

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 957 Session of 2005

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, YUDICHAK, THOMAS, PALLONE, LaGROTTA AND BROWNE, MARCH 15, 2005

AS REPORTED FROM COMMITTEE ON PROFESSIONAL LICENSURE, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 11, 2005

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.

1 ~~"Health care facility." As defined in section 103 of the act~~ <—  
2 ~~of July 19, 1979 (P.L.130, No.48), known as the Health Care~~  
3 ~~Facilities Act. The term includes a health care facility~~  
4 ~~providing clinically related health services and operated by the~~  
5 ~~Department of Corrections.~~

6 "HEALTH CARE FACILITY." A FACILITY WHICH PROVIDES CLINICALLY <—  
7 RELATED HEALTH SERVICES, REGARDLESS OF WHETHER THE OPERATION IS  
8 FOR PROFIT OR NONPROFIT AND REGARDLESS OF WHETHER OPERATION IS  
9 BY THE PRIVATE SECTOR OR BY STATE OR LOCAL GOVERNMENT. THE TERM  
10 INCLUDES A GENERAL OR SPECIAL HOSPITAL, A PSYCHIATRIC HOSPITAL,  
11 A REHABILITATION HOSPITAL, A HOSPICE, AN AMBULATORY SURGICAL  
12 FACILITY, A LONG-TERM CARE NURSING FACILITY, A CANCER TREATMENT  
13 CENTER USING RADIATION THERAPY ON AN AMBULATORY BASIS AND AN  
14 INPATIENT DRUG AND ALCOHOL TREATMENT FACILITY. THE TERM INCLUDES  
15 A FACILITY WHICH PROVIDES CLINICALLY RELATED HEALTH SERVICES AND  
16 WHICH IS OPERATED BY THE DEPARTMENT OF CORRECTIONS, THE  
17 DEPARTMENT OF HEALTH, THE DEPARTMENT OF MILITARY AND VETERANS  
18 AFFAIRS OR THE DEPARTMENT OF PUBLIC WELFARE. THE TERM DOES NOT  
19 INCLUDE AN OFFICE USED PRIMARILY FOR THE PRIVATE OR GROUP  
20 PRACTICE BY A HEALTH CARE PRACTITIONER, A FACILITY PROVIDING  
21 TREATMENT SOLELY ON THE BASIS OF PRAYER OR SPIRITUAL MEANS IN  
22 ACCORDANCE WITH THE TENETS OF A CHURCH OR A RELIGIOUS  
23 DENOMINATION OR A FACILITY CONDUCTED BY RELIGIOUS ORGANIZATION  
24 FOR THE PURPOSE OF PROVIDING HEALTH CARE SERVICES EXCLUSIVELY TO  
25 CLERGY OR OTHER INDIVIDUALS IN A RELIGIOUS PROFESSION WHO ARE  
26 MEMBERS OF THE RELIGIOUS DENOMINATION CONDUCTING THE FACILITY.

27 "Nurse." A licensed practical nurse or a registered nurse,  
28 who:

- 29 (1) does not act in a supervisory role; and
- 30 (2) is paid an hourly wage.

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

3 (1) is compensated for availability; or

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

7 "Reasonable efforts." Attempts by ~~an employer~~ A HEALTH CARE  
8 FACILITY to: <—

9 (1) seek persons who volunteer to work extra time from  
10 all available qualified staff who are working at the time of  
11 the ~~unforeseen~~ UNFORESEEABLE emergent circumstance; <—

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

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

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

17 "Unforeseeable emergent circumstance." Either of the  
18 following:

19 (1) An ~~unforeseen~~ UNFORESEEABLE declared national, State <—  
20 or municipal emergency.

21 (2) A catastrophic event which is unpredictable or  
22 unavoidable and which substantially affects or increases the  
23 need for health care services.

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

26 Section 3. Prohibition of mandatory overtime.

27 (a) General rule.--Except as set forth in subsection (c), a <—  
28 ~~health care facility may not require a nurse to work in excess~~

29 ALL OF THE FOLLOWING APPLY: <—

30 (1) A HEALTH CARE FACILITY MAY NOT REQUIRE A NURSE TO

1 WORK IN EXCESS of 12 hours per workday, or in excess of 12  
2 consecutive hours, or in excess of 60 hours per week. ~~This~~ ←  
3 ~~limitation shall not be~~

4 (2) IF A HEALTH CARE FACILITY REQUIRES A NURSE TO WORK ←  
5 IN EXCESS OF THE NURSE'S AGREED TO, PREDETERMINED AND  
6 REGULARLY SCHEDULED WORK SHIFT, THE HEALTH CARE FACILITY  
7 SHALL PROVIDE REASONABLE NOTICE AS SOON AS IT IS PRACTICABLE.

8 (3) THIS SUBSECTION SHALL NOT BE construed to prevent a  
9 nurse from voluntarily accepting work in excess of these  
10 limitations.

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

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

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

21 (2) If an ~~unforeseen~~ UNFORESEEABLE emergent circumstance ←  
22 occurs and:

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

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

27 (d) Off-duty time.--A nurse who is required to work more  
28 than 12 consecutive hours per workday pursuant to subsection (c)  
29 or who volunteers to work more than 12 consecutive hours shall  
30 be entitled to at least ten consecutive hours of off-duty time

1 immediately after the worked overtime. A nurse may voluntarily  
2 waive the requirements of this subsection.

3 Section 4. Collective bargaining.

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

11 Section 5. Regulations.

12 The department shall, WITHIN 18 MONTHS OF THE EFFECTIVE DATE  
13 OF THIS SECTION, promulgate regulations to implement this act. ←

14 Section 6. Penalties.

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

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

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

27 Section 20. Effective date.

28 This act shall take effect as follows:

29 (1) The following provisions shall take effect  
30 immediately:

1 (i) Section 5.

2 (ii) This section.

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

4 2005, OR IN 60 DAYS, WHICHEVER IS LATER.

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