

SENATE BILL 537

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2002 Regular Session
(21r1248)

ENROLLED BILL

-- Education, Health, and Environmental Affairs/Economic Matters --

Introduced by **Senators Hollinger, Dyson, Blount, Colburn, Collins, Conway, Della, Dorman, Exum, Forehand, Green, Hoffman, Kelley, Lawlah, Mooney, Roesser, Ruben, Schrader, Sfikas, Stone, and Teitelbaum**
Teitelbaum, and McFadden

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER 322

1 AN ACT concerning

2 **Health Occupations—Nurses' Bill of Rights**
3 **Labor and Employment - Nurses - Involuntary Overtime Prohibition**

4 FOR the purpose of ~~declaring that nurses have certain rights; prohibiting an~~
5 ~~employer from taking retribution against a nurse under certain circumstances;~~
6 prohibiting an employer from requiring a nurse to work more than the
7 scheduled hours according to the predetermined work schedule; providing that a
8 nurse may not be considered to be responsible for the care of a patient beyond
9 the nurse's ~~scheduled work period~~ predetermined work schedule under certain
10 circumstances; requiring an employer to ~~be responsible for ensuring~~ exhaust all
11 good faith, reasonable attempts to ensure that appropriate staff is available to
12 accept responsibility for care of a patient beyond a nurse's ~~scheduled work~~
13 ~~period~~ predetermined work schedule; exempting certain nurses from certain
14 provisions of this Act; defining a certain terms term; and generally relating to

1 the ~~rights of nurses~~ *employment and work hours of nurses*.

2 ~~BY adding to~~

3 ~~Article Health Occupations~~

4 ~~Section 8-103 and 8-708~~

5 ~~Annotated Code of Maryland~~

6 ~~(2000 Replacement Volume and 2001 Supplement)~~

7 BY adding to

8 Article - Labor and Employment

9 Section 3-421

10 Annotated Code of Maryland

11 (1999 Replacement Volume and 2001 Supplement)

12 **Preamble**

13 ~~WHEREAS, Nurses are highly competent, highly educated specialists, and~~
 14 ~~highly valued professional care givers who are independent decision makers and~~
 15 ~~whose autonomy of action is legally defined; and~~

16 ~~WHEREAS, Nurses are at the core of the delivery of hands on patient care; and~~

17 ~~WHEREAS, Due to higher patient acuity levels, an aging population, and~~
 18 ~~myriad other factors, the extraordinary demands placed on nurses today need to be~~
 19 ~~recognized and respected; and~~

20 ~~WHEREAS, The nursing shortage, combined with an increasing demand for~~
 21 ~~patient care in a variety of settings, presents a continuous challenge to assure~~
 22 ~~appropriate levels of nurse staffing, particularly in settings which must be staffed 24~~
 23 ~~hours a day, 7 days a week; and~~

24 ~~WHEREAS, Common sense and emerging research, including an Institute of~~
 25 ~~Medicine report called "To Err is Human - Building a Safe Health System" published~~
 26 ~~in November of 1999, confirm that nursing staff shortages and excessive overtime~~
 27 ~~may lead to an increased incidence of errors that injure patients; and now, therefore,~~

28 ~~SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF~~
 29 ~~MARYLAND, That the Laws of Maryland read as follows:~~

30 ~~**Article Health Occupations**~~

31 ~~8-103.~~

32 ~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS~~
 33 ~~INDICATED.~~

1 (2) ~~"INVOLUNTARY OVERTIME" MEANS WORK THAT EXCEEDS~~
2 ~~REGULARLY SCHEDULED HOURS ACCORDING TO THE PREDETERMINED WORK~~
3 ~~SCHEDULE.~~

4 (3) ~~"RETRIBUTION" MEANS THE DISCHARGE, SUSPENSION, DEMOTION,~~
5 ~~HARASSMENT, DENIAL OF EMPLOYMENT, DENIAL OF PROMOTION, LAYOFF, OR~~
6 ~~OTHER ADVERSE ACTION TAKEN BY A HOSPITAL AN EMPLOYER AGAINST A NURSE IN~~
7 ~~RESPONSE TO THE FILING OF A COMPLAINT.~~

8 (B) ~~IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT NURSES WHO ARE~~
9 ~~EMPLOYED IN HEALTH FACILITIES IN THE STATE HAVE THE EDUCATION,~~
10 ~~PROFESSIONAL LICENSES, TRAINING, SKILL, AND UNIT ORIENTATION NECESSARY~~
11 ~~TO PERFORM THEIR JOBS.~~

12 (C) ~~NURSES IN THE STATE HAVE THE FOLLOWING RIGHTS:~~

13 (1) ~~THE RIGHT TO BE TREATED WITH CONSIDERATION, RESPECT, AND~~
14 ~~FULL RECOGNITION OF THEIR PROFESSIONAL STATUS AND THE SIGNIFICANT~~
15 ~~CONTRIBUTION THAT THEY MAKE TO THE HEALTH AND WELL BEING OF THEIR~~
16 ~~PATIENTS;~~

17 (2) ~~THE RIGHT TO COLLABORATE AND BE ACTIVELY INVOLVED WITH~~
18 ~~THE MANAGEMENT OF THE HEALTH FACILITY IN ORDER TO RESOLVE ISSUES~~
19 ~~BEFORE THESE SAME ISSUES IMPACT PATIENT SAFETY OR BECOME A CAUSE OF~~
20 ~~DISSATISFACTION FOR STAFF;~~

21 (3) ~~THE RIGHT TO SERVE ON HEALTH FACILITY COMMITTEES DEALING~~
22 ~~WITH ISSUES INCLUDING APPROPRIATE BED UTILIZATION, PURCHASING, PHARMACY~~
23 ~~AND THERAPEUTICS, ETHICS, PATIENT SAFETY, PRODUCTS ISSUES, HUMAN~~
24 ~~RESOURCES WITH REGARD TO CAREER LADDERS AND PERFORMANCE APPRAISALS,~~
25 ~~RECRUITMENT AND RETENTION, QUALITY MANAGEMENT AND PERFORMANCE~~
26 ~~IMPROVEMENT, DISASTER PLANNING, RISK MANAGEMENT, AND INSTITUTIONAL~~
27 ~~REVIEW BOARD ACTIVITY;~~

28 (4) ~~THE RIGHT TO FINANCIAL COMPENSATION, BENEFITS, AND A~~
29 ~~RETIREMENT PACKAGE THAT IS COMPARABLE TO THAT RECEIVED BY OTHER~~
30 ~~PROFESSIONALS WITH EQUIVALENT EDUCATION AND TRAINING;~~

31 (5) ~~THE RIGHT TO MANAGE AND PRIORITIZE THEIR PERSONAL AFFAIRS;~~

32 (6) ~~THE RIGHT TO A WORK ENVIRONMENT THAT IS SAFE AND THAT~~
33 ~~SUPPORTS AND FACILITATES ETHICAL PRACTICE IN ACCORDANCE WITH~~
34 ~~ESTABLISHED STANDARDS OF PRACTICE AND THE CODE OF ETHICS FOR NURSES~~
35 ~~AND ITS INTERPRETIVE STATEMENTS;~~

36 (7) ~~THE RIGHT TO BE FREE FROM PENALTY FOR EXERCISING~~
37 ~~PROFESSIONAL JUDGMENT THAT PRIORITIZES THE HEALTH AND SAFETY OF~~
38 ~~PATIENTS, COLLEAGUES, AND OTHER STAFF;~~

1 (8) ~~THE RIGHT TO REFUSE ASSIGNMENTS THAT COULD COMPROMISE~~
2 ~~THE HEALTH, SAFETY, AND WELL-BEING OF PATIENTS, NURSES, OR BOTH, EVEN IF~~
3 ~~THAT DECISION NECESSITATES THE TEMPORARY CLOSING OF BEDS OR UNITS IN A~~
4 ~~FACILITY, THE CANCELLATION OF ELECTIVE ADMISSIONS OR SURGERIES, OR A~~
5 ~~TEMPORARY CESSATION IN THE ADMISSION OF PATIENTS TO ANY AREA OF THE~~
6 ~~FACILITY UNTIL THE SAFETY OF THE PATIENTS, NURSES, OR BOTH, IN THE~~
7 ~~AFFECTED AREA IS NO LONGER POTENTIALLY COMPROMISED;~~

8 (9) ~~THE RIGHT TO WORK COLLABORATIVELY WITH MANAGEMENT ON~~
9 ~~REASONABLE STAFFING PLANS AND SYSTEMS FOR MEETING STAFFING~~
10 ~~REQUIREMENTS;~~

11 (10) ~~EXCEPT FOR NURSES IN COMMUNITY-BASED CARE, THE RIGHT TO~~
12 ~~BE FREE FROM INVOLUNTARY OVERTIME; AND~~

13 (11) ~~THE RIGHT TO BE FREE FROM RETRIBUTION AS DESCRIBED IN §~~
14 ~~8-708 OF THIS TITLE; AND~~

15 (12) ~~THE RIGHT TO WORK AS AN EMPLOYEE OR INDEPENDENT~~
16 ~~CONTRACTOR.~~

17 ~~8-708.~~

18 (A) A NURSE'S EMPLOYER MAY NOT TAKE RETRIBUTION AGAINST THE NURSE
19 BECAUSE THE NURSE:

20 (1) ~~DISCLOSES OR INTENDS TO DISCLOSE TO A MANAGER, PRIVATE~~
21 ~~ACCREDITATION ORGANIZATION, OR PUBLIC BODY AN ACTIVITY, POLICY, OR~~
22 ~~PRACTICE THAT THE NURSE REASONABLY BELIEVES TO BE IN VIOLATION OF A LAW,~~
23 ~~REGULATION, OR PROFESSIONAL STANDARD OF PRACTICE AND THAT THE NURSE~~
24 ~~REASONABLY BELIEVES POSES A RISK TO THE HEALTH, SAFETY, OR WELFARE OF A~~
25 ~~PATIENT OR THE PUBLIC;~~

26 (2) ~~PROVIDES INFORMATION TO OR TESTIFIES BEFORE A PRIVATE~~
27 ~~ACCREDITATION ORGANIZATION OR A PUBLIC BODY CONDUCTING AN~~
28 ~~INVESTIGATION, HEARING, OR INQUIRY REGARDING AN ALLEGED ACTIVITY, POLICY,~~
29 ~~OR PRACTICE THAT THE NURSE REASONABLY BELIEVES TO BE IN VIOLATION OF A~~
30 ~~LAW, REGULATION, OR PROFESSIONAL STANDARD OF PRACTICE AND THAT THE~~
31 ~~NURSE REASONABLY BELIEVES POSES A RISK TO THE HEALTH, SAFETY, OR WELFARE~~
32 ~~OF A PATIENT OR THE PUBLIC;~~

33 (3) ~~OBJECTS TO OR REFUSES TO PARTICIPATE IN ANY ACTIVITY, POLICY,~~
34 ~~OR PRACTICE OF A HEALTH FACILITY THAT THE NURSE REASONABLY BELIEVES IS IN~~
35 ~~VIOLATION OF A LAW, RULE, OR PROFESSIONAL STANDARD OF PRACTICE AND THAT~~
36 ~~THE NURSE REASONABLY BELIEVES POSES A RISK TO THE HEALTH, SAFETY, OR~~
37 ~~WELFARE OF A PATIENT OR THE PUBLIC; OR~~

38 (4) ~~PARTICIPATES IN A COMMITTEE OR PEER REVIEW PROCESS OR~~
39 ~~FILES A REPORT OR A COMPLAINT THAT DISCUSSES ALLEGATIONS OF UNSAFE,~~
40 ~~DANGEROUS, OR POTENTIALLY DANGEROUS CARE.~~

1 ~~(B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE~~
 2 ~~PROTECTION AGAINST RETRIBUTION UNDER SUBSECTION (A) OF THIS SECTION~~
 3 ~~DOES NOT APPLY TO A NURSE, UNLESS THE NURSE, BEFORE MAKING A DISCLOSURE~~
 4 ~~TO A PRIVATE ACCREDITATION ORGANIZATION OR A PUBLIC BODY AS DESCRIBED IN~~
 5 ~~SUBSECTION (A)(1) OF THIS SECTION:~~

6 ~~(1) GIVES WRITTEN NOTICE TO THE ADMINISTRATION OF THE HEALTH~~
 7 ~~FACILITY OF THE ACTIVITY, POLICY, PRACTICE, OR VIOLATION OF PROFESSIONAL~~
 8 ~~STANDARDS OF PRACTICE THAT THE NURSE REASONABLY BELIEVES POSES A RISK~~
 9 ~~TO PUBLIC HEALTH; AND~~

10 ~~(2) PROVIDES THE ADMINISTRATION A REASONABLE OPPORTUNITY TO~~
 11 ~~CORRECT THE ACTIVITY, POLICY, PRACTICE, OR VIOLATION IN ACCORDANCE WITH~~
 12 ~~THE STANDARDS OF THE JOINT COMMISSION ON ACCREDITATION OF HEALTH CARE~~
 13 ~~ORGANIZATIONS.~~

14 ~~(C) A NURSE IS NOT REQUIRED TO COMPLY WITH THE PROVISIONS OF~~
 15 ~~SUBSECTION (B) OF THIS SECTION IF AN EMERGENCY SITUATION EXISTS AND THE~~
 16 ~~NURSE:~~

17 ~~(1) (1) REASONABLY BELIEVES THAT THE ACTIVITY, POLICY,~~
 18 ~~PRACTICE, OR VIOLATION IS KNOWN TO ONE OR MORE MANAGERS OF THE HEALTH~~
 19 ~~FACILITY OR AN AFFILIATED FACILITY; AND AN EMERGENCY SITUATION EXISTS;~~

20 ~~(2) (1) MAKES THE DISCLOSURE DISCLOSES THE ACTIVITY, POLICY,~~
 21 ~~PRACTICE, OR VIOLATION TO A PRIVATE ACCREDITATION ORGANIZATION OR A~~
 22 ~~PUBLIC BODY FOR THE PURPOSE OF PROVIDING EVIDENCE OF AN ACTIVITY, POLICY,~~
 23 ~~PRACTICE, OR VIOLATION THAT THE NURSE REASONABLY BELIEVES IS A CRIME; OR~~

24 ~~(2) COMPLIES WITH § 8 505 OF THIS TITLE.~~

25 **Article - Labor and Employment**

26 3-421.

27 (A) IN THIS SECTION, "NURSE" MEANS A LICENSED PRACTICAL NURSE OR A
 28 REGISTERED NURSE AS DEFINED IN § 8-101 OF THE HEALTH OCCUPATIONS ARTICLE.

29 (B) EXCEPT AS PROVIDED IN ~~SUBSECTION (C)~~ SUBSECTIONS (C) AND (D) OF
 30 THIS SECTION, AN EMPLOYER MAY NOT REQUIRE A NURSE TO WORK MORE THAN
 31 THE REGULARLY SCHEDULED HOURS ACCORDING TO THE PREDETERMINED WORK
 32 SCHEDULE.

33 (C) A NURSE MAY BE REQUIRED TO WORK OVERTIME IF:

34 (1) THE WORK IS A CONSEQUENCE OF AN EMERGENCY SITUATION
 35 WHICH COULD NOT HAVE BEEN REASONABLY ANTICIPATED;

1 (2) THE EMERGENCY SITUATION IS NONRECURRING AND IS NOT
 2 CAUSED BY OR AGGRAVATED BY THE EMPLOYER'S INATTENTION OR LACK OF
 3 REASONABLE CONTINGENCY PLANNING;

4 (3) THE EMPLOYER HAS EXHAUSTED ALL GOOD FAITH, REASONABLE
 5 ATTEMPTS TO OBTAIN VOLUNTARY WORKERS DURING THE SUCCEEDING SHIFTS;

6 (4) THE NURSE HAS CRITICAL SKILLS AND EXPERTISE THAT ARE
 7 REQUIRED FOR THE WORK; ~~AND~~

8 (5) THE STANDARD OF CARE FOR A PATIENT ASSIGNMENT REQUIRES
 9 CONTINUITY OF CARE THROUGH COMPLETION OF A CASE, TREATMENT, OR
 10 PROCEDURE; AND

11 ~~(5)~~ (6) (I) THE EMPLOYER HAS INFORMED THE NURSE OF THE
 12 BASIS FOR THE EMPLOYER'S DIRECTION; AND

13 (II) THAT BASIS SATISFIES THE OTHER REQUIREMENTS FOR
 14 MANDATORY OVERTIME LISTED UNDER THIS ~~ITEM~~ SUBSECTION.

15 (D) IN ADDITION TO THE PROVISIONS OF SUBSECTION (C) OF THIS SECTION, A
 16 NURSE MAY BE REQUIRED TO WORK OVERTIME IF:

17 (1) A CONDITION OF EMPLOYMENT INCLUDES ON-CALL ROTATION; OR

18 (2) THE NURSE WORKS IN COMMUNITY-BASED CARE.

19 ~~(D)~~ (E) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT A NURSE
 20 FROM VOLUNTARILY AGREEING TO WORK MORE THAN THE NUMBER OF SCHEDULED
 21 HOURS PROVIDED IN THIS SECTION.

22 ~~(E)~~ (F) (1) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (D) OF THIS
 23 SECTION, A NURSE MAY NOT BE CONSIDERED RESPONSIBLE FOR THE CARE OF A
 24 PATIENT BEYOND THE NURSE'S ~~PRESCRIBED WORK PERIOD~~ PREDETERMINED WORK
 25 SCHEDULE IF THE NURSE:

26 (I) HAS NOTIFIED ANOTHER APPROPRIATE NURSE OF THE
 27 PATIENT'S STATUS; AND

28 (II) HAS TRANSFERRED RESPONSIBILITY FOR THE PATIENT'S CARE
 29 TO ANOTHER APPROPRIATE NURSE OR PROPERLY DESIGNATED INDIVIDUAL.

30 (2) THE EMPLOYER SHALL ~~BE RESPONSIBLE FOR ENSURING~~ EXHAUST
 31 ALL GOOD FAITH, REASONABLE ATTEMPTS TO ENSURE THAT APPROPRIATE STAFF IS
 32 AVAILABLE TO ACCEPT RESPONSIBILITY FOR A PATIENT'S CARE BEYOND A NURSE'S
 33 ~~SCHEDULED WORK PERIOD~~ PREDETERMINED WORK SCHEDULE.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 35 October 1, 2002.

