

**HOUSE BILL NO. 170**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-NINTH LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVE DRUMMOND**

**Introduced: 3/30/15**  
**Referred:**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to limitations on mandatory overtime work for nurses and certified**  
2 **nurse aides."**

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

4 **\* Section 1.** AS 18.20.400 is amended to read:

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

8 (1) to work beyond a predetermined and regularly scheduled shift that  
9 is agreed to by the nurse **or certified nurse aide** and the health care facility; or

10 (2) to accept an assignment of overtime if, in the judgment of the nurse  
11 **or certified nurse aide**, the overtime would jeopardize patient or employee safety.

12 (b) Except as provided by (c) of this section, after working a predetermined  
13 and regularly scheduled shift that is agreed to by the nurse **or certified nurse aide** and  
14 the health care facility as authorized by (a)(1) of this section, a nurse **or certified**

1 **nurse aide** in a health care facility shall be allowed not less than 10 consecutive hours  
2 of off-duty time immediately following the end of that work.

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

4 (1) a nurse **or certified nurse aide** who is employed by a health care  
5 facility providing services for a school, school district, or other educational institution,  
6 when the nurse **or certified nurse aide** is on duty for more than 14 consecutive hours  
7 during an occasional special event, such as a field trip, that is sponsored by the  
8 employer;

9 (2) a nurse **or certified nurse aide** voluntarily working overtime on an  
10 aircraft in use for medical transport, so long as the shift worked is allowable under  
11 regulations adopted by the Board of Nursing based on accreditation standards adopted  
12 by the Commission on Accreditation of Medical Transport Systems;

13 (3) a nurse **or certified nurse aide** on duty in overtime status

14 (A) who is participating in the performance of a medical  
15 procedure or surgery that has begun but has not been completed;

16 (B) because of an unforeseen emergency situation that could  
17 jeopardize patient safety; in this subparagraph, "unforeseen emergency  
18 situation" means an unusual, unpredictable, or unforeseen situation caused by  
19 an act of terrorism, disease outbreak, natural disaster, major disaster as defined  
20 in 42 U.S.C. 5122, or disaster emergency under AS 26.23.020 or 26.23.140,  
21 but does not include a situation in which a health care facility has reasonable  
22 knowledge of increased patient volume or inadequate staffing because of some  
23 other cause, if that cause is foreseeable;

24 (C) because the health care facility has a scheduling problem  
25 caused by unforeseen weather conditions that prevent a second nurse from  
26 arriving at the facility to relieve the nurse on duty, **or a second certified nurse**  
27 **aide from arriving at the facility to relieve the certified nurse aide on duty;**  
28 in this subparagraph, "unforeseen weather conditions" means unusual,  
29 unpredictable, or unforeseen weather so extreme as to impair travel to the  
30 health care facility, but does not include a situation in which the health care  
31 facility has knowledge of the weather conditions far enough in advance to act

1 so that a scheduling problem under this subparagraph can reasonably be  
2 avoided; or

3 (D) **for nurses**, at a health care facility located in a rural  
4 community that declares a temporary nurse staffing emergency under  
5 **AS 18.20.410(a)** [AS 18.20.410];

6 **(E) for certified nurse aides, at a health care facility located**  
7 **in a rural community that declares a temporary certified nurse aide**  
8 **staffing emergency under AS 18.20.410(b);**

9 (4) a nurse **or certified nurse aide** fulfilling on-call time that is agreed  
10 on by the nurse **or certified nurse aide** and a health care facility before it is scheduled  
11 unless fulfilling the on-call time would, in the nurse's **or certified nurse aide's**  
12 judgment, create an unacceptable risk to the physical safety of the nurse **or certified**  
13 **nurse aide**, a patient, or an employee of the facility;

14 (5) a nurse **or certified nurse aide** voluntarily working overtime so  
15 long as the work is consistent with professional standards and safe patient care and  
16 does not exceed 14 consecutive hours;

17 (6) a nurse **or certified nurse aide** voluntarily working beyond 80  
18 hours in a 14-day period so long as the nurse **or certified nurse aide** does not work  
19 more than 14 consecutive hours without a 10-hour break and the work is consistent  
20 with professional standards and safe patient care;

21 (7) a nurse **or certified nurse aide** who

22 (A) [IS EMPLOYED

23 (i) AT A PSYCHIATRIC TREATMENT HOSPITAL  
24 THAT TREATS ONLY CHILDREN OR AT A RESIDENTIAL  
25 PSYCHIATRIC TREATMENT CENTER, AS DEFINED UNDER  
26 AS 18.07.111, THAT TREATS ONLY CHILDREN; IN THIS SUB-  
27 SUBPARAGRAPH, "CHILDREN" MEANS PERSONS UNDER 19  
28 YEARS OF AGE WHO ARE RECEIVING PSYCHIATRIC  
29 TREATMENT FROM A HOSPITAL OR CENTER OR WHO ARE  
30 RESIDING IN A CENTER AND WHO WERE UNDER 18 YEARS  
31 OF AGE ON THE DATE THAT THE TREATMENT OR PERIOD

1 OF RESIDENCE COMMENCED;

2 (ii) AT A RESIDENTIAL PSYCHIATRIC  
3 TREATMENT CENTER AS DEFINED UNDER AS 47.32.900; OR

4 (iii) AT A SECURE RESIDENTIAL PSYCHIATRIC  
5 TREATMENT CENTER AS DEFINED UNDER AS 47.12.990;

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

11 (B) [(C)] during the period described in (A) [(B)] of this  
12 paragraph, does not work a 16-hour shift consecutive with another shift of  
13 eight hours or more without an intervening break of at least eight hours;

14 (8) the first two hours on overtime status when the health care facility  
15 is obtaining another nurse to work in place of the nurse who is in overtime status, or  
16 certified nurse aide to work in place of the certified nurse aide who is in overtime  
17 status, so long as the nurse or certified nurse aide who is in overtime status is not on  
18 duty for more than 14 consecutive hours.

19 \* **Sec. 2.** AS 18.20.410 is repealed and reenacted to read:

20 **Sec. 18.20.410. Temporary staffing emergency.** (a) If, after making a  
21 substantial and reasonable effort to increase the number of available nurses on staff  
22 and failing in that effort, a health care facility in a rural community determines it is not  
23 able to meet the overtime limitations in AS 18.20.400 without putting the safety of its  
24 patients at risk of serious harm, the health care facility may declare a temporary nurse  
25 staffing emergency.

26 (b) If, after making a substantial and reasonable effort to increase the number  
27 of available certified nurse aides on staff and failing in that effort, a health care facility  
28 in a rural community determines it is not able to meet the overtime limitations in  
29 AS 18.20.400 without putting the safety of its patients at risk of serious harm, the  
30 health care facility may declare a temporary certified nurse aide staffing emergency.

31 (c) Immediately after declaring a temporary staffing emergency under (a) or

1 (b) of this section, a health care facility shall file with the division of labor standards  
 2 and safety, Department of Labor and Workforce Development, a report that includes a  
 3 copy of the signed writing required under (d) of this section. A report under this  
 4 subsection is a public document.

5 (d) A declaration of a temporary staffing emergency under this section

6 (1) must be made in writing, signed by the administrator of the health  
 7 care facility or the administrator's designee, that describes the facility's reasonable  
 8 effort to avoid the temporary staffing emergency; and

9 (2) may not exceed 30 days.

10 (e) In addition to the requirements of (a) - (d) of this section, a health care  
 11 facility shall notify the legislature immediately by delivery of a written report to the  
 12 Alaska Legislative Council each time the facility declares a temporary nurse staffing  
 13 emergency under (a) of this section or a temporary certified nurse aide staffing  
 14 emergency under (b) of this section that exceeds two occurrences of its type in a six-  
 15 month period that begins on January 1 or July 1 of the year in which the declaration  
 16 occurs, or three occurrences of its type in the one-year period that begins on January 1  
 17 of that year. A report under this subsection must include a copy of each report that is  
 18 required of the health care facility under (c) of this section for the one-year period that  
 19 begins on January 1 of the year the excessive declaration under this subsection occurs.

20 \* **Sec. 3.** AS 18.20.420 is amended to read:

21 **Sec. 18.20.420. Health care facility complaint process for overtime work**  
 22 **by nurses or certified nurse aides.** A health care facility shall provide for an  
 23 anonymous process by which a patient, [OR] a nurse, **or a certified nurse aide** may  
 24 make a complaint about staffing levels and patient safety that relate to overtime work  
 25 by nurses **or certified nurse aides** and to limitations on overtime work by nurses **or**  
 26 **certified nurse aides** under AS 18.20.400.

27 \* **Sec. 4.** AS 18.20.440 is amended to read:

28 **Sec. 18.20.440. Prohibition of retaliation.** A health care facility may not  
 29 discharge, discipline, threaten, discriminate against, penalize, or file a report with the  
 30 Board of Nursing against a nurse **or certified nurse aide** for exercising rights under  
 31 AS 18.20.400 - 18.20.499 or for the good faith reporting of an alleged violation of

1 AS 18.20.400 - 18.20.499.

2 \* **Sec. 5.** AS 18.20.450(a) is amended to read:

3 (a) A health care facility shall file with the division of labor standards and  
4 safety, Department of Labor and Workforce Development, a semiannual report on a  
5 form provided by the department. The report for the six-month period ending June 30  
6 must be filed before the following August 1, and the report for the six-month period  
7 ending December 31 must be filed before the following February 1. The report must  
8 include, for each nurse or certified nurse aide employed by the health care facility or  
9 under contract with the health care facility, the number of overtime hours worked and  
10 the number of hours the nurse or certified nurse aide was on call. A health care  
11 facility that does not employ a nurse or certified nurse aide who worked overtime  
12 hours or who was on call during the reporting period is not required to describe hours  
13 worked as overtime and on-call hours for individual nurses or certified nurse aides  
14 but may instead complete the report by stating on the form that there are no reportable  
15 hours.

16 \* **Sec. 6.** AS 18.20.460 is amended to read:

17 **Sec. 18.20.460. Provisions not applicable to nurses or certified nurse aides**  
18 **employed in federal or tribal facilities.** The provisions of AS 18.20.400 - 18.20.499  
19 do not apply to a nurse or certified nurse aide employed in a health care facility that  
20 is operated by

21 (1) the federal government; or

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

23 \* **Sec. 7.** AS 18.20.499(4) is amended to read:

24 (4) "on-call" means a status in which a nurse or certified nurse aide  
25 must be ready to report to the health care facility and may be called to work by the  
26 health care facility;

27 \* **Sec. 8.** AS 18.20.499(5) is amended to read:

28 (5) "overtime" means the hours worked in excess of a predetermined  
29 and regularly scheduled shift that is agreed to by a nurse or certified nurse aide and a  
30 health care facility;

31 \* **Sec. 9.** AS 18.20.499 is amended by adding a new paragraph to read:

1 (7) "certified nurse aide" means a person who is certified as a nurse  
2 aide by the Board of Nursing under AS 08.68.