

SENATE BILL REPORT

E2SHB 2501

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 23, 2012

Title: An act relating to mandatory overtime for employees of health care facilities.

Brief Description: Placing restrictions on mandatory overtime for employees of health care facilities.

Sponsors: House Committee on General Government Appropriations & Oversight (originally sponsored by Representatives Green, Cody, Jinkins, Ryu, Lytton, Sells, Reykdal, Kirby, Van De Wege, Moeller, Darneille, Miloscia, Santos and Roberts).

Brief History: Passed House: 2/14/12, 57-41.

Committee Activity: Labor, Commerce & Consumer Protection: 2/21/12, 2/23/12 [DPA, DNP, w/oRec].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: Do pass as amended.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Keiser and Kline.

Minority Report: Do not pass.

Signed by Senators Holmquist Newbry, Ranking Minority Member; Hewitt.

Minority Report: That it be referred without recommendation.

Signed by Senator King, Assistant Ranking Minority Member.

Staff: Ingrid Mungia (786-7423)

Background: Both federal and state minimum wage laws establish requirements related to overtime work. These laws require that covered employees receive overtime pay for hours worked over 40 hours per week. With some exceptions, these wage laws do not prohibit an employer from requiring employees to work overtime.

One exception prohibits covered health care facilities from requiring overtime for registered nurses and licensed practical nurses who are involved in direct patient care and are paid an hourly wage. Health care facilities covered by this prohibition on mandatory overtime are hospitals, hospices, rural health care facilities, psychiatric hospitals, some nursing homes, and facilities owned or operated by prisons and jails that provide health care services to

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inmates in the custody of the Department of Corrections. In the context of this prohibition, overtime means work in excess of an agreed upon, regularly scheduled shift of not more than 12 hours in a 24-hour period or 80 hours in a 14-day period.

The prohibition on mandatory overtime does not apply to overtime work that occurs:

- because of an unforeseeable emergency or disaster;
- because of prescheduled on-call time;
- when the employer documents reasonable efforts to obtain staffing; or
- when an employee must work overtime to complete a patient care procedure already in progress where the employee's absence would have an adverse effect on the patient.

The state may designate hospitals as critical access hospitals in accordance with criteria provided in federal law. Critical access hospitals are located in rural areas and have no more than 25 acute beds. Washington currently has 38 hospitals certified as critical access hospitals.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Amendments): The prohibition on mandatory overtime in health care facilities applies to surgical technologists, diagnostic radiologic technologists, cardiovascular invasive specialists, respiratory technicians, and certified nursing assistants. The prohibition applies to employees who are covered by a collective bargaining agreement in addition to those who receive an hourly wage.

For health care facilities owned and operated by prisons and jails, the requirement that the facility provide care to inmates in state custody is deleted.

The exceptions to the prohibition on mandatory overtime are modified. The exception for prescheduled on-call time applies only if the prescheduled on-call time is necessary for immediate and unanticipated patient care emergencies.

The employer may not use prescheduled on-call time to fill chronic or foreseeable staff shortages. The exemption does not apply to critical access hospitals.

Employers also may not schedule non-emergency procedures that would require overtime.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Amendments): Critical access hospitals may use prescheduled on-call time to fill chronic or foreseeable staff shortages.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony as Heard in Committee: PRO: This bill expands to include technicians and a number of health care workers that the statute did not have before. The bill is to change this narrow exemption from prescheduled on-call from being occasional to becoming routine. There are over 100,000 errors in hospitals in the nation by health care workers that kill people. We need to be sure we have safe places for people to get healthcare. I don't believe this bill will cost hospitals more, they simply have to plan more. This bill will still allow for reasonable use of overtime, the bill clarifies that the pre-scheduled on-call exception is only for patient care emergencies. Nursing requires alertness, keen observation skills, critical thinking and decision making – all under time pressure. Fatigue wears away at the judgment needed to provide safe patient care. Nurses routinely intercept 87 percent of errors, before they even occur. Pre-scheduled on-call, originally intended for unanticipated and emergency cases, is now being used for regularly staff units. The law would still allow for appropriate use of overtime and pre-scheduled on-call. Employees could still volunteer to work overtime. This bill narrows the exception of pre-scheduled on-call to its original use – for patient care emergencies and not an excuse for unsafe staffing. This bill will protect patient safety. This bill is trying to close the loop hole currently in statute.

CON: Pre-scheduled on-call time is a nationally accepted common practice in our industry. This bill will not enhance patient care and actually puts our patients at risk. We have processes in place for staff to request when they want to take time off. We have staggered stop time, rolling closing time and added a surgical team when we are most busy to address the needs of our staff. Pre-scheduled on-call should not be used to extend a nurses work hours, but this bill goes about this the wrong way. Concerned that this bill will not allow us to serve patients. This bill is not operationally sound and fails to ensure patient safety. We based our scheduling on patient needs and operational flow.

Persons Testifying: PRO: Representative Green, prime sponsor; Sandra Baygan, SEIU 1199 NW; John Tweedy, Anne Tan Piazza, WSNA; Jane Teske, Sharon Ness, UFCW 141 Nurses; Chris Barton, SEIU; Julia Weinburg, RN.

CON: June Hara, Swedish Health Services; Patty Cochiell, Harrison Medical Center; Laurie Brown, Franciscan Health Systems; Mark Hainer, D.O., Harrison Medical Center; Lawrence Schfeter, M.D., Providence Medical Center; James McRae, Virginia Mason Medical; Lisa Thatcher, WSHA.