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**SUBSTITUTE HOUSE BILL 1680**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** House Commerce & Labor (originally sponsored by Representatives Green, Conway, Appleton, Wood, Campbell, Morrell, Hasegawa, Darneille, Crouse, Sequist, Williams, Cody, Moeller, Priest, Smith, Sullivan, Kenney, and Ormsby)

READ FIRST TIME 02/17/09.

1           AN ACT Relating to limiting the exceptions to the prohibition on  
2 mandatory overtime for employees of health care facilities; and  
3 amending RCW 49.28.130 and 49.28.140.

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

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

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

10           (1) "Employee" means a person who is (a) a licensed practical nurse  
11 or a registered nurse licensed under chapter 18.79 RCW, a surgical  
12 technologist registered under chapter 18.215 RCW, a radiologic  
13 technologist certified under chapter 18.84 RCW, a diagnostic medical  
14 sonographer who produces ultrasonic recordings of internal organs for  
15 use by physicians, or a cardiovascular technologist or technician who  
16 conducts tests on pulmonary or cardiovascular systems of patients for  
17 diagnostic purposes; and (b) employed by a health care facility who is  
18 involved in direct patient care activities or clinical services and  
19 receives an hourly wage.

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

5 (3) "Health care facility" means the following facilities, or any  
6 part of the facility, that operates on a twenty-four hours per day,  
7 seven days per week basis: Hospices licensed under chapter 70.127 RCW,  
8 hospitals licensed under chapter 70.41 RCW, rural health care  
9 facilities as defined in RCW 70.175.020, and psychiatric hospitals  
10 licensed under chapter 71.12 RCW, and includes such facilities if owned  
11 and operated by a political subdivision or instrumentality of the  
12 state. If a nursing home regulated under chapter 18.51 RCW or a home  
13 health agency regulated under chapter 70.127 RCW is operating under the  
14 license of a health care facility, the nursing home or home health  
15 agency is considered part of the health care facility for the purposes  
16 of this subsection.

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

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

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

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

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

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

34 (d) Seeks personnel from a contracted temporary agency when such  
35 staffing is permitted by law or an applicable collective bargaining  
36 agreement, and when the employer regularly uses a contracted temporary  
37 agency.

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

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

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

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

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

18 (a) Because of any unforeseeable emergent circumstance;

19 (b) Because of prescheduled on-call time. Prescheduled on-call  
20 time must only be used for unanticipated and immediate patient care  
21 emergencies. Prescheduled on-call time may not be used to fill chronic  
22 or foreseeable staff shortages. The employer shall document reasonable  
23 efforts to obtain staffing to avoid prescheduled on-call time;

24 (c) When the employer documents that the employer has used  
25 reasonable efforts to obtain staffing. An employer has not used  
26 reasonable efforts if overtime work is used to fill vacancies resulting  
27 from chronic staff shortages; or

28 (d) When an employee is required to work overtime to complete a  
29 patient care procedure already in progress where the absence of the  
30 employee could have an adverse effect on the patient. The employer may  
31 not schedule nonemergency procedures that would require overtime.

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