

(PRE-FILED)

---

By: **Delegates Nathan-Pulliam, Goldwater, and Eckardt**

Requested: October 3, 2001

Introduced and read first time: January 9, 2002

Assigned to: Economic Matters

---

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 2001 Supplement)

22 Preamble

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

25 WHEREAS, It is increasingly apparent that the shortages have led to  
26 under-staffing, which not only has accelerated nurses' earlier retirement from direct  
27 patient care settings but 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) SUBJECT TO SUBSECTION (C) OF THIS SECTION, AN EMPLOYER MAY NOT  
25 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;

31 (2) NOT MORE THAN 3 DAYS OF 12 HOURS OF WORK EACH DAY AND THE  
32 FOURTH WORKDAY OF NO MORE THAN 8 HOURS; OR

33 (3) PART OR ALL OF THE NEXT SUCCEEDING WORK SHIFT FOLLOWING  
34 THE WORK SHIFT COMPLETED BY THE NURSE IF:

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

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

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

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

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

13 2. THAT BASIS SATISFIES THE REQUIREMENTS FOR  
14 MANDATORY OVERTIME UNDER ITEMS (I) THROUGH (IV) OF THIS ITEM.

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

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

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

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

24 (2) EXCEPT AS PROVIDED IN SUBSECTION (C)(3) OF THIS SECTION, THE  
25 EMPLOYER SHALL BE RESPONSIBLE FOR PROVIDING THAT APPROPRIATE STAFF IS  
26 AVAILABLE TO ACCEPT RESPONSIBILITY FOR A PATIENT'S CARE BEYOND A NURSE'S  
27 PRESCRIBED WORK PERIOD.

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

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

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