

HOUSE BILL REPORT

ESB 6675

As Passed House:

March 8, 2002

Title: An act relating to prohibiting health care facilities from requiring employees to perform overtime work.

Brief Description: Prohibiting health care facilities from requiring employees to perform overtime work.

Sponsors: By Senators Prentice, Fairley, Rasmussen, Fraser, Keiser, Costa, Franklin and Spanel.

Brief History:

Committee Activity:

Commerce & Labor: 2/27/02, 2/28/02 [DP].

Floor Activity:

Passed House: 3/8/02, 82-14.

Brief Summary of Engrossed Bill

- Establishes limits on mandatory overtime for registered nurses and licensed practical nurses employed by certain health care facilities.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Clements, Ranking Minority Member; Kenney and Lysen.

Minority Report: Do not pass. Signed by 2 members: Representatives Chandler and McMorris.

Staff: Chris Cordes (786-7103).

Background:

Both federal and Washington minimum wage laws establish requirements related to overtime work. These laws require covered employees to receive overtime pay for hours worked over 40 hours per week. These wage laws do not, however, prohibit an

employer from requiring employees to work overtime. Other laws establish overtime limits for certain employees in specified industries. For example, regulations adopted under the federal Motor Carrier Act prohibit truck drivers from working more than a maximum number of hours in a specified period.

Summary of Bill:

Limits on mandatory overtime are established for registered nurses and licensed practical nurses who are involved in direct patient care or clinical services, paid an hourly wage, and employed by a health care facility. A health care facility means a facility that is licensed under specified laws as a hospital, a hospice, a rural health care facility, or a psychiatric hospital, including those facilities owned and operated by a political subdivision or the state. A nursing home or a home health agency is considered part of a health care facility if the home or agency is operating under the license of the health care facility.

Mandatory Overtime Limits

"Overtime" means work in excess of an agreed upon, predetermined, regularly scheduled shift within a 24-hour period not to exceed 12 hours in a 24-hour period or 80 hours in a consecutive 14-day period.

Covered employees may not be required to work overtime. Attempts to compel employees to work overtime are contrary to public policy and such a requirement in a contract or agreement is void. Acceptance of overtime must be voluntary. An employee's refusal to accept overtime work is not grounds for discrimination or other employment decisions adverse to the employee.

Exceptions to the Mandatory Overtime Limits

The mandatory overtime limits do not apply to overtime work that occurs:

- because of unforeseeable emergent circumstances, including an unforeseen national or state emergency, the activation of a health care facility disaster plan, or an unforeseen disaster or catastrophic event that substantially increases the need for health care services;
- because of prescheduled on-call time;
- when the employer documents that the employer has used reasonable efforts to obtain staffing, including seeking volunteers, contacting qualified individuals who have made themselves available, seeking the use of per diem staff, and seeking personnel from a contracted temporary agency, if permitted and if the employer regularly uses a contracted temporary agency. An employer has not used reasonable efforts if overtime work is used to fill vacancies resulting from chronic staff shortages; or
- when an employee is required to work overtime to complete a patient care procedure

already in progress where the employee's absence could have an adverse effect on the patient.

Civil Penalties for Violations

The Department of Labor and Industries must investigate complaints of mandatory overtime violations. The department may issue and enforce violations as civil infractions, with a maximum penalty of \$1,000 for each infraction, up to three infractions. If a health care facility has four or more violations, the penalty is \$2,500 for the fourth violation and \$5,000 for each subsequent violation.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This is a compromise bill that the parties could accept. There are still concerns about non-nursing staff and there is a need to address staffing shortages. However, this bill is a good first step in addressing the problems that are causing nurses to leave the profession. Safety for patients will improve if nurses are not forced to work overtime when tired. The hospital's concerns were addressed in this version by adding safeguards. In facilities that have both hospital wards and nursing home wards, the bill treats staff in both wards the same and avoids dual standards.

Testimony Against: There are about a dozen hospitals that have long-term care units. These employers are concerned about including the long-term care units under the new overtime limits and concerned about the potential cost. Some facilities are already in difficult financial positions, especially in rural areas. They would prefer to be removed from the bill as they do not see that staff cross-over from hospital wards to long-term care wards is an issue. It is not clear whether the hospitals and other institutional facilities operated by the Department of Social and Health Services (DSHS) are intended to be included. If they are included, DSHS has serious concerns about the standard for "reasonable efforts" since chronic staff shortages could occur. If staffing is not adequate, this could jeopardize accreditation for the institutions. Although the department takes all possible steps to avoid overtime, some flexibility is needed.

Testified: (In support) Ann Simons, United Food and Commercial Workers; Tamara Warnke, Washington State Nurses Association; Dawn Morrell; and Lisa Thatcher, Washington State Hospital Association.

(Concerns) Harry Steinmetz, Washington Association of Housing and Services for the

Aging.

(Opposed) Tim Brown and Karl Brimmer, Department of Social and Health Services.