

---

SENATE BILL 5368

---

State of Washington

59th Legislature

2005 Regular Session

By Senators Keiser, Benton, Kastama, Thibaudeau, Franklin, McAuliffe and Rasmussen

Read first time 01/21/2005. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to revising the mandatory overtime prohibition  
2 applicable to nurses, but only with respect to increasing the types of  
3 health care facilities that are subject to the prohibition from  
4 requiring nurses to perform overtime work and limiting the exceptions  
5 from the prohibition related to prescheduled on-call time and  
6 completion of patient care procedures; and amending RCW 49.28.130,  
7 49.28.140, and 72.01.042.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 **Sec. 1.** RCW 49.28.130 and 2002 c 112 s 2 are each amended to read  
10 as follows:

11 The definitions in this section apply throughout this section and  
12 RCW 49.28.140 and 49.28.150 unless the context clearly requires  
13 otherwise.

14 (1) "Employee" means a licensed practical nurse or a registered  
15 nurse licensed under chapter 18.79 RCW employed by a health care  
16 facility who is involved in direct patient care activities or clinical  
17 services and receives an hourly wage.

18 (2) "Employer" means an individual, partnership, association,

1 corporation, the state (~~(institution)~~), a political subdivision of the  
2 state, or person or group of persons, acting directly or indirectly in  
3 the interest of a health care facility.

4 (3)(a) "Health care facility" means the following facilities, or  
5 any part of the facility, including such facilities if owned and  
6 operated by a political subdivision or instrumentality of the state,  
7 that operate(~~(s)~~) on a twenty-four hours per day, seven days per week  
8 basis:

9 (i) Hospices licensed under chapter 70.127 RCW(~~(7)~~);

10 (ii) Hospitals licensed under chapter 70.41 RCW(~~(7)~~);

11 (iii) Rural health care facilities as defined in RCW 70.175.020(~~(7~~  
12 and));

13 (iv) Psychiatric hospitals licensed under chapter 71.12 RCW(~~(7~~  
14 and  
15 includes such facilities if owned and operated by a political  
16 subdivision or instrumentality of the state));

17 (v) State hospitals as defined in RCW 72.23.010;

18 (vi) State veterans' homes as defined in RCW 72.36.035;

19 (vii) The residential habilitation centers listed in RCW  
20 71A.20.020, 71A.20.030, and 71A.20.040;

21 (viii) Facilities owned and operated by the department of  
22 corrections or by a governing unit as defined in RCW 70.48.020 in a  
23 correctional institution as defined in RCW 9.94.049(1) that provide  
24 health care services to inmates as defined in RCW 72.09.015 or to jail  
25 inmates; and

26 (ix) Facilities in an institution as defined in RCW 13.40.020(12)  
27 or a detention facility as defined in RCW 13.40.020(9) that provide  
28 health care services to juveniles committed to the custody of the  
29 department of social and health services under RCW 13.40.185 or  
30 confined in a detention facility.

31 (b) If a nursing home regulated under chapter 18.51 RCW (~~(or a home~~  
32 health agency regulated under chapter 70.127 RCW)) is operating under  
33 the license of a health care facility, the nursing home (~~(or home~~  
34 health agency)) is considered part of the health care facility for the  
35 purposes of this subsection.

36 (4) "Overtime" means the hours worked in excess of an agreed upon,  
37 predetermined, regularly scheduled shift within a twenty-four hour  
38 period not to exceed twelve hours in a twenty-four hour period or  
eighty hours in a consecutive fourteen-day period.

1 (5) "On-call time" means time spent by an employee who is not  
2 working on the premises of the place of employment but who is  
3 compensated for availability or who, as a condition of employment, has  
4 agreed to be available to return to the premises of the place of  
5 employment on short notice if the need arises.

6 (6) "Reasonable efforts" means that the employer, to the extent  
7 reasonably possible, does all of the following but is unable to obtain  
8 staffing coverage:

9 (a) Seeks individuals to volunteer to work extra time from all  
10 available qualified staff who are working;

11 (b) Contacts qualified employees who have made themselves available  
12 to work extra time;

13 (c) Seeks the use of per diem staff; and

14 (d) Seeks personnel from a contracted temporary agency when such  
15 staffing is permitted by law or an applicable collective bargaining  
16 agreement, and when the employer regularly uses a contracted temporary  
17 agency.

18 (7) "Unforeseeable emergent circumstance" means (a) any unforeseen  
19 declared national, state, or municipal emergency; (b) when a health  
20 care facility disaster plan is activated; or (c) any unforeseen  
21 disaster or other catastrophic event which substantially affects or  
22 increases the need for health care services.

23 **Sec. 2.** RCW 49.28.140 and 2002 c 112 s 3 are each amended to read  
24 as follows:

25 (1) No employee of a health care facility may be required to work  
26 overtime. Attempts to compel or force employees to work overtime are  
27 contrary to public policy, and any such requirement contained in a  
28 contract, agreement, or understanding is void.

29 (2) The acceptance by any employee of overtime is strictly  
30 voluntary, and the refusal of an employee to accept such overtime work  
31 is not grounds for discrimination, dismissal, discharge, or any other  
32 penalty, threat of reports for discipline, or employment decision  
33 adverse to the employee.

34 (3) This section does not apply to overtime work that occurs:

35 (a) Because of any unforeseeable emergent circumstance;

36 (b) Because of prescheduled on-call time, unless such on-call time

1 is used to fill vacancies resulting from chronic, foreseeable staff  
2 shortages or is used in patient care units typically staffed on a  
3 twenty-four hour basis;

4 (c) When the employer documents that the employer has used  
5 reasonable efforts to obtain staffing. An employer has not used  
6 reasonable efforts if overtime work is used to fill vacancies resulting  
7 from chronic, foreseeable staff shortages; or

8 (d) When an employee is required to work overtime to complete a  
9 patient care procedure already in progress where the absence of the  
10 employee could have an adverse effect on the patient, as long as the  
11 health care facility made a good faith effort to schedule such patient  
12 care procedures so that overtime would not be required.

13 **Sec. 3.** RCW 72.01.042 and 1981 c 136 s 67 are each amended to read  
14 as follows:

15 (1)(a) The hours of labor for each full time employee shall be a  
16 maximum of eight hours in any work day and forty hours in any work  
17 week.

18 (b) Employees required to work in excess of the eight-hour maximum  
19 per day or the forty-hour maximum per week shall be compensated by not  
20 less than equal hours of compensatory time off or, in lieu thereof, a  
21 premium rate of pay per hour equal to not less than one-one hundred and  
22 seventy-sixth of the employee's gross monthly salary: PROVIDED, That  
23 in the event that an employee is granted compensatory time off, such  
24 time off should be given within the calendar year and in the event that  
25 such an arrangement is not possible the employee shall be given a  
26 premium rate of pay: PROVIDED FURTHER, That compensatory time and/or  
27 payment thereof shall be allowed only for overtime as is duly  
28 authorized and accounted for under rules and regulations established by  
29 the secretary.

30 (2) Overtime requirements for an employee under this section who is  
31 also an employee of a health care facility under chapter 49.28 RCW are  
32 subject to RCW 49.28.130 through 49.28.150.

--- END ---