

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1335 Session of
2003

INTRODUCED BY HASAY, BLAUM, TIGUE, ADOLPH, BASTIAN, BELARDI,
BELFANTI, CAPPELLI, CASORIO, CIVERA, COSTA, CREIGHTON, CURRY,
DALEY, DeLUCA, GEIST, GEORGE, GOODMAN, GRUCELA, HARHAI,
HARRIS, HERMAN, HORSEY, JAMES, JOSEPHS, KIRKLAND, LAUGHLIN,
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PHILLIPS, PISTELLA, ROBERTS, SAINATO, SANTONI, SATHER,
SOLOBAY, STEIL, TANGRETTI, E. Z. TAYLOR, THOMAS, TRAVAGLIO,
WALKO, WANSACZ, WASHINGTON, YOUNGBLOOD AND YUDICHAK,
MAY 5, 2003

REFERRED TO COMMITTEE ON LABOR RELATIONS, MAY 5, 2003

AN ACT

1 Relating to hours of employment of certain nurses; providing for
2 penalties and remedies; and imposing powers and duties on the
3 Department of Labor and Industry.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Nurses'
8 Overtime Protection Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Department." The Department of Labor and Industry of the
14 Commonwealth.

15 "Emergency." Any unforeseen declared national, State or

1 municipal emergency when replacement staff are not able to
2 report for duty for the next shift or increased patient need for
3 health care services because of unusual, unpredictable or
4 unforeseen circumstances such as an act of terrorism, a disease
5 outbreak, adverse weather conditions or natural disasters which
6 impact continuity of patient care.

7 "Normal work period." Twelve or fewer consecutive hours
8 consistent with a predetermined work shift.

9 "Nurse." A licensed practical nurse or a registered nurse.

10 "Taking action against." Discharging; disciplining;
11 threatening; reporting to the State Board of Nursing; or
12 discriminating against or penalizing regarding compensation,
13 terms, conditions, location or privileges of employment.

14 Section 3. Prohibited actions.

15 (a) General rule.--Except as provided in subsection (b) or
16 section 4, a hospital or other entity licensed under the
17 Department of Health that is authorized to provide care within
18 this Commonwealth is prohibited from requiring a nurse to work
19 more than the regularly scheduled hours according to the
20 predetermined work schedule and is prohibited from taking action
21 against a nurse solely on the grounds that the nurse fails to
22 accept an assignment of additional consecutive hours if the
23 nurse declines to work additional hours because doing so may, in
24 the nurse's judgment, jeopardize patient safety.

25 (b) Applicability.--This section does not apply to a nursing
26 facility, an intermediate care facility for persons with mental
27 retardation, a licensed boarding care facility or a housing with
28 services establishment.

29 Section 4. Exceptions.

30 (a) General rule.--A nurse may be scheduled for duty or

1 required to continue on duty for more than one normal work
2 period if:

3 (1) The work is a consequence of an emergency which
4 could not have been reasonably anticipated.

5 (2) The employer has exhausted all good faith,
6 reasonable attempts to obtain voluntary workers during the
7 succeeding shifts.

8 (3) The standard of care for a patient assignment
9 requires continuity of care through completion of a case,
10 treatment or procedure.

11 (4) The employer has informed the nurse of the basis for
12 the employer's direction and that basis satisfies the other
13 requirements for mandatory overtime listed under this
14 subsection.

15 (b) Construction of section.--This section may not be
16 construed to prohibit a nurse from voluntarily agreeing to work
17 more than the number of scheduled hours provided in this
18 section.

19 Section 5. Penalties.

20 (a) Prohibitions.--A person that violates section 3 commits
21 a summary offense.

22 (b) Taking action against.--A person that takes action
23 against a nurse because the nurse has testified or is about to
24 testify before the department or a court in a proceeding under
25 or related to this act commits a summary offense.

26 Section 6. Remedies.

27 (a) Administrative penalty.--

28 (1) A nurse aggrieved by a violation of section 3(a) is
29 entitled to recover as an administrative penalty twice the
30 amount of wages that the nurse earned during the period of

1 the violation.

2 (2) A nurse aggrieved by a violation of section 3(b) is
3 entitled to relief the department deems equitable. This
4 paragraph includes reinstatement and lost wages.

5 (b) Action.--An action under this action is subject to 2
6 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of
7 Commonwealth agencies) and 7 Subch. A (relating to judicial
8 review of Commonwealth agency action).

9 (c) Costs and fees.--A nurse who is successful under this
10 section is entitled to recover costs of the hearing, court costs
11 and reasonable attorney fees.

12 Section 7. Department.

13 The department has the following powers and duties:

14 (1) To prosecute criminal actions under section 5.

15 (2) To assess penalties and order remedies under section
16 6.

17 (3) To promulgate regulations to administer this act.

18 Section 20. Effective date.

19 This act shall take effect in 60 days.