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**SUBSTITUTE HOUSE BILL 2601**

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**State of Washington**

**57th Legislature**

**2002 Regular Session**

**By** House Committee on Commerce & Labor (originally sponsored by Representatives Cody, Campbell, Conway, Skinner, Wood, McDermott, Ballasiotes, McIntire, Darneille and Ogden)

Read first time 02/08/2002. Referred to Committee on .

1 AN ACT Relating to prohibiting health care facilities from  
2 requiring employees to perform overtime work; adding new sections to  
3 chapter 49.28 RCW; creating a new section; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** Washington state is experiencing a critical  
6 shortage of qualified, competent health care workers. To safeguard the  
7 health, efficiency, and general well-being of health care workers and  
8 promote patient safety and quality of care, the legislature finds, as  
9 a matter of public policy, that required overtime work should be  
10 limited in order to ensure the public will continue to receive safe  
11 quality care.

12 NEW SECTION. **Sec. 2.** The definitions in this section apply  
13 throughout this section and sections 3 and 4 of this act unless the  
14 context clearly requires otherwise.

15 (1) "Employee" means an individual employed by a health care  
16 facility who is involved in direct patient care activities or clinical  
17 services and receives an hourly wage, but does not include a physician.

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 hospices licensed under chapter  
6 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health  
7 care facilities as defined in RCW 70.175.020, and psychiatric hospitals  
8 licensed under chapter 71.12 RCW, and includes such facilities if owned  
9 and operated by a political subdivision or instrumentality of the  
10 state. If a nursing home regulated under chapter 18.51 RCW or a home  
11 health agency regulated under chapter 70.127 RCW is operating under the  
12 license of a health care facility, the nursing home or home health  
13 agency is considered part of the health care facility for the purposes  
14 of this subsection.

15 (4) "Overtime" means the hours worked in excess of any of the  
16 following:

17 (a) An agreed upon, predetermined, regularly scheduled shift;

18 (b) Twelve hours in a twenty-four-hour period; or

19 (c) Eighty hours in a consecutive fourteen-day period.

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

25 (6) "Reasonable efforts" means that the employer does all of the  
26 following but is unable to obtain staffing coverage:

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

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

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

32 (d) Seeks personnel from a contracted temporary agency when such  
33 staffing is permitted by law or an applicable collective bargaining  
34 agreement.

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

1        NEW SECTION.    **Sec. 3.**    (1) No employee of a health care facility  
2 may be required to work overtime. This policy is a minimum employment  
3 standard and any requirement contained in a contract, agreement, or  
4 understanding that is less favorable to an employee than this minimum  
5 employment standard is void.

6        (2) Compelling or attempting to compel an employee to work overtime  
7 is contrary to public policy and a violation of this section. The  
8 acceptance by any employee of overtime work is strictly voluntary, and  
9 the refusal of an employee to accept such overtime work is not grounds  
10 for discrimination, dismissal, discharge, or any other penalty, threat  
11 of reports for discipline, or employment decision adverse to the  
12 employee.

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

14        (a) Because of any unforeseeable emergent circumstance;

15        (b) During prescheduled on-call time if, as of the effective date  
16 of this section, such prescheduled on-call time was a customary and  
17 long-standing practice in the unit or department of the health care  
18 facility; or

19        (c) Because of an unpredictable and unavoidable occurrence at  
20 unscheduled intervals relating to health care delivery that requires  
21 immediate action if the employer shows that the employer has exhausted  
22 reasonable efforts to obtain staffing. An employer has not used  
23 reasonable efforts if overtime work is used to fill vacancies resulting  
24 from chronic staff shortages.

25        NEW SECTION.    **Sec. 4.**    (1) The department of labor and industries  
26 shall investigate complaints of violations of section 3 of this act.  
27 A violation of section 3 of this act is a class 1 civil infraction in  
28 accordance with chapter 7.80 RCW, except that the maximum penalty is  
29 one thousand dollars for each infraction up to three infractions. If  
30 there are four or more violations of section 3 of this act for a health  
31 care facility, the employer is subject to a fine of two thousand five  
32 hundred dollars for the fourth violation, and five thousand dollars for  
33 each subsequent violation. The department of labor and industries is  
34 authorized to issue and enforce civil infractions according to chapter  
35 7.80 RCW.

1        NEW SECTION.    **Sec. 5.**    Sections 2 through 4 of this act are each  
2    added to chapter 49.28 RCW.

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