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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 957**      Session of  
2005

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INTRODUCED BY HASAY, ALLEN, BASTIAN, BELARDI, BLAUM, BUXTON, CALTAGIRONE, CAPPELLI, CAWLEY, CLYMER, CRAHALLA, CREIGHTON, CURRY, DIVEN, FREEMAN, GEIST, GEORGE, GINGRICH, GOOD, GOODMAN, GRUCELA, HARRIS, HENNESSEY, HESS, HICKERNELL, JAMES, M. KELLER, KOTIK, LEACH, LEDERER, LEVDANSKY, MARKOSEK, McILHATTAN, MILLARD, MUNDY, MUSTIO, O'NEILL, PETRARCA, PHILLIPS, PICKETT, PRESTON, READSHAW, REED, RUBLEY, SATHER, SAYLOR, SCAVELLO, SHANER, B. SMITH, TANGRETTI, E. Z. TAYLOR, TIGUE, TURZAI, WALKO, YOUNGBLOOD AND YUDICHAK, MARCH 15, 2005

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REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, MARCH 15, 2005

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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 Prohibition  
8 of Excessive Overtime for Nurses 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 "Health care facility." As defined in section 103 of the act

1 of July 19, 1979 (P.L.130, No.48), known as the Health Care  
2 Facilities Act. The term includes a health care facility  
3 providing clinically related health services and operated by the  
4 Department of Corrections.

5 "Nurse." A licensed practical nurse or a registered nurse,  
6 who:

7 (1) does not act in a supervisory role; and

8 (2) is paid an hourly wage.

9 "On-call time." Time spent by a nurse who is not currently  
10 working on the premises of the place of employment but who:

11 (1) is compensated for availability; or

12 (2) as a condition of employment, has agreed to be  
13 available to return to the premises of the place of  
14 employment on short notice if the need arises.

15 "Reasonable efforts." Attempts by an employer to:

16 (1) seek persons who volunteer to work extra time from  
17 all available qualified staff who are working at the time of  
18 the unforeseen emergent circumstance;

19 (2) contact all qualified employees who have made  
20 themselves available to work extra time;

21 (3) seek the use of per diem staff; or

22 (4) seek personnel from a contracted temporary agency  
23 when such staff is permitted by law or regulation.

24 "Unforeseeable emergent circumstance." Either of the  
25 following:

26 (1) An unforeseen declared national, State or municipal  
27 emergency.

28 (2) A catastrophic event which is unpredictable or  
29 unavoidable and which substantially affects or increases the  
30 need for health care services.

1 The term does not include vacancies that arise as a result of  
2 chronic short staffing or a labor dispute.

3 Section 3. Prohibition of mandatory overtime.

4 (a) General rule.--Except as set forth in subsection (c), a  
5 health care facility may not require a nurse to work in excess  
6 of 12 hours per workday, or in excess of 12 consecutive hours,  
7 or in excess of 60 hours per week. This limitation shall not be  
8 construed to prevent a nurse from voluntarily accepting work in  
9 excess of these limitations.

10 (b) Retaliation prohibited.--The refusal of a nurse to  
11 accept work in excess of the limitations set forth in subsection  
12 (a) shall not be grounds for discrimination, dismissal,  
13 discharge or any other employment decision adverse to the nurse.

14 (c) Exception.--The provisions of subsection (a) shall not  
15 apply to any of the following:

16 (1) On-call time. Nothing in this paragraph shall be  
17 construed to permit a health care facility to use on-call  
18 time as a substitute for mandatory overtime or a means of  
19 circumventing the intent of this act.

20 (2) If an unforeseen emergent circumstance occurs and:

21 (i) the assignment of additional hours is used as a  
22 last resort; and

23 (ii) the health care facility has exhausted  
24 reasonable efforts to obtain other staffing.

25 (d) Off-duty time.--A nurse who is required to work more  
26 than 12 consecutive hours per workday pursuant to subsection (c)  
27 or who volunteers to work more than 12 consecutive hours shall  
28 be entitled to at least ten consecutive hours of off-duty time  
29 immediately after the worked overtime. A nurse may voluntarily  
30 waive the requirements of this subsection.

1 Section 4. Collective bargaining.

2 This act shall not be construed to impact or negate any  
3 employer-employee collective bargaining agreement or any other  
4 employer-employee contract in effect on the effective date of  
5 this section. Nothing in this act shall be construed to prevent  
6 the negotiation of collective bargaining agreements which  
7 contain overtime requirements more or less restrictive than  
8 required by this act.

9 Section 5. Regulations.

10 The department shall promulgate regulations to implement this  
11 act.

12 Section 6. Penalties.

13 (a) Administrative fine.--The department may levy an  
14 administrative fine on a health care facility that violates this  
15 act or any regulation issued under this act. The fine shall be  
16 not less than \$100 nor greater than \$1,000 for each violation.

17 (b) Administrative order.--The department may order a health  
18 care facility to take an action which the department deems  
19 necessary to correct a violation of section 3 (relating to  
20 prohibition of mandatory overtime).

21 (c) Administrative Agency Law.--This section is subject to 2  
22 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of  
23 Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial  
24 review of Commonwealth agency action).

25 Section 20. Effective date.

26 This act shall take effect as follows:

27 (1) The following provisions shall take effect  
28 immediately:

29 (i) Section 5.

30 (ii) This section.

1           (2) The remainder of this act shall take effect July 1,  
2           2005.