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**SUBSTITUTE SENATE BILL 5419**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** Senate Committee on Health & Long-Term Care (originally sponsored by Senators Deccio, Thibaudeau, Roach, Keiser, Kohl-Welles and McAuliffe)

READ FIRST TIME 03/03/03.

1       AN ACT Relating to increasing the number of health care facilities  
2 that are prohibited from requiring nurses to perform overtime work;  
3 amending RCW 49.28.130 and 72.01.042; and declaring an emergency.

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 licensed practical nurse or a registered  
11 nurse licensed under chapter 18.79 RCW employed by a health care  
12 facility who is involved in direct patient care activities or clinical  
13 services and receives an hourly wage. However, with respect to home  
14 health agencies covered under subsection (3)(a)(iii) of this section,  
15 this definition only includes those employees who are in a bargaining  
16 unit of employees of a hospital covered under subsection (3)(a)(ii) of  
17 this section.

18       (2) "Employer" means an individual, partnership, association,

1 corporation, state (~~(institution)~~) agency, political subdivision of the  
2 state, or person or group of persons, acting directly or indirectly in  
3 the interest of a health care facility.

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

9 (i) Hospices licensed under chapter 70.127 RCW(~~(7)~~);

10 (ii) Hospitals licensed under chapter 70.41 RCW(~~(7)~~);

11 (iii) Home health agencies licensed under chapter 70.127 RCW, but  
12 only to the extent provided in subsection (1) of this section;

13 (iv) Rural health care facilities as defined in RCW 70.175.020(~~(7~~  
14 and));

15 (v) Psychiatric hospitals licensed under chapter 71.12 RCW(~~(7~~  
16 and  
17 includes such facilities if owned and operated by a political  
18 subdivision or instrumentality of the state));

19 (vi) State hospitals as defined in RCW 72.23.010;

20 (vii) State veterans' homes as defined in RCW 72.36.035;

21 (viii) The residential habilitation centers listed in RCW  
22 71A.20.020, 71A.20.030, and 71A.20.040;

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

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

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

37 (4) "Overtime" means the hours worked in excess of an agreed upon,  
predetermined, regularly scheduled shift within a twenty-four hour

1 period not to exceed twelve hours in a twenty-four hour period or  
2 eighty hours in a consecutive fourteen-day period.

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

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

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

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

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

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

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

25 **Sec. 2.** RCW 72.01.042 and 1981 c 136 s 67 are each amended to read  
26 as follows:

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

30 (b) Employees required to work in excess of the eight-hour maximum  
31 per day or the forty-hour maximum per week shall be compensated by not  
32 less than equal hours of compensatory time off or, in lieu thereof, a  
33 premium rate of pay per hour equal to not less than one-one hundred and  
34 seventy-sixth of the employee's gross monthly salary: PROVIDED, That  
35 in the event that an employee is granted compensatory time off, such  
36 time off should be given within the calendar year and in the event that  
37 such an arrangement is not possible the employee shall be given a

1 premium rate of pay: PROVIDED FURTHER, That compensatory time and/or  
2 payment thereof shall be allowed only for overtime as is duly  
3 authorized and accounted for under rules and regulations established by  
4 the secretary.

5 (2) Overtime requirements for an employee under this section who is  
6 also an employee of a health care facility under chapter 49.28 RCW are  
7 subject to RCW 49.28.130 through 49.28.150.

8 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
9 preservation of the public peace, health, or safety, or support of the  
10 state government and its existing public institutions, and takes effect  
11 immediately.

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