

2SHB 2501 - H AMD 1134

By Representative Condotta

FAILED 02/14/2012

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 49.28.130 and 2011 c 251 s 1 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this section and
6 RCW 49.28.140 and 49.28.150 unless the context clearly requires
7 otherwise.

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

12 (2) "Employer" means an individual, partnership, association,
13 corporation, the state, a political subdivision of the state, or
14 person or group of persons, acting directly or indirectly in the
15 interest of a health care facility.

16 (3)(a) "Health care facility" means the following facilities, or
17 any part of the facility, including such facilities if owned and
18 operated by a political subdivision or instrumentality of the state,
19 that operate on a twenty-four hours per day, seven days per week
20 basis:

- 21 (i) Hospices licensed under chapter 70.127 RCW;
- 22 (ii) Hospitals licensed under chapter 70.41 RCW;
- 23 (iii) Rural health care facilities as defined in RCW 70.175.020;
- 24 (iv) Psychiatric hospitals licensed under chapter 71.12 RCW; or
- 25 (v) Facilities owned and operated by the department of corrections
26 or by a governing unit as defined in RCW 70.48.020 in a correctional
27

1 institution as defined in RCW 9.94.049 that provide health care
2 services to inmates as defined in RCW 72.09.015.

3 (b) If a nursing home regulated under chapter 18.51 RCW or a home
4 health agency regulated under chapter 70.127 RCW is operating under
5 the license of a health care facility, the nursing home or home health
6 agency is considered part of the health care facility for the purposes
7 of this subsection.

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

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

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

20 (a) Analyzes routine utilization trends to ensure that the
21 hospital department's normal operating hours are consistent with these
22 trends and only schedules employees to be on-call for hours outside
23 the hospital department's normal operating hours;

24 (b) Seeks individuals to volunteer to work extra time from all
25 available qualified staff who are working;

26 (~~(b)~~) (c) Contacts qualified employees who have made themselves
27 available to work extra time;

28 (~~(e)~~) (d) Seeks the use of per diem staff; and

29 (~~(d)~~) (e) Seeks personnel from a contracted temporary agency
30 when such staffing is permitted by law or an applicable collective
31 bargaining agreement, and when the employer regularly uses a
32 contracted temporary agency.

33 (7) "Unforeseeable emergent circumstance" means (a) any unforeseen
34 declared national, state, or municipal emergency; (b) when a health

1 care facility disaster plan is activated; or (c) any unforeseen
2 disaster or other catastrophic event which substantially affects or
3 increases the need for health care services.

4 (8) "Utilization trends" means the process through which a
5 hospital analyzes its patient care work to determine the volume of
6 patients cared for by month of the year, day of the week, and hours of
7 the day.

8
9 **Sec. 2.** RCW 49.28.140 and 2002 c 112 s 3 are each amended to read
10 as follows:

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

15 (2) The acceptance by any employee of overtime is strictly
16 voluntary, and the refusal of an employee to accept such overtime work
17 is not grounds for discrimination, dismissal, discharge, or any other
18 penalty, threat of reports for discipline, or employment decision
19 adverse to the employee.

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

21 (a) Because of any unforeseeable emergent circumstance;

22 (b) Because of prescheduled on-call time when the employer has
23 made a good faith effort to limit the use of on-call time to hours
24 outside the hospital department's normal operating hours;

25 (c) Because an employee voluntarily accepted an on-call shift
26 following a regularly scheduled shift and was called in to work the
27 on-call shift;

28 (d) When the employer documents that the employer has used
29 reasonable efforts to obtain staffing. An employer has not used
30 reasonable efforts if overtime work is used to fill vacancies
31 resulting from chronic staff shortages; or

32 ~~((d))~~ (e) When an employee is required to work overtime to
33 complete a patient care procedure already in progress where the
34 absence of the employee could have an adverse effect on the patient.

1 The health care facility must make a good faith effort to ensure
2 scheduled procedures do not routinely extend beyond the hospital
3 department's normal operating hours."

4
5

EFFECT: Strikes the underlying bill and changes the exceptions to the prohibition on mandatory overtime as follows:

- Limits the exception for prescheduled on-call time to situations where the employer made a good faith effort to limit the use of on-call time to hours outside a hospital department's normal operating hours.
- Adds an exception when an employee voluntarily accepted an on-call shift following a regularly scheduled shift.
- Defines "reasonable efforts" to obtain staffing to include analyzing routine utilization trends, making a hospital department's normal operating hours consistent with those trends, and only scheduling employees to be on-call for hours outside normal operating hours.
- Requires the health care facility to make a good faith effort to ensure that scheduled procedures do not routinely extend beyond the hospital department's normal operating hours.

--- END ---