

By: Nelson

S.B. No. 476

A BILL TO BE ENTITLED

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;

1 (2) nurse satisfaction with the practice environment
2 is in large measure determined by providing an adequate level of
3 nurse staffing based on research findings and patient intensity;

4 (3) nurse satisfaction and patient safety can be
5 adversely affected when nurses work excessive hours; and

6 (4) hospitals and nurses share a mutual interest in
7 patient safety initiatives that create a healthy environment for
8 nurses and appropriate care for patients.

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

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

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

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

27 (3) using the official nurse services staffing plan as

1 a component in setting the nurse staffing budget;

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

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

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

9 (b) The official nurse services staffing plan developed
10 under Subsection (a) must:

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

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

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

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

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

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

26 (c) The hospital shall:

27 (1) use the official nurse services staffing plan:

1 (A) as a component in setting the nurse staffing
2 budget; and

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

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

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

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

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

17 (d) At least 50 percent of the members of the committee must
18 be registered nurses who:

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

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

23 (e) The committee shall meet at least quarterly.

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

27 The hospital shall relieve a committee member of other work duties

1 during committee meetings.

2 (g) The committee shall:

3 (1) develop and recommend to the hospital's governing
4 body a nurse staffing plan that meets the requirements of Section
5 257.003;

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

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

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

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

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

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

27 (1) whether the hospital's governing body has adopted

1 a nurse staffing policy as required by Section 257.003;

2 (2) whether the hospital has established a nurse
3 staffing committee as required by Section 257.004 that meets the
4 membership requirements of that section;

5 (3) whether the nurse staffing committee has evaluated
6 the hospital's official nurse services staffing plan as required by
7 Section 257.004 and has reported the results of the evaluation to
8 the hospital's governing body as provided by that section; and

9 (4) the nurse-sensitive outcome measures the
10 committee adopted for use in evaluating the hospital's official
11 nurse services staffing plan.

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

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

17 CHAPTER 258. MANDATORY OVERTIME FOR NURSES PROHIBITED

18 Sec. 258.001. DEFINITIONS. In this chapter:

19 (1) "Hospital" means:

20 (A) a general hospital or special hospital, as
21 those terms are defined by Section 241.003, including a hospital
22 maintained or operated by this state; or

23 (B) a mental hospital licensed under Chapter 577.

24 (2) "Nurse" means a registered nurse or vocational
25 nurse licensed under Chapter 301, Occupations Code.

26 (3) "On-call time" means time spent by a nurse who is
27 not working but who is compensated for availability.

1 Sec. 258.002. MANDATORY OVERTIME. For purposes of this
2 chapter, "mandatory overtime" means a requirement that a nurse work
3 hours or days that are in addition to the hours or days scheduled,
4 regardless of the length of a scheduled shift or the number of
5 scheduled shifts each week. In determining whether work is
6 mandatory overtime, prescheduled on-call time or time immediately
7 before or after a scheduled shift necessary to document or
8 communicate patient status to ensure patient safety is not
9 included.

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

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

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

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

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

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

26 (3) there is an emergency or unforeseen event of a kind
27 that:

1 (A) does not regularly occur;

2 (B) increases the need for health care personnel
3 at the hospital to provide safe patient care; and

4 (C) could not prudently be anticipated by the
5 hospital; or

6 (4) the nurse is actively engaged in an ongoing
7 medical or surgical procedure and the continued presence of the
8 nurse through the completion of the procedure is necessary to
9 ensure the health and safety of the patient.

10 (b) If a hospital determines that an exception exists under
11 Subsection (a)(3), the hospital shall, to the extent possible, make
12 a good faith effort to meet the staffing need through voluntary
13 overtime, including calling per diems and agency nurses, assigning
14 floats, or requesting an additional day of work from off-duty
15 employees.

16 Sec. 258.005. RETALIATION PROHIBITED. A hospital may not
17 suspend, terminate, or otherwise discipline or discriminate
18 against a nurse who refuses to work mandatory overtime. Section
19 301.413, Occupations Code, applies to an action that violates this
20 section.

21 SECTION 2. Subchapter H, Chapter 301, Occupations Code, is
22 amended by adding Section 301.356 to read as follows:

23 Sec. 301.356. REFUSAL OF MANDATORY OVERTIME. The refusal
24 by a nurse to work mandatory overtime as authorized by Chapter 258,
25 Health and Safety Code, does not constitute patient abandonment or
26 neglect.

27 SECTION 3. Section 301.413, Occupations Code, is amended by

1 amending Subsections (b), (c), and (e) and adding Subsection (g) to
2 read as follows:

3 (b) A person may not suspend, ~~[or]~~ terminate ~~[the employment~~
4 ~~of]~~, or otherwise discipline or discriminate against~~[r]~~ a person
5 who:

6 (1) reports, without malice, under this subchapter;
7 ~~[or]~~

8 (2) requests, in good faith, a nursing peer review
9 committee determination under Section 303.005;

10 (3) refuses to engage in conduct as authorized by
11 Section 301.352; or

12 (4) refuses to work mandatory overtime as authorized
13 by Chapter 258, Health and Safety Code.

14 (c) A person who reports under this subchapter, refuses to
15 engage in conduct as authorized by Section 301.352, refuses to work
16 mandatory overtime as authorized by Chapter 258, Health and Safety
17 Code, or requests a nursing peer review committee determination
18 under Section 303.005 has a cause of action against a person who
19 violates Subsection (b), and may recover:

20 (1) the greater of:

21 (A) actual damages, including damages for mental
22 anguish even if no other injury is shown; or

23 (B) \$5,000;

24 (2) exemplary damages;

25 (3) court costs; and

26 (4) reasonable attorney's fees.

27 (e) A person who brings an action under this section has the

1 burden of proof. It is a rebuttable presumption that the person
2 [~~person's employment~~] was suspended, [~~or~~] terminated, or otherwise
3 disciplined or discriminated against for reporting under this
4 subchapter, for refusing to engage in conduct as authorized by
5 Section 301.352, for refusing to work mandatory overtime as
6 authorized by Chapter 258, Health and Safety Code, or for
7 requesting a peer review committee determination under Section
8 303.005 if:

9 (1) the person was suspended, [~~or~~] terminated, or
10 otherwise disciplined or discriminated against within 60 days after
11 the date the report, refusal, or request was made; and

12 (2) the board or a court determines that:

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

15 (i) authorized or required under Section
16 301.402, 301.4025, 301.403, 301.405, 301.406, 301.407, 301.408,
17 301.409, or 301.410; and

18 (ii) made without malice;

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

21 (i) authorized under Section 303.005; and

22 (ii) made in good faith; [~~or~~]

23 (C) the refusal to engage in conduct was
24 authorized by Section 301.352; or

25 (D) the refusal to work mandatory overtime was
26 authorized by Chapter 258, Health and Safety Code.

27 (g) A nurse employed by a hospital operated by or on behalf

1 of a state or local governmental entity who alleges a violation of
2 Subsection (b) may sue the state or local governmental entity for
3 the relief provided by this section and the sovereign immunity of
4 the state or local governmental entity from suit and from liability
5 is waived for the limited purpose of allowing the nurse to maintain
6 a lawsuit in state court to obtain that relief. The provisions of
7 Section 554.003, Government Code, relating to the type of relief
8 and the amount of damages available to a public employee apply to a
9 lawsuit under this subsection. The relief provided by this section
10 is in addition to any other remedies a nurse may have under state or
11 federal law as a public employee. In this subsection:

12 (1) "Local governmental entity," "public employee,"
13 and "state governmental entity" have the meanings assigned by
14 Section 554.001, Government Code.

15 (2) "Hospital" has the meaning assigned by Section
16 257.001, Health and Safety Code.

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

22 SECTION 5. (a) The executive commissioner of the Health and
23 Human Services Commission shall adopt rules for the Department of
24 State Health Services as required by this Act as soon as practicable
25 after the effective date of this Act, but not later than January 1,
26 2010.

27 (b) The change in law made by this Act to Section 301.413,

1 Occupations Code, applies to an action commenced on or after the
2 effective date of this Act. An action commenced before the
3 effective date of this Act is governed by the law as it existed
4 immediately before the effective date of this Act, and that law is
5 continued in effect for that purpose.

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