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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**

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 20, 2002

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CHAPTER \_\_\_\_\_

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

15 BY adding to  
16 Article - Health Occupations  
17 Section 8-103 and 8-708  
18 Annotated Code of Maryland  
19 (2000 Replacement Volume and 2001 Supplement)

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

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

3 Preamble

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

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

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

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

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

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

21 **Article - Health Occupations**

22 8-103.

23 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
24 INDICATED.

25 (2) "INVOLUNTARY OVERTIME" MEANS WORK THAT EXCEEDS  
26 REGULARLY SCHEDULED HOURS ACCORDING TO THE PREDETERMINED WORK  
27 SCHEDULE.

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

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

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

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

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

9 (3) THE RIGHT TO SERVE ON HEALTH FACILITY COMMITTEES DEALING  
10 WITH ISSUES INCLUDING APPROPRIATE BED UTILIZATION, PURCHASING, PHARMACY  
11 AND THERAPEUTICS, ETHICS, PATIENT SAFETY, PRODUCTS ISSUES, HUMAN  
12 RESOURCES WITH REGARD TO CAREER LADDERS AND PERFORMANCE APPRAISALS,  
13 RECRUITMENT AND RETENTION, QUALITY MANAGEMENT AND PERFORMANCE  
14 IMPROVEMENT, DISASTER PLANNING, RISK MANAGEMENT, AND INSTITUTIONAL  
15 REVIEW BOARD ACTIVITY;

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

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

20 (6) THE RIGHT TO A WORK ENVIRONMENT THAT IS SAFE AND THAT  
21 SUPPORTS AND FACILITATES ETHICAL PRACTICE IN ACCORDANCE WITH  
22 ESTABLISHED STANDARDS OF PRACTICE AND THE CODE OF ETHICS FOR NURSES  
23 AND ITS INTERPRETIVE STATEMENTS;

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

27 (8) THE RIGHT TO REFUSE ASSIGNMENTS THAT COULD COMPROMISE  
28 THE HEALTH, SAFETY, AND WELL-BEING OF PATIENTS, NURSES, OR BOTH, ~~EVEN IF~~  
29 ~~THAT DECISION NECESSITATES THE TEMPORARY CLOSING OF BEDS OR UNITS IN A~~  
30 ~~FACILITY, THE CANCELLATION OF ELECTIVE ADMISSIONS OR SURGERIES, OR A~~  
31 ~~TEMPORARY CESSATION IN THE ADMISSION OF PATIENTS TO ANY AREA OF THE~~  
32 ~~FACILITY UNTIL THE SAFETY OF THE PATIENTS, NURSES, OR BOTH, IN THE~~  
33 ~~AFFECTED AREA IS NO LONGER POTENTIALLY COMPROMISED;~~

34 (9) THE RIGHT TO WORK COLLABORATIVELY WITH MANAGEMENT ON  
35 REASONABLE STAFFING PLANS AND SYSTEMS FOR MEETING STAFFING  
36 REQUIREMENTS;

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

39 (11) THE RIGHT TO BE FREE FROM RETRIBUTION AS DESCRIBED IN §  
40 8-708 OF THIS TITLE; AND

1           (12)    THE RIGHT TO WORK AS AN EMPLOYEE OR INDEPENDENT  
2 CONTRACTOR.

3 8-708.

4       (A)     A NURSE'S EMPLOYER MAY NOT TAKE RETRIBUTION AGAINST THE NURSE  
5 BECAUSE THE NURSE:

6           (1)     DISCLOSES OR INTENDS TO DISCLOSE TO A MANAGER, PRIVATE  
7 ACCREDITATION ORGANIZATION, OR PUBLIC BODY AN ACTIVITY, POLICY, OR  
8 PRACTICE THAT THE NURSE REASONABLY BELIEVES TO BE IN VIOLATION OF A LAW,  
9 REGULATION, OR PROFESSIONAL STANDARD OF PRACTICE AND THAT THE NURSE  
10 REASONABLY BELIEVES POSES A RISK TO THE HEALTH, SAFETY, OR WELFARE OF A  
11 PATIENT OR THE PUBLIC;

12          (2)     PROVIDES INFORMATION TO OR TESTIFIES BEFORE A PRIVATE  
13 ACCREDITATION ORGANIZATION OR A PUBLIC BODY CONDUCTING AN  
14 INVESTIGATION, HEARING, OR INQUIRY REGARDING AN ALLEGED ACTIVITY, POLICY,  
15 OR PRACTICE THAT THE NURSE REASONABLY BELIEVES TO BE IN VIOLATION OF A  
16 LAW, REGULATION, OR PROFESSIONAL STANDARD OF PRACTICE AND THAT THE  
17 NURSE REASONABLY BELIEVES POSES A RISK TO THE HEALTH, SAFETY, OR WELFARE  
18 OF A PATIENT OR THE PUBLIC;

19          (3)     OBJECTS TO OR REFUSES TO PARTICIPATE IN ANY ACTIVITY, POLICY,  
20 OR PRACTICE OF A HEALTH FACILITY THAT THE NURSE REASONABLY BELIEVES IS IN  
21 VIOLATION OF A LAW, RULE, OR PROFESSIONAL STANDARD OF PRACTICE AND THAT  
22 THE NURSE REASONABLY BELIEVES POSES A RISK TO THE HEALTH, SAFETY, OR  
23 WELFARE OF A PATIENT OR THE PUBLIC; OR

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

27       (B)     EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE  
28 PROTECTION AGAINST RETRIBUTION UNDER SUBSECTION (A) OF THIS SECTION  
29 DOES NOT APPLY TO A NURSE, UNLESS THE NURSE, BEFORE MAKING A DISCLOSURE  
30 TO A PRIVATE ACCREDITATION ORGANIZATION OR A PUBLIC BODY AS DESCRIBED IN  
31 SUBSECTION (A)(1) OF THIS SECTION:

32          (1)     GIVES WRITTEN NOTICE TO THE ADMINISTRATION OF THE HEALTH  
33 FACILITY OF THE ACTIVITY, POLICY, PRACTICE, OR VIOLATION OF PROFESSIONAL  
34 STANDARDS OF PRACTICE THAT THE NURSE REASONABLY BELIEVES POSES A RISK  
35 TO PUBLIC HEALTH; AND

36          (2)     PROVIDES THE ADMINISTRATION A REASONABLE OPPORTUNITY TO  
37 CORRECT THE ACTIVITY, POLICY, PRACTICE, OR VIOLATION IN ACCORDANCE WITH  
38 THE STANDARDS OF THE JOINT COMMISSION ON ACCREDITATION OF HEALTH CARE  
39 ORGANIZATIONS.

1 (C) A NURSE IS NOT REQUIRED TO COMPLY WITH THE PROVISIONS OF  
 2 SUBSECTION (B) OF THIS SECTION IF AN EMERGENCY SITUATION EXISTS AND THE  
 3 NURSE:

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

7 ~~(2)~~ (II) ~~MAKES THE DISCLOSURE~~ DISCLOSES THE ACTIVITY, POLICY,  
 8 PRACTICE, OR VIOLATION TO A PRIVATE ACCREDITATION ORGANIZATION OR A  
 9 PUBLIC BODY FOR THE PURPOSE OF PROVIDING EVIDENCE OF AN ACTIVITY, POLICY,  
 10 PRACTICE, OR VIOLATION THAT THE NURSE REASONABLY BELIEVES IS A CRIME; OR

11 (2) COMPLIES WITH § 8-505 OF THIS TITLE.

12 **Article - Labor and Employment**

13 3-421.

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

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

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

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

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

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

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

30 (5) THE STANDARD OF CARE FOR A PATIENT ASSIGNMENT REQUIRES  
 31 CONTINUITY OF CARE THROUGH COMPLETION OF A CASE, TREATMENT, OR  
 32 PROCEDURE; AND

33 ~~(6)~~ (6) (1) THE EMPLOYER HAS INFORMED THE NURSE OF THE  
 34 BASIS FOR THE EMPLOYER'S DIRECTION; AND

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

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

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

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

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

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

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

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

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

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