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

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A BILL ENTITLED

1 AN ACT concerning

2 **Health Occupations - Nurses' Bill of Rights**

3 FOR the purpose of declaring that nurses have certain rights; prohibiting an
4 employer from taking retribution against a nurse under certain circumstances;
5 prohibiting an employer from requiring a nurse to work more than the
6 scheduled hours; providing that a nurse may not be considered to be responsible
7 for the care of a patient beyond the nurse's scheduled work period under certain
8 circumstances; requiring an employer to be responsible for ensuring that
9 appropriate staff is available to accept responsibility for care of a patient beyond
10 a nurse's scheduled work period; defining certain terms; and generally relating
11 to the rights of nurses.

12 BY adding to
13 Article - Health Occupations
14 Section 8-103 and 8-708
15 Annotated Code of Maryland
16 (2000 Replacement Volume and 2001 Supplement)

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, Nurses are highly competent, highly educated specialists, and
24 highly valued professional care givers who are independent decision-makers and
25 whose autonomy of action is legally defined; and

26 WHEREAS, Nurses are at the core of the delivery of hands-on patient care; and

1 WHEREAS, Due to higher patient acuity levels, an aging population, and
2 myriad other factors, the extraordinary demands placed on nurses today need to be
3 recognized and respected; and

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

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

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

14 **Article - Health Occupations**

15 8-103.

16 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
17 INDICATED.

18 (2) "INVOLUNTARY OVERTIME" MEANS WORK THAT EXCEEDS
19 REGULARLY SCHEDULED HOURS.

20 (3) "RETRIBUTION" MEANS THE DISCHARGE, SUSPENSION, DEMOTION,
21 HARASSMENT, DENIAL OF EMPLOYMENT, DENIAL OF PROMOTION, LAYOFF, OR
22 OTHER ADVERSE ACTION TAKEN BY A HOSPITAL AGAINST A NURSE IN RESPONSE TO
23 THE FILING OF A COMPLAINT.

24 (B) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT NURSES WHO ARE
25 EMPLOYED IN HEALTH FACILITIES IN THE STATE HAVE THE EDUCATION,
26 PROFESSIONAL LICENSES, TRAINING, SKILL, AND UNIT ORIENTATION NECESSARY
27 TO PERFORM THEIR JOBS.

28 (C) NURSES IN THE STATE HAVE THE FOLLOWING RIGHTS:

29 (1) THE RIGHT TO BE TREATED WITH CONSIDERATION, RESPECT, AND
30 FULL RECOGNITION OF THEIR PROFESSIONAL STATUS AND THE SIGNIFICANT
31 CONTRIBUTION THAT THEY MAKE TO THE HEALTH AND WELL-BEING OF THEIR
32 PATIENTS;

33 (2) THE RIGHT TO COLLABORATE AND BE ACTIVELY INVOLVED WITH
34 THE MANAGEMENT OF THE HEALTH FACILITY IN ORDER TO RESOLVE ISSUES
35 BEFORE THESE SAME ISSUES IMPACT PATIENT SAFETY OR BECOME A CAUSE OF
36 DISSATISFACTION FOR STAFF;

1 (3) THE RIGHT TO SERVE ON HEALTH FACILITY COMMITTEES DEALING
2 WITH APPROPRIATE BED UTILIZATION, PURCHASING, PHARMACY AND
3 THERAPEUTICS, ETHICS, PATIENT SAFETY, PRODUCTS ISSUES, HUMAN RESOURCES
4 WITH REGARD TO CAREER LADDERS AND PERFORMANCE APPRAISALS,
5 RECRUITMENT AND RETENTION, QUALITY MANAGEMENT AND PERFORMANCE
6 IMPROVEMENT, DISASTER PLANNING, RISK MANAGEMENT, AND INSTITUTIONAL
7 REVIEW BOARD ACTIVITY;

8 (4) THE RIGHT TO FINANCIAL COMPENSATION, BENEFITS, AND A
9 RETIREMENT PACKAGE THAT IS COMPARABLE TO THAT RECEIVED BY OTHER
10 PROFESSIONALS WITH EQUIVALENT EDUCATION AND TRAINING;

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

12 (6) THE RIGHT TO A WORK ENVIRONMENT THAT IS SAFE AND THAT
13 SUPPORTS AND FACILITATES ETHICAL PRACTICE IN ACCORDANCE WITH
14 ESTABLISHED STANDARDS OF PRACTICE AND THE CODE OF ETHICS FOR NURSES
15 AND ITS INTERPRETIVE STATEMENTS;

16 (7) THE RIGHT TO BE FREE FROM PENALTY FOR EXERCISING
17 PROFESSIONAL JUDGMENT THAT PRIORITIZES THE HEALTH AND SAFETY OF
18 PATIENTS, COLLEAGUES, AND OTHER STAFF;

19 (8) THE RIGHT TO REFUSE ASSIGNMENTS THAT COULD COMPROMISE
20 THE HEALTH, SAFETY, AND WELL-BEING OF PATIENTS, NURSES, OR BOTH, EVEN IF
21 THAT DECISION NECESSITATES THE TEMPORARY CLOSING OF BEDS OR UNITS IN A
22 FACILITY, THE CANCELLATION OF ELECTIVE ADMISSIONS OR SURGERIES, OR A
23 TEMPORARY CESSATION IN THE ADMISSION OF PATIENTS TO ANY AREA OF THE
24 FACILITY UNTIL THE SAFETY OF THE PATIENTS, NURSES, OR BOTH, IN THE
25 AFFECTED AREA IS NO LONGER POTENTIALLY COMPROMISED;

26 (9) THE RIGHT TO WORK COLLABORATIVELY WITH MANAGEMENT ON
27 REASONABLE STAFFING PLANS AND SYSTEMS FOR MEETING STAFFING
28 REQUIREMENTS;

29 (10) THE RIGHT TO BE FREE FROM INVOLUNTARY OVERTIME; AND

30 (11) THE RIGHT TO BE FREE FROM RETRIBUTION AS DESCRIBED IN §
31 8-708 OF THIS TITLE.

32 8-708.

33 (A) A NURSE'S EMPLOYER MAY NOT TAKE RETRIBUTION AGAINST THE NURSE
34 BECAUSE THE NURSE:

35 (1) DISCLOSES OR INTENDS TO DISCLOSE TO A MANAGER, PRIVATE
36 ACCREDITATION ORGANIZATION, OR PUBLIC BODY AN ACTIVITY, POLICY, OR
37 PRACTICE THAT THE NURSE REASONABLY BELIEVES TO BE IN VIOLATION OF A LAW,
38 REGULATION, OR PROFESSIONAL STANDARD OF PRACTICE AND THAT THE NURSE

1 REASONABLY BELIEVES POSES A RISK TO THE HEALTH, SAFETY, OR WELFARE OF A
2 PATIENT OR THE PUBLIC;

3 (2) PROVIDES INFORMATION TO OR TESTIFIES BEFORE A PRIVATE
4 ACCREDITATION ORGANIZATION OR A PUBLIC BODY CONDUCTING AN
5 INVESTIGATION, HEARING, OR INQUIRY REGARDING AN ALLEGED ACTIVITY, POLICY,
6 OR PRACTICE THAT THE NURSE REASONABLY BELIEVES TO BE IN VIOLATION OF A
7 LAW, REGULATION, OR PROFESSIONAL STANDARD OF PRACTICE AND THAT THE
8 NURSE REASONABLY BELIEVES POSES A RISK TO THE HEALTH, SAFETY, OR WELFARE
9 OF A PATIENT OR THE PUBLIC;

10 (3) OBJECTS TO OR REFUSES TO PARTICIPATE IN ANY ACTIVITY, POLICY,
11 OR PRACTICE OF A HEALTH FACILITY THAT THE NURSE REASONABLY BELIEVES IS IN
12 VIOLATION OF A LAW, RULE, OR PROFESSIONAL STANDARD OF PRACTICE AND THAT
13 THE NURSE REASONABLY BELIEVES POSES A RISK TO THE HEALTH, SAFETY, OR
14 WELFARE OF A PATIENT OR THE PUBLIC; OR

15 (4) PARTICIPATES IN A COMMITTEE OR PEER REVIEW PROCESS OR
16 FILES A REPORT OR A COMPLAINT THAT DISCUSSES ALLEGATIONS OF UNSAFE,
17 DANGEROUS, OR POTENTIALLY DANGEROUS CARE.

18 (B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE
19 PROTECTION AGAINST RETRIBUTION UNDER SUBSECTION (A) OF THIS SECTION
20 DOES NOT APPLY TO A NURSE, UNLESS THE NURSE, BEFORE MAKING A DISCLOSURE
21 TO A PRIVATE ACCREDITATION ORGANIZATION OR A PUBLIC BODY AS DESCRIBED IN
22 SUBSECTION (A)(1) OF THIS SECTION:

23 (1) GIVES WRITTEN NOTICE TO THE ADMINISTRATION OF THE HEALTH
24 FACILITY OF THE ACTIVITY, POLICY, PRACTICE, OR VIOLATION OF PROFESSIONAL
25 STANDARDS OF PRACTICE THAT THE NURSE REASONABLY BELIEVES POSES A RISK
26 TO PUBLIC HEALTH; AND

27 (2) PROVIDES THE ADMINISTRATION A REASONABLE OPPORTUNITY TO
28 CORRECT THE ACTIVITY, POLICY, PRACTICE, OR VIOLATION.

29 (C) A NURSE IS NOT REQUIRED TO COMPLY WITH THE PROVISIONS OF
30 SUBSECTION (B) OF THIS SECTION IF THE NURSE:

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

34 (2) MAKES THE DISCLOSURE TO A PRIVATE ACCREDITATION
35 ORGANIZATION OR A PUBLIC BODY FOR THE PURPOSE OF PROVIDING EVIDENCE OF
36 AN ACTIVITY, POLICY, PRACTICE, OR VIOLATION THAT THE NURSE REASONABLY
37 BELIEVES IS A CRIME.

1

Article - Labor and Employment

2 3-421.

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

5 (B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, AN
6 EMPLOYER MAY NOT REQUIRE A NURSE TO WORK MORE THAN THE REGULARLY
7 SCHEDULED HOURS.

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

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

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

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

16 (4) THE NURSE HAS CRITICAL SKILLS AND EXPERTISE THAT ARE
17 REQUIRED FOR THE WORK; AND

18 (5) (I) THE EMPLOYER HAS INFORMED THE NURSE OF THE BASIS FOR
19 THE EMPLOYER'S DIRECTION; AND

20 (II) THAT BASIS SATISFIES THE OTHER REQUIREMENTS FOR
21 MANDATORY OVERTIME LISTED UNDER THIS ITEM.

22 (D) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT A NURSE FROM
23 VOLUNTARILY AGREEING TO WORK MORE THAN THE NUMBER OF SCHEDULED
24 HOURS PROVIDED IN THIS SECTION.

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

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

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

31 (2) THE EMPLOYER SHALL BE RESPONSIBLE FOR ENSURING THAT
32 APPROPRIATE STAFF IS AVAILABLE TO ACCEPT RESPONSIBILITY FOR A PATIENT'S
33 CARE BEYOND A NURSE'S SCHEDULED WORK PERIOD.

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

