 30
 24 must be filed before the following August 1, and the report for the six-month period
 25 ending December 31 must be filed before the following February 1. The report must
 26 include, for each nurse employed by the health care facility or under contract with the
 27 health care facility, the number of overtime hours worked, the number of overtime
 28 hours that were mandatory, the number of overtime hours that were voluntary, the
 29 number of on-call hours, the number of on-call hours that were mandatory, and the
 30 number of on-call hours that were voluntary.

31 **Sec. 18.20.460. Provisions not applicable to nurses employed in federal or**

1 **tribal facilities.** The provisions of AS 18.20.400 - 18.20.469 do not apply to a nurse
2 employed in a health care facility that is operated by

3 (1) the federal government; or

4 (2) a tribal organization as defined in 25 U.S.C. 450b.

5 **Sec. 18.20.469. Definitions.** In AS 18.20.400 - 18.20.469,

6 (1) "commissioner" means the commissioner of labor and workforce
7 development;

8 (2) "health care facility" means a private, municipal, or state hospital;
9 psychiatric hospital; independent diagnostic testing facility; residential psychiatric
10 treatment center, as defined in AS 18.07.111; skilled nursing facility; kidney disease
11 treatment center, including freestanding hemodialysis units; intermediate care facility;
12 ambulatory surgical facility; Alaska Pioneers' Home or Alaska Veterans' Home
13 administered by the Department of Health and Social Services under AS 47.55;
14 correctional facility owned or administered by the state; juvenile detention facility,
15 juvenile detention home, juvenile work camp, or treatment facility, as defined in
16 AS 47.12.990; private, municipal, or state facility employing one or more public
17 health nurses; long-term care facility; or primary care outpatient facility;

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

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

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

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

28 **APPLICABILITY.** The first report required to be filed under AS 18.20.450, enacted in
29 sec. 2 of this Act, shall be filed before February 1, 2010, for the period July 1, 2009, through
30 December 31, 2009.

31 * **Sec. 4.** AS 18.20.450, enacted in sec. 2 of this Act, and sec. 3 of this Act take effect

1 July 1, 2009.

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