

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, HICKERNELL, JAMES, M. KELLER, KOTIK, LEACH, LEDERER, LEVDANSKY, MARKOSEK, McILHATTAN, MILLARD, MUNDY, MUSTIO, O'NEILL, PETRARCA, PHILLIPS, PICKETT, PRESTON, READSHAW, REED, SATHER, SAYLOR, SCAVELLO, SHANER, B. SMITH, TANGRETTI, E. Z. TAYLOR, TIGUE, TURZAI, WALKO, YOUNGBLOOD, YUDICHAK, THOMAS, PALLONE, LaGROTTA, BROWNE, BUNT, DiGIROLAMO, BEYER, WATSON, SIPTROTH, COSTA, PETRI, CASORIO, PAYNE, BELFANTI, SOLOBAY, SURRA, McCALL, DALEY, MELIO AND ARGALL, MARCH 15, 2005

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES, OCTOBER 4, 2006

AN ACT

1 Relating to hours of employment of certain ~~nurses~~ EMPLOYEES; <—
2 providing for penalties and remedies; and imposing powers and
3 duties on the 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 "CLINICAL CARE SERVICES." THE DIAGNOSTIC, TREATMENT, OR <—

1 REHABILITATIVE SERVICES PROVIDED IN A HEALTH CARE FACILITY,
2 INCLUDING THE FOLLOWING: RADIOLOGY AND DIAGNOSTIC IMAGING, SUCH
3 AS MAGNETIC RESONANCE IMAGING AND POSITRON EMISSION TOMOGRAPHY;
4 RADIATION THERAPY; PHLEBOTOMY; ELECTROCARDIOGRAM AND
5 ELECTROENCEPHALOGRAPHY; AND LABORATORY MEDICAL SERVICES.

6 "Department." The Department of Labor and Industry of the
7 Commonwealth.

8 "EMPLOYEE." AN INDIVIDUAL EMPLOYED BY A HEALTH CARE FACILITY ←
9 OR BY THE COMMONWEALTH OR A POLITICAL SUBDIVISION OR
10 INSTRUMENTALITY OF THE COMMONWEALTH WHO IS INVOLVED IN DIRECT
11 PATIENT CARE ACTIVITIES OR CLINICAL CARE SERVICES AND WHO
12 RECEIVES AN HOURLY WAGE OR IS CLASSIFIED AS A NONSUPERVISORY
13 EMPLOYEE FOR COLLECTIVE BARGAINING PURPOSES. THE TERM INCLUDES
14 AN INDIVIDUAL EMPLOYED THROUGH A PERSONNEL AGENCY THAT CONTRACTS
15 WITH A HEALTH CARE FACILITY TO PROVIDE PERSONNEL. THE TERM DOES
16 NOT INCLUDE A PHYSICIAN; PHYSICIAN ASSISTANT; DENTIST; OR WORKER
17 INVOLVED IN ENVIRONMENTAL SERVICES, CLERICAL, MAINTENANCE, FOOD
18 SERVICE OR OTHER JOB CLASSIFICATION NOT INVOLVED IN DIRECT
19 PATIENT CARE AND CLINICAL CARE SERVICES.

20 "Health care facility." A facility which provides clinically
21 related health services, regardless of whether the operation is
22 for profit or nonprofit and regardless of whether operation is
23 by the private sector or by State or local government. The term
24 includes a general or special hospital, a psychiatric hospital,
25 a rehabilitation hospital, a hospice, an ambulatory surgical
26 facility, a long-term care nursing facility, a cancer treatment
27 center using radiation therapy on an ambulatory basis and an
28 inpatient drug and alcohol treatment facility. The term includes
29 a facility which provides clinically related health services and
30 which is operated by the Department of Corrections, the

1 Department of Health, the Department of Military and Veterans
2 Affairs or the Department of Public Welfare. The term does not
3 include an office used primarily for the private or group
4 practice by a health care practitioner, a facility providing
5 treatment solely on the basis of prayer or spiritual means in
6 accordance with the tenets of a church or a religious
7 denomination or a facility conducted by religious organization
8 for the purpose of providing health care services exclusively to
9 clergy or other individuals in a religious profession who are
10 members of the religious denomination conducting the facility.

11 ~~"Nurse." A licensed practical nurse or a registered nurse,~~ <—
12 ~~who:~~

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

14 ~~(2) is paid an hourly wage.~~

15 "On-call time." Time spent by ~~a nurse~~ AN EMPLOYEE who is not <—
16 currently working on the premises of the place of employment but
17 who:

18 (1) is compensated for availability; or

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

22 "Reasonable efforts." Attempts by a health care facility to:

23 (1) seek persons who volunteer to work extra time from
24 all available qualified staff who are working at the time of
25 the unforeseeable emergent circumstance;

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

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

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

1 "Unforeseeable emergent circumstance." Either of the
2 following:

3 (1) An unforeseeable declared national, State or
4 municipal emergency.

5 (2) A catastrophic event which is unpredictable or
6 unavoidable and which substantially affects or increases the
7 need for health care services.

8 The term does not include vacancies that arise as a result of
9 chronic short staffing ~~or a labor dispute.~~ <—

10 Section 3. Prohibition of mandatory overtime.

11 (a) General rule.--Except as set forth in subsection (c),
12 all of the following apply:

13 (1) A health care facility may not require ~~a nurse AN~~ <—
14 ~~EMPLOYEE to work in excess of 12 hours per workday, or in~~ <—
15 ~~excess of 12 consecutive hours, or in excess of 60 hours per~~
16 ~~week.~~ WORK IN EXCESS OF AN AGREED TO, PREDETERMINED AND <—
17 REGULARLY SCHEDULED DAILY WORK SHIFT.

18 (2) If a health care facility requires ~~a nurse AN~~ <—
19 ~~EMPLOYEE to work in excess of the nurse's~~ EMPLOYEE'S agreed <—
20 to, predetermined and regularly scheduled work shift, the
21 health care facility OR EMPLOYER shall provide ~~reasonable~~ <—
22 ~~notice as soon as it is practicable~~ AT LEAST THREE HOURS' <—
23 NOTICE OF THE REQUIREMENT.

24 (3) This subsection shall not be construed to prevent a <—
25 ~~nurse AN~~ EMPLOYEE nurse from voluntarily accepting work in <—
26 excess of these limitations.

27 (4) THIS SUBSECTION SHALL NOT BE CONSTRUED: <—

28 (I) TO PREVENT AN EMPLOYEE FROM WORKING AN AGREED
29 TO, PREDETERMINED AND REGULARLY SCHEDULED DAILY WORK
30 SHIFT THAT IS GREATER THAN EIGHT HOURS.

1 (II) TO PRECLUDE THE HIRING OF PART-TIME OR PER DIEM
2 EMPLOYEES BY A HEALTH CARE FACILITY.

3 (b) Retaliation prohibited.--The refusal of ~~a nurse~~ AN <—
4 EMPLOYEE to accept work in excess of the limitations set forth
5 in subsection (a) shall not be grounds for discrimination,
6 dismissal, discharge or any other employment decision adverse to
7 the ~~nurse~~ EMPLOYEE. <—

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

10 (1) On-call time. Nothing in this paragraph shall be
11 construed to permit a health care facility OR EMPLOYER to use <—
12 on-call time as a substitute for mandatory overtime or a
13 means of circumventing the intent of this act.

14 (2) If an unforeseeable emergent circumstance occurs
15 and:

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

18 (ii) the health care facility OR EMPLOYER has <—
19 exhausted reasonable efforts to obtain other staffing.

20 (3) WHEN AN EMPLOYEE IS REQUIRED TO WORK OVERTIME TO <—
21 COMPLETE A PATIENT CARE PROCEDURE ALREADY IN PROGRESS IF THE
22 ABSENCE OF THE EMPLOYEE COULD HAVE AN ADVERSE EFFECT ON THE
23 PATIENT.

24 (d) Off-duty time.--~~A nurse~~ AN EMPLOYEE who is required to <—
25 work more than 12 consecutive hours per workday pursuant to
26 subsection (c) or who volunteers to work more than 12
27 consecutive hours shall be entitled to at least ten consecutive
28 hours of off-duty time immediately after the worked overtime. ~~A~~ <—
29 ~~nurse~~ AN EMPLOYEE may voluntarily waive the requirements of this <—
30 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 NOTHING IN THIS ACT SHALL PREVENT AN EMPLOYER OR HEALTH CARE <—
10 FACILITY FROM PROVIDING EMPLOYEES MORE PROTECTION FROM MANDATORY
11 OVERTIME THAN THE MINIMUM ESTABLISHED UNDER THIS ACT.

12 Section 5. Regulations.

13 The department shall, within 18 months of the effective date
14 of this section, promulgate regulations to implement this act.

15 Section 6. Penalties.

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

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

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

29 Section 20. Effective date.

30 This act shall take effect as follows:

1 (1) The following provisions shall take effect
2 immediately:

3 (i) Section 5.

4 (ii) This section.

5 (2) The remainder of this act shall take effect July 1,
6 2005, or in 60 days, whichever is later.