AN ACT
relating to staffing, overtime, and other employment protections for nurses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 4, Health and Safety Code, is amended by adding Chapters 257 and 258 to read as follows:

CHAPTER 257. NURSE STAFFING

Sec. 257.001. DEFINITIONS. In this chapter:
(1) "Committee" means a nurse staffing committee required by this chapter.
(2) "Department" means the Department of State Health Services.
(3) "Hospital" means:
(A) a general hospital or special hospital, as those terms are defined by Section 241.003, including a hospital maintained or operated by this state; or
(B) a mental hospital licensed under Chapter 577.
(4) "Patient care unit" means a unit or area of a hospital in which registered nurses provide patient care.

Sec. 257.002. LEGISLATIVE FINDINGS. (a) The legislature finds that:
(1) research supports a conclusion that adequate nurse staffing is directly related to positive patient outcomes and nurse satisfaction with the practice environment;
AAnurse satisfaction with the practice environment is in large measure determined by providing an adequate level of nurse staffing based on research findings and patient intensity; (3) nurse satisfaction and patient safety can be adversely affected when nurses work excessive hours; and (4) hospitals and nurses share a mutual interest in patient safety initiatives that create a healthy environment for nurses and appropriate care for patients.

(b) In order to protect patients, support greater retention of registered nurses, and promote adequate nurse staffing, the legislature intends to establish a mechanism whereby nurses and hospital management shall participate in a joint process regarding decisions about nurse staffing.

Sec. 257.003. NURSE STAFFING POLICY AND PLAN. (a) The governing body of a hospital shall adopt, implement, and enforce a written nurse staffing policy to ensure that an adequate number and skill mix of nurses are available to meet the level of patient care needed. The policy must include a process for:

(1) requiring the hospital to give significant consideration to the nurse staffing plan recommended by the hospital's nurse staffing committee and to that committee's evaluation of any existing plan;

(2) adopting, implementing, and enforcing an official nurse services staffing plan that is based on the needs of each patient care unit and shift and on evidence relating to patient care needs;

(3) using the official nurse services staffing plan as
a component in setting the nurse staffing budget;

(4) encouraging nurses to provide input to the committee relating to nurse staffing concerns;

(5) protecting from retaliation nurses who provide input to the committee; and

(6) ensuring compliance with rules adopted by the executive commissioner of the Health and Human Services Commission relating to nurse staffing.

(b) The official nurse services staffing plan adopted under Subsection (a) must:

(1) reflect current standards established by private accreditation organizations, governmental entities, national nursing professional associations, and other health professional organizations;

(2) set minimum staffing levels for patient care units that are:

(A) based on multiple nurse and patient considerations; and

(B) determined by the nursing assessment and in accordance with evidence-based safe nursing standards;

(3) include a method for adjusting the staffing plan for each patient care unit to provide staffing flexibility to meet patient needs; and

(4) include a contingency plan when patient care needs unexpectedly exceed direct patient care staff resources.

(c) The hospital shall:

(1) use the official nurse services staffing plan:
(A) as a component in setting the nurse staffing budget; and

(B) to guide the hospital in assigning nurses hospital-wide; and

(2) make readily available to nurses on each patient care unit at the beginning of each shift the official nurse services staffing plan levels and current staffing levels for that unit and that shift.

Sec. 257.004. NURSE STAFFING COMMITTEE. (a) A hospital shall establish a nurse staffing committee as a standing committee of the hospital.

(b) The committee shall be composed of members who are representative of the types of nursing services provided in the hospital.

(c) The chief nursing officer of the hospital is a voting member of the committee.

(d) At least 60 percent of the members of the committee must be registered nurses who:

(1) provide direct patient care during at least 50 percent of their work time; and

(2) are selected by their peers who provide direct patient care during at least 50 percent of their work time.

(e) The committee shall meet at least quarterly.

(f) Participation on the committee by a hospital employee as a committee member is part of the employee’s work time, and the hospital shall compensate that member for that time accordingly.

The hospital shall relieve a committee member of other work duties
during committee meetings.

(g) The committee shall:

(1) develop and recommend to the hospital's governing body a nurse staffing plan that meets the requirements of Section 257.003;

(2) review, assess, and respond to staffing concerns expressed to the committee;

(3) identify the nurse-sensitive outcome measures the committee will use to evaluate the effectiveness of the official nurse services staffing plan;

(4) evaluate, at least semiannually, the effectiveness of the official nurse services staffing plan and variations between the plan and the actual staffing; and

(5) submit to the hospital's governing body, at least semiannually, a report on nurse staffing and patient care outcomes, including the committee's evaluation of the effectiveness of the official nurse services staffing plan and aggregate variations between the staffing plan and actual staffing.

(h) In evaluating the effectiveness of the official nurse services staffing plan, the committee shall consider patient needs, nursing-sensitive quality indicators, nurse satisfaction measures collected by the hospital, and evidence-based nurse staffing standards.

Sec. 257.005. REPORTING OF STAFFING INFORMATION TO DEPARTMENT. (a) A hospital shall annually report to the department on:

(1) whether the hospital's governing body has adopted
a nurse staffing policy as required by Section 257.003;
(2) whether the hospital has established a nurse staffing committee as required by Section 257.004 that meets the membership requirements of that section;
(3) whether the nurse staffing committee has evaluated the hospital's official nurse services staffing plan as required by Section 257.004 and has reported the results of the evaluation to the hospital's governing body as provided by that section; and
(4) the nurse-sensitive outcome measures the committee adopted for use in evaluating the hospital's official nurse services staffing plan.

(b) Information reported under Subsection (a) is public information.

(c) To the extent possible, the department shall collect the data required under Subsection (a) as part of a survey required by the department under other law.

CHAPTER 258. MANDATORY OVERTIME FOR NURSES PROHIBITED

Sec. 258.001. DEFINITIONS. In this chapter:
(1) "Hospital" means:
      (A) a general hospital or special hospital, as those terms are defined by Section 241.003, including a hospital maintained or operated by this state; or
      (B) a mental hospital licensed under Chapter 577.
(2) "Nurse" means a registered nurse or vocational nurse licensed under Chapter 301, Occupations Code.
(3) "On-call time" means time spent by a nurse who is not working but who is compensated for availability.
Sec. 258.002. MANDATORY OVERTIME. For purposes of this chapter, "mandatory overtime" means a requirement that a nurse work hours or days that are in addition to the hours or days scheduled, regardless of the length of a scheduled shift or the number of scheduled shifts each week. In determining whether work is mandatory overtime, prescheduled on-call time or time immediately before or after a scheduled shift necessary to document or communicate patient status to ensure patient safety is not included.

Sec. 258.003. PROHIBITION OF MANDATORY OVERTIME. (a) A hospital may not require a nurse to work mandatory overtime, and a nurse may refuse to work mandatory overtime.

(b) This section does not prohibit a nurse from volunteering to work overtime.

(c) A hospital may not use on-call time as a substitute for mandatory overtime.

Sec. 258.004. EXCEPTIONS. (a) Section 258.003 does not apply if:

(1) a health care disaster, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affects the county in which the nurse is employed or affects a contiguous county;

(2) a federal, state, or county declaration of emergency is in effect in the county in which the nurse is employed or is in effect in a contiguous county;

(3) there is an emergency or unforeseen event of a kind that:
(A) does not regularly occur;

(B) increases the need for health care personnel

at the hospital to provide safe patient care; and

(C) could not prudently be anticipated by the

hospital; or

(4) the nurse is actively engaged in an ongoing

medical or surgical procedure and the continued presence of the

nurse through the completion of the procedure is necessary to

ensure the health and safety of the patient.

(b) If a hospital determines that an exception exists under

Subsection (a)(3), the hospital shall, to the extent possible, make

a good faith effort to meet the staffing need through voluntary

overtime, including calling per diems and agency nurses, assigning

floats, or requesting an additional day of work from off-duty

employees.

Sec. 258.005. RETALIATION PROHIBITED. A hospital may not

suspend, terminate, or otherwise discipline or discriminate

against a nurse who refuses to work mandatory overtime.

SECTION 2. Subchapter H, Chapter 301, Occupations Code, is

amended by adding Section 301.356 to read as follows:

Sec. 301.356. REFUSAL OF MANDATORY OVERTIME. The refusal

by a nurse to work mandatory overtime as authorized by Chapter 258,

Health and Safety Code, does not constitute patient abandonment or

neglect.

SECTION 3. Subsections (b), (c), and (e), Section 301.413,

Occupations Code, are amended to read as follows:

(b) A person may not suspend, [or] terminate [the employment
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... or otherwise discipline or discriminate against [a person who:]

(1) reports, without malice, under this subchapter; 
(2) requests, in good faith, a nursing peer review committee determination under Section 303.005; or 
(3) refuses to engage in conduct as authorized by Section 301.352.

(c) A person who reports under this subchapter, refuses to engage in conduct as authorized by Section 301.352, or requests a nursing peer review committee determination under Section 303.005 has a cause of action against a person who violates Subsection (b), and may recover:

(1) the greater of:
   (A) actual damages, including damages for mental anguish even if no other injury is shown; or
   (B) $5,000; 
(2) exemplary damages; 
(3) court costs; and 
(4) reasonable attorney's fees.

(e) A person who brings an action under this section has the burden of proof. It is a rebuttable presumption that the person's employment was suspended, [or] terminated, or otherwise disciplined or discriminated against for reporting under this subchapter, for refusing to engage in conduct as authorized by Section 301.352, or for requesting a peer review committee determination under Section 303.005 if:
(1) the person was suspended, or terminated, or otherwise disciplined or discriminated against within 60 days after the date the report, refusal, or request was made; and

(2) the board or a court determines that:

(A) the report that is the subject of the cause of action was:

(i) authorized or required under Section 301.402, 301.4025, 301.403, 301.405, 301.406, 301.407, 301.408, 301.409, or 301.410; and

(ii) made without malice;

(B) the request for a peer review committee determination that is the subject of the cause of action was:

(i) authorized under Section 303.005; and

(ii) made in good faith; or

(C) the refusal to engage in conduct was authorized by Section 301.352.

SECTION 4. It is not the intent of the legislature that the executive commissioner of the Health and Human Services Commission rewrite the current rules of the Department of State Health Services relating to nurse staffing except to the extent the current rules conflict with this Act.

SECTION 5. (a) The executive commissioner of the Health and Human Services Commission shall adopt rules for the Department of State Health Services as required by this Act as soon as practicable after the effective date of this Act, but not later than January 1, 2010.

(b) The change in law made by this Act to Section 301.413,
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1 Occupations Code, applies to an action commenced on or after the
effective date of this Act. An action commenced before the
effective date of this Act is governed by the law as it existed
immediately before the effective date of this Act, and that law is
continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 2009.

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President of the Senate

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Speaker of the House

I hereby certify that S.B. No. 476 passed the Senate on
March 25, 2009, by the following vote: Yeas 31, Nays 0; and that
the Senate concurred in House amendment on May 29, 2009, by the
following vote: Yeas 31, Nays 0.

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Secretary of the Senate

I hereby certify that S.B. No. 476 passed the House, with
amendment, on May 20, 2009, by the following vote: Yeas 137,
Nays 0, two present not voting.

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Chief Clerk of the House

Approved:

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Date

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Governor