

HOUSE BILL 42

Unofficial Copy  
K3  
HB 889/01 - ECM

2002 Regular Session  
2lr0614

(PRE-FILED)

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By: ~~Delegates Nathan-Pulliam, Goldwater, and Eckardt~~ Eckardt, Mandel, Harrison, Hill, Kirk, Pendergrass, Benson, Bobo, Dembrow, Frush, Grosfeld, Hubbard, Hubers, A. Jones, Malone, Menes, McIntosh, Owings, Morhaim, Minnick, Kach, Walkup, and Klausmeier

Requested: October 3, 2001  
Introduced and read first time: January 9, 2002  
Assigned to: Economic Matters

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: April 4, 2002

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CHAPTER \_\_\_\_\_

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

21 BY adding to  
22 Article - Labor and Employment  
23 Section 3-421

1 Annotated Code of Maryland  
2 (1999 Replacement Volume and 2001 Supplement)

3 **Preamble**

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

6 ~~WHEREAS, It is increasingly apparent that the shortages have led to~~  
7 ~~under-staffing, which not only has accelerated nurses' earlier retirement from direct~~  
8 ~~patient care settings but has compromised the quality of care provided by the~~  
9 ~~overburdened nurses who remain in the workplace; and~~

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

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

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

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

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

29 **Article - Labor and Employment**

30 3-421.

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

33 (B) ~~SUBJECT TO SUBSECTION (C) EXCEPT AS PROVIDED IN SUBSECTIONS (C)~~  
34 ~~AND (D) OF THIS SECTION, AN EMPLOYER MAY NOT REQUIRE A NURSE TO WORK~~  
35 ~~MORE THAN:~~

36 (1) ~~8 HOURS IN ANY WORKDAY; OR~~

1           ~~(2)~~     40 HOURS IN ANY WORKWEEK THE REGULARLY SCHEDULED HOURS  
 2 ACCORDING TO THE PREDETERMINED WORK SCHEDULE.

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

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

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

8           ~~(3)~~     ~~PART OR ALL OF THE NEXT SUCCEEDING WORK SHIFT FOLLOWING~~  
 9 ~~THE WORK SHIFT COMPLETED BY THE NURSE IF:~~

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

12           ~~(II)~~    ~~(2)~~     THE EMERGENCY SITUATION IS NONRECURRING AND IS  
 13 NOT CAUSED BY ~~OR CONTRIBUTED TO BY~~ OR AGGRAVATED BY THE EMPLOYER'S  
 14 INATTENTION OR A LACK OF REASONABLE CONTINGENCY ~~PLANS BY THE EMPLOYER~~  
 15 PLANNING;

16           ~~(III)~~   ~~(3)~~     THE EMPLOYER HAS EXHAUSTED ALL GOOD FAITH,  
 17 REASONABLE ATTEMPTS TO OBTAIN VOLUNTARY WORKERS DURING THE  
 18 SUCCEEDING SHIFTS;

19           ~~(IV)~~   ~~(4)~~     THE NURSE HAS CRITICAL SKILLS AND EXPERTISE THAT  
 20 ARE REQUIRED FOR THE WORK; ~~AND~~

21           ~~(V)~~     ~~(5)~~     THE STANDARD OF CARE FOR A PATIENT ASSIGNMENT REQUIRES  
 22 CONTINUITY OF CARE THROUGH COMPLETION OF A CASE, TREATMENT, OR  
 23 PROCEDURE; AND

24           ~~(VI)~~   ~~(6)~~     +     ~~(I)~~    THE EMPLOYER HAS INFORMED THE NURSE OF  
 25 THE BASIS FOR THE EMPLOYER'S DIRECTION; AND

26                           ~~2.~~     ~~(II)~~    THAT BASIS SATISFIES THE REQUIREMENTS FOR  
 27 MANDATORY OVERTIME ~~UNDER ITEMS (I) THROUGH (IV) OF THIS ITEM LISTED~~  
 28 UNDER THIS SUBSECTION.

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

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

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

33       ~~(E)~~     ~~(E)~~     THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT A NURSE  
 34 FROM VOLUNTARILY AGREEING TO WORK MORE THAN THE NUMBER OF HOURS  
 35 PROVIDED IN THIS SECTION.

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

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

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

9 (2) ~~EXCEPT AS PROVIDED IN SUBSECTION (C)(3) OF THIS SECTION~~, THE  
10 EMPLOYER SHALL ~~BE RESPONSIBLE FOR PROVIDING~~ EXHAUST ALL GOOD FAITH,  
11 REASONABLE ATTEMPTS TO ENSURE THAT APPROPRIATE STAFF IS AVAILABLE TO  
12 ACCEPT RESPONSIBILITY FOR A PATIENT'S CARE BEYOND A NURSE'S ~~PRESCRIBED~~  
13 ~~WORK PERIOD~~ PREDETERMINED WORK SCHEDULE.

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

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

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
22 effect ~~July~~ October 1, 2002.