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**SUBSTITUTE HOUSE BILL 2824**

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**State of Washington                      60th Legislature                      2008 Regular Session**

**By** House Commerce & Labor (originally sponsored by Representatives Green, Appleton, Sells, Hunt, Nelson, Conway, Morrell, Darneille, McIntire, Sullivan, Wood, Simpson, Hasegawa, and O'Brien)

READ FIRST TIME 02/04/08.

1            AN ACT Relating to hours of labor for nurses; amending RCW  
2 49.28.130, 49.28.140, 49.28.150, and 72.01.042; and adding a new  
3 section to chapter 49.12 RCW.

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

5            NEW SECTION.    **Sec. 1.** A new section is added to chapter 49.12 RCW  
6 to read as follows:

7            (1) Employees of health care facilities shall be allowed scheduled  
8 meal and rest periods as specified in rules adopted by the department  
9 of labor and industries under this chapter. Employees of health care  
10 facilities are not engaged in the type of work that allows employees to  
11 take intermittent rest periods in place of scheduled meal and rest  
12 periods.

13            (2) The definitions in RCW 49.28.130 apply to this section.

14            **Sec. 2.** RCW 49.28.130 and 2002 c 112 s 2 are each amended to read  
15 as follows:

16            The definitions in this section apply throughout this section and  
17 RCW 49.28.140 and 49.28.150 unless the context clearly requires  
18 otherwise.

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

5 (2) "Employer" means an individual, partnership, association,  
6 corporation, the state (~~(institution)~~), a political subdivision of the  
7 state, or person or group of persons, acting directly or indirectly in  
8 the interest of a health care facility.

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

14 (i) Hospices licensed under chapter 70.127 RCW(~~((τ))~~);

15 (ii) Hospitals licensed under chapter 70.41 RCW(~~((τ))~~);

16 (iii) Rural health care facilities as defined in RCW 70.175.020(~~((τ~~  
17 ~~and))~~);

18 (iv) Psychiatric hospitals licensed under chapter 71.12 RCW(~~((τ~~  
19 ~~and~~ includes such facilities if owned and operated by a political  
20 subdivision or instrumentality of the state));

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

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

23 (vii) Residential habilitation centers listed in RCW 71A.20.020,  
24 71A.20.030, and 71A.20.040;

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

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

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

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

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

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

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

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

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

18 (d) Seeks personnel from a contracted temporary agency when such  
19 staffing is permitted by law or an applicable collective bargaining  
20 agreement, and when the employer regularly uses a contracted temporary  
21 agency.

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

27 **Sec. 3.** RCW 49.28.140 and 2002 c 112 s 3 are each amended to read  
28 as follows:

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

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

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

2 (a) Because of any unforeseeable emergent circumstance;

3 (b) Because of prescheduled on-call time unless such on-call time  
4 is used to fill vacancies resulting from chronic staff shortages or is  
5 used due to a lack of good faith by the health care facility to  
6 schedule patient procedures so that overtime would not be required;

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

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

16 **Sec. 4.** RCW 49.28.150 and 2002 c 112 s 4 are each amended to read  
17 as follows:

18 The department of labor and industries shall investigate complaints  
19 of violations of RCW 49.28.140 and section 1 of this act. A violation  
20 of RCW 49.28.140 or section 1 of this act is a class 1 civil infraction  
21 in accordance with chapter 7.80 RCW, except that the maximum penalty is  
22 one thousand dollars for each infraction up to three infractions. If  
23 there are four or more violations of RCW 49.28.140, section 1 of this  
24 act, or any combination thereof for a health care facility, the  
25 employer is subject to a fine of two thousand five hundred dollars for  
26 the fourth violation, and five thousand dollars for each subsequent  
27 violation. The department of labor and industries is authorized to  
28 issue and enforce civil infractions according to chapter 7.80 RCW.

29 **Sec. 5.** RCW 72.01.042 and 1981 c 136 s 67 are each amended to read  
30 as follows:

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

34 (b) Employees required to work in excess of the eight-hour maximum  
35 per day or the forty-hour maximum per week shall be compensated by not  
36 less than equal hours of compensatory time off or, in lieu thereof, a

1 premium rate of pay per hour equal to not less than one-one hundred and  
2 seventy-sixth of the employee's gross monthly salary: PROVIDED, That  
3 in the event that an employee is granted compensatory time off, such  
4 time off should be given within the calendar year and in the event that  
5 such an arrangement is not possible the employee shall be given a  
6 premium rate of pay: PROVIDED FURTHER, That compensatory time and/or  
7 payment thereof shall be allowed only for overtime as is duly  
8 authorized and accounted for under rules and regulations established by  
9 the secretary.

10 (2) Overtime requirements for an employee under this section who is  
11 also an employee of a health care facility under chapter 49.28 RCW are  
12 subject to RCW 49.28.130 through 49.28.150 and section 1 of this act.

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