
By: **Senators Hollinger, Collins, Conway, Dorman, Mitchell, Roesser, and Teitelbaum**

Introduced and read first time: February 2, 2001

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment - Nurses - Involuntary Overtime Prohibition**

3 FOR the purpose of prohibiting an employer from requiring a nurse to work more
4 than a certain number of hours in a workday or more than a certain number of
5 hours in a workweek; authorizing an employer to require a nurse to work up to
6 a certain number of hours in a day or part or all of a succeeding work shift under
7 certain circumstances; providing that a nurse may not be considered to be
8 responsible for the care of a patient beyond the nurse's prescribed work period
9 under certain circumstances; requiring an employer to be responsible for
10 providing that appropriate staff is available to accept responsibility for care of a
11 patient beyond a nurse's prescribed work period; prohibiting an employer from
12 discharging, discriminating, or retaliating in any manner against a nurse
13 because the nurse declines to work beyond certain hours; authorizing a nurse to
14 bring a civil suit for certain damages and fees against an employer that violates
15 this Act; providing for the construction of this Act; defining a certain term; and
16 generally relating to employment and work hours of nurses.

17 BY adding to
18 Article - Labor and Employment
19 Section 3-421
20 Annotated Code of Maryland
21 (1999 Replacement Volume and 2000 Supplement)

22 Preamble

23 WHEREAS, There is a shortage of nurses generally and particularly nurses able
24 to work in multiple patient care settings; and

25 WHEREAS, It is increasingly apparent that the shortages have led to
26 understaffing, which not only has accelerated nurses' earlier retirement from direct
27 patient care settings but also has compromised the quality of care provided by the
28 overburdened nurses who remain in the workplace; and

1 WHEREAS, In an attempt to offset short staffing patterns, employers
2 frequently require nurses, as a condition of at-will employment, and contrary to a
3 nurse's professional assessment of his or her own particular capabilities, to work
4 substantial overtime to provide patient coverage; and

5 WHEREAS, Common sense and emerging research, including an Institute of
6 Medicine report called "To Err is Human - Building a Safe Health System" published
7 in November of 1999, confirms that nursing staff shortages and the resulting
8 involuntary overtime and incident fatigue inevitably lead to an increased incidence of
9 errors that injure patients; and

10 WHEREAS, Maryland's nurses, caught between the orders of their employers
11 and their professional responsibilities under the Nurse Practice Act and pressures
12 from their personal lives are frequently forced to accept mandatory, involuntary
13 overtime or risk their at-will positions; and

14 WHEREAS, Absent legislation prohibiting involuntary overtime, nurses will
15 continue to confront this dilemma to their detriment, to their patients' detriment, and
16 to the detriment of efforts to encourage vitally needed numbers of young people to
17 choose nursing as a career; now, therefore,

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

20 **Article - Labor and Employment**

21 3-421.

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

24 (B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, AN
25 EMPLOYER MAY NOT REQUIRE A NURSE TO WORK MORE THAN:

26 (1) 8 HOURS IN ANY WORKDAY; OR

27 (2) 40 HOURS IN ANY WORKWEEK.

28 (C) A NURSE MAY BE REQUIRED TO WORK:

29 (1) NOT MORE THAN 10 HOURS IN A DAY IF THE EMPLOYER'S
30 WORKWEEK IS BASED ON 4 DAYS OF 10 HOURS OF WORK EACH DAY; OR

31 (2) PART OR ALL OF THE NEXT SUCCEEDING WORK SHIFT FOLLOWING
32 THE WORK SHIFT COMPLETED BY THE NURSE IF:

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

1 (II) THE EMERGENCY SITUATION IS NONRECURRING AND IS NOT
2 CAUSED BY OR CONTRIBUTED TO BY INATTENTION OR A LACK OF REASONABLE
3 CONTINGENCY PLANS BY THE EMPLOYER;

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

7 (IV) THE NURSE HAS CRITICAL SKILLS AND EXPERTISE THAT ARE
8 REQUIRED FOR THE WORK; AND

9 (V) 1. THE EMPLOYER HAS INFORMED THE NURSE OF THE
10 BASIS FOR THE EMPLOYER'S DIRECTION; AND

11 2. THAT BASIS SATISFIES THE REQUIREMENTS FOR
12 MANDATORY OVERTIME LISTED UNDER ITEM (2) OF THIS SUBSECTION.

13 (D) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT A NURSE FROM
14 VOLUNTARILY AGREEING TO WORK MORE THAN THE NUMBER OF HOURS PROVIDED
15 IN THIS SECTION.

16 (E) (1) A NURSE MAY NOT BE CONSIDERED RESPONSIBLE FOR THE CARE OF
17 A PATIENT BEYOND THE NURSE'S PRESCRIBED WORK PERIOD IF THE NURSE:

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

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

22 (2) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE
23 EMPLOYER SHALL BE RESPONSIBLE FOR PROVIDING THAT APPROPRIATE STAFF IS
24 AVAILABLE TO ACCEPT RESPONSIBILITY FOR A PATIENT'S CARE BEYOND A NURSE'S
25 PRESCRIBED WORK PERIOD.

26 (F) (1) AN EMPLOYER MAY NOT DISCHARGE, DISCRIMINATE AGAINST, OR
27 RETALIATE IN ANY MANNER AGAINST A NURSE BECAUSE THE NURSE DECLINES TO
28 WORK BEYOND THE HOURS PROVIDED IN THIS SECTION.

29 (2) A NURSE WHO BELIEVES THAT HE OR SHE HAS BEEN DISCHARGED,
30 DISCRIMINATED AGAINST, OR RETALIATED AGAINST BY AN EMPLOYER IN VIOLATION
31 OF THIS SECTION MAY BRING A CIVIL ACTION FOR DAMAGES AND REASONABLE
32 ATTORNEY'S FEES.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 October 1, 2001.