

1-1 By: Nelson, Davis S.B. No. 476
1-2 (In the Senate - Filed January 14, 2009; February 17, 2009,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 17, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0; 1
1-6 present not voting, March 17, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 476 By: Nelson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to staffing, overtime, and other employment protections
1-11 for nurses.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle B, Title 4, Health and Safety Code, is
1-14 amended by adding Chapters 257 and 258 to read as follows:

1-15 CHAPTER 257. NURSE STAFFING

1-16 Sec. 257.001. DEFINITIONS. In this chapter:

1-17 (1) "Committee" means a nurse staffing committee
1-18 required by this chapter.

1-19 (2) "Department" means the Department of State Health
1-20 Services.

1-21 (3) "Hospital" means:

1-22 (A) a general hospital or special hospital, as
1-23 those terms are defined by Section 241.003, including a hospital
1-24 maintained or operated by this state; or

1-25 (B) a mental hospital licensed under Chapter 577.

1-26 (4) "Patient care unit" means a unit or area of a
1-27 hospital in which registered nurses provide patient care.

1-28 Sec. 257.002. LEGISLATIVE FINDINGS. (a) The legislature
1-29 finds that:

1-30 (1) research supports a conclusion that adequate nurse
1-31 staffing is directly related to positive patient outcomes and nurse
1-32 satisfaction with the practice environment;

1-33 (2) nurse satisfaction with the practice environment
1-34 is in large measure determined by providing an adequate level of
1-35 nurse staffing based on research findings and patient intensity;

1-36 (3) nurse satisfaction and patient safety can be
1-37 adversely affected when nurses work excessive hours; and

1-38 (4) hospitals and nurses share a mutual interest in
1-39 patient safety initiatives that create a healthy environment for
1-40 nurses and appropriate care for patients.

1-41 (b) In order to protect patients, support greater retention
1-42 of registered nurses, and promote adequate nurse staffing, the
1-43 legislature intends to establish a mechanism whereby nurses and
1-44 hospital management shall participate in a joint process regarding
1-45 decisions about nurse staffing.

1-46 Sec. 257.003. NURSE STAFFING POLICY AND PLAN. (a) The
1-47 governing body of a hospital shall develop, adopt, implement, and
1-48 enforce a written nurse staffing policy to ensure that an adequate
1-49 number and skill mix of nurses are available to meet the level of
1-50 patient care needed. The policy must include a process for:

1-51 (1) requiring the hospital to give significant
1-52 consideration to the nurse staffing plan recommended by the
1-53 hospital's nurse staffing committee and to that committee's
1-54 evaluation of any existing plan;

1-55 (2) developing, adopting, implementing, and enforcing
1-56 an official nurse services staffing plan that is based on the needs
1-57 of each patient care unit and shift and on evidence relating to
1-58 patient care needs;

1-59 (3) using the official nurse services staffing plan as
1-60 a component in setting the nurse staffing budget;

1-61 (4) encouraging nurses to provide input to the
1-62 committee relating to nurse staffing concerns;

1-63 (5) protecting from retaliation nurses who provide

2-1 input to the committee; and
2-2 (6) ensuring compliance with rules adopted by the
2-3 executive commissioner of the Health and Human Services Commission
2-4 relating to nurse staffing.
2-5 (b) The official nurse services staffing plan developed
2-6 under Subsection (a) must:
2-7 (1) reflect current standards established by private
2-8 accreditation organizations, governmental entities, national
2-9 nursing professional associations, and other health professional
2-10 organizations;
2-11 (2) set minimum staffing levels for patient care units
2-12 that are:
2-13 (A) based on multiple nurse and patient
2-14 considerations; and
2-15 (B) determined by the nursing assessment and in
2-16 accordance with evidence-based safe nursing standards;
2-17 (3) include a method for adjusting the staffing plan
2-18 for each patient care unit to provide staffing flexibility to meet
2-19 patient needs; and
2-20 (4) include a contingency plan when patient care needs
2-21 unexpectedly exceed direct patient care staff resources.
2-22 (c) The hospital shall:
2-23 (1) use the official nurse services staffing plan:
2-24 (A) as a component in setting the nurse staffing
2-25 budget; and
2-26 (B) to guide the hospital in assigning nurses
2-27 hospital-wide; and
2-28 (2) make readily available to nurses on each patient
2-29 care unit at the beginning of each shift the official nurse services
2-30 staffing plan levels and current staffing levels for that unit and
2-31 that shift.
2-32 Sec. 257.004. NURSE STAFFING COMMITTEE. (a) A hospital
2-33 shall establish a nurse staffing committee as a standing committee
2-34 of the hospital.
2-35 (b) The committee shall be composed of members who are
2-36 representative of the types of nursing services provided in the
2-37 hospital.
2-38 (c) The chief nursing officer of the hospital is a voting
2-39 member of the committee.
2-40 (d) At least 60 percent of the members of the committee must
2-41 be registered nurses who:
2-42 (1) provide direct patient care during at least 50
2-43 percent of their work time; and
2-44 (2) are selected by their peers who provide direct
2-45 patient care during at least 50 percent of their work time.
2-46 (e) The committee shall meet at least quarterly.
2-47 (f) Participation on the committee by a hospital employee as
2-48 a committee member is part of the employee's work time, and the
2-49 hospital shall compensate that member for that time accordingly.
2-50 The hospital shall relieve a committee member of other work duties
2-51 during committee meetings.
2-52 (g) The committee shall:
2-53 (1) develop and recommend to the hospital's governing
2-54 body a nurse staffing plan that meets the requirements of Section
2-55 257.003;
2-56 (2) review, assess, and respond to staffing concerns
2-57 expressed to the committee;
2-58 (3) identify the nurse-sensitive outcome measures the
2-59 committee will use to evaluate the effectiveness of the official
2-60 nurse services staffing plan;
2-61 (4) evaluate, at least semiannually, the
2-62 effectiveness of the official nurse services staffing plan and
2-63 variations between the plan and the actual staffing; and
2-64 (5) submit to the hospital's governing body, at least
2-65 semiannually, a report on nurse staffing and patient care outcomes,
2-66 including the committee's evaluation of the effectiveness of the
2-67 official nurse services staffing plan and aggregate variations
2-68 between the staffing plan and actual staffing.
2-69 (h) In evaluating the effectiveness of the official nurse

3-1 services staffing plan, the committee shall consider patient needs,
3-2 nursing-sensitive quality indicators, nurse satisfaction measures
3-3 collected by the hospital, and evidence-based nurse staffing
3-4 standards.

3-5 Sec. 257.005. REPORTING OF STAFFING INFORMATION TO
3-6 DEPARTMENT. (a) A hospital shall annually report to the
3-7 department on:

3-8 (1) whether the hospital's governing body has adopted
3-9 a nurse staffing policy as required by Section 257.003;

3-10 (2) whether the hospital has established a nurse
3-11 staffing committee as required by Section 257.004 that meets the
3-12 membership requirements of that section;

3-13 (3) whether the nurse staffing committee has evaluated
3-14 the hospital's official nurse services staffing plan as required by
3-15 Section 257.004 and has reported the results of the evaluation to
3-16 the hospital's governing body as provided by that section; and

3-17 (4) the nurse-sensitive outcome measures the
3-18 committee adopted for use in evaluating the hospital's official
3-19 nurse services staffing plan.

3-20 (b) Information reported under Subsection (a) is public
3-21 information.

3-22 (c) To the extent possible, the department shall collect the
3-23 data required under Subsection (a) as part of a survey required by
3-24 the department under other law.

3-25 CHAPTER 258. MANDATORY OVERTIME FOR NURSES PROHIBITED

3-26 Sec. 258.001. DEFINITIONS. In this chapter:

3-27 (1) "Hospital" means:

3-28 (A) a general hospital or special hospital, as
3-29 those terms are defined by Section 241.003, including a hospital
3-30 maintained or operated by this state; or

3-31 (B) a mental hospital licensed under Chapter 577.

3-32 (2) "Nurse" means a registered nurse or vocational
3-33 nurse licensed under Chapter 301, Occupations Code.

3-34 (3) "On-call time" means time spent by a nurse who is
3-35 not working but who is compensated for availability.

3-36 Sec. 258.002. MANDATORY OVERTIME. For purposes of this
3-37 chapter, "mandatory overtime" means a requirement that a nurse work
3-38 hours or days that are in addition to the hours or days scheduled,
3-39 regardless of the length of a scheduled shift or the number of
3-40 scheduled shifts each week. In determining whether work is
3-41 mandatory overtime, prescheduled on-call time or time immediately
3-42 before or after a scheduled shift necessary to document or
3-43 communicate patient status to ensure patient safety is not
3-44 included.

3-45 Sec. 258.003. PROHIBITION OF MANDATORY OVERTIME. (a) A
3-46 hospital may not require a nurse to work mandatory overtime, and a
3-47 nurse may refuse to work mandatory overtime.

3-48 (b) This section does not prohibit a nurse from volunteering
3-49 to work overtime.

3-50 (c) A hospital may not use on-call time as a substitute for
3-51 mandatory overtime.

3-52 Sec. 258.004. EXCEPTIONS. (a) Section 258.003 does not
3-53 apply if:

3-54 (1) a health care disaster, such as a natural or other
3-55 type of disaster that increases the need for health care personnel,
3-56 unexpectedly affects the county in which the nurse is employed or
3-57 affects a contiguous county;

3-58 (2) a federal, state, or county declaration of
3-59 emergency is in effect in the county in which the nurse is employed
3-60 or is in effect in a contiguous county;

3-61 (3) there is an emergency or unforeseen event of a kind
3-62 that:

3-63 (A) does not regularly occur;

3-64 (B) increases the need for health care personnel
3-65 at the hospital to provide safe patient care; and

3-66 (C) could not prudently be anticipated by the
3-67 hospital; or

3-68 (4) the nurse is actively engaged in an ongoing
3-69 medical or surgical procedure and the continued presence of the

4-1 nurse through the completion of the procedure is necessary to
 4-2 ensure the health and safety of the patient.

4-3 (b) If a hospital determines that an exception exists under
 4-4 Subsection (a)(3), the hospital shall, to the extent possible, make
 4-5 a good faith effort to meet the staffing need through voluntary
 4-6 overtime, including calling per diems and agency nurses, assigning
 4-7 floats, or requesting an additional day of work from off-duty
 4-8 employees.

4-9 Sec. 258.005. RETALIATION PROHIBITED. A hospital may not
 4-10 suspend, terminate, or otherwise discipline or discriminate
 4-11 against a nurse who refuses to work mandatory overtime. Section
 4-12 301.413, Occupations Code, applies to an action that violates this
 4-13 section.

4-14 SECTION 2. Subchapter H, Chapter 301, Occupations Code, is
 4-15 amended by adding Section 301.356 to read as follows:

4-16 Sec. 301.356. REFUSAL OF MANDATORY OVERTIME. The refusal
 4-17 by a nurse to work mandatory overtime as authorized by Chapter 258,
 4-18 Health and Safety Code, does not constitute patient abandonment or
 4-19 neglect.

4-20 SECTION 3. Subsections (b), (c), and (e), Section 301.413,
 4-21 Occupations Code, are amended to read as follows:

4-22 (b) A person may not suspend, ~~or~~ terminate ~~[the employment~~
 4-23 ~~of]~~, or otherwise discipline or discriminate against ~~[a]~~ a person
 4-24 who:

4-25 (1) reports, without malice, under this subchapter;
 4-26 ~~or~~

4-27 (2) requests, in good faith, a nursing peer review
 4-28 committee determination under Section 303.005;

4-29 (3) refuses to engage in conduct as authorized by
 4-30 Section 301.352; or

4-31 (4) refuses to work mandatory overtime as authorized
 4-32 by Chapter 258, Health and Safety Code.

4-33 (c) A person who reports under this subchapter, refuses to
 4-34 engage in conduct as authorized by Section 301.352, or requests a
 4-35 nursing peer review committee determination under Section 303.005
 4-36 has a cause of action against a person who violates Subsection (b),
 4-37 and may recover:

4-38 (1) the greater of:

4-39 (A) actual damages, including damages for mental
 4-40 anguish even if no other injury is shown; or

4-41 (B) \$5,000;

4-42 (2) exemplary damages;

4-43 (3) court costs; and

4-44 (4) reasonable attorney's fees.

4-45 (e) A person who brings an action under this section has the
 4-46 burden of proof. It is a rebuttable presumption that the person
 4-47 [~~person's employment~~] was suspended, ~~or~~ terminated, or otherwise
 4-48 disciplined or discriminated against for reporting under this
 4-49 subchapter, for refusing to engage in conduct as authorized by
 4-50 Section 301.352, for refusing to work mandatory overtime as
 4-51 authorized by Chapter 258, Health and Safety Code, or for
 4-52 requesting a peer review committee determination under Section
 4-53 303.005 if:

4-54 (1) the person was suspended, ~~or~~ terminated, or
 4-55 otherwise disciplined or discriminated against within 60 days after
 4-56 the date the report, refusal, or request was made; and

4-57 (2) the board or a court determines that:

4-58 (A) the report that is the subject of the cause of
 4-59 action was:

4-60 (i) authorized or required under Section
 4-61 301.402, 301.4025, 301.403, 301.405, 301.406, 301.407, 301.408,
 4-62 301.409, or 301.410; and

4-63 (ii) made without malice;

4-64 (B) the request for a peer review committee
 4-65 determination that is the subject of the cause of action was:

4-66 (i) authorized under Section 303.005; and

4-67 (ii) made in good faith; ~~or~~

4-68 (C) the refusal to engage in conduct was
 4-69 authorized by Section 301.352; or

5-1 (D) the refusal to work mandatory overtime was
5-2 authorized by Chapter 258, Health and Safety Code.

5-3 SECTION 4. It is not the intent of the legislature that the
5-4 executive commissioner of the Health and Human Services Commission
5-5 rewrite the current rules of the Department of State Health
5-6 Services relating to nurse staffing except to the extent the
5-7 current rules conflict with this Act.

5-8 SECTION 5. (a) The executive commissioner of the Health
5-9 and Human Services Commission shall adopt rules for the Department
5-10 of State Health Services as required by this Act as soon as
5-11 practicable after the effective date of this Act, but not later than
5-12 January 1, 2010.

5-13 (b) The change in law made by this Act to Section 301.413,
5-14 Occupations Code, applies to an action commenced on or after the
5-15 effective date of this Act. An action commenced before the
5-16 effective date of this Act is governed by the law as it existed
5-17 immediately before the effective date of this Act, and that law is
5-18 continued in effect for that purpose.

5-19 SECTION 6. This Act takes effect September 1, 2009.

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