



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB4525

Introduced 1/11/2006, by Rep. Brandon W. Phelps

SYNOPSIS AS INTRODUCED:

20 ILCS 510/510-40 new
20 ILCS 1705/4.2a new
20 ILCS 2310/2310-12 new
20 ILCS 2805/2.09 new
305 ILCS 5/12-4.36 new
730 ILCS 5/3-6-2.10 new

Amends the Department of Children and Family Services Powers Law of the Civil Administrative Code of Illinois, the Mental Health and Developmental Disabilities Administrative Act, the Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois, the Department of Veterans Affairs Act, the Illinois Public Aid Code, and the Unified Code of Corrections. Provides that no nurse who is paid an hourly wage and who has direct responsibility to oversee or carry out nursing care or related duties may be required to work mandated overtime except in the case of an unforeseen emergent circumstance when such overtime is required only as a last resort, and limits the time of such overtime. Provides that when a nurse is mandated to work up to 12 consecutive hours, the nurse must be allowed at least 8 consecutive hours of off-duty time. Prohibits retaliation because a nurse refuses to work mandated overtime as prohibited under these provisions. Authorizes the filing of complaints alleging violations of these provisions. Effective immediately.

LRB094 15287 DRJ 52266 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Department of Children and Family Services
5 Powers Law of the Civil Administrative Code of Illinois is
6 amended by adding Section 510-40 as follows:

7 (20 ILCS 510/510-40 new)

8 Sec. 510-40. Nurse mandated overtime prohibited.

9 (a) Definitions. As used in this Section:

10 "Mandated overtime" means work that is required by the
11 Department in excess of an agreed-to, predetermined work shift.
12 Time spent by nurses required to be available as a condition of
13 employment in specialized units shall not be counted or
14 considered in calculating the amount of time worked for the
15 purpose of applying the prohibition against mandated overtime
16 under subsection (b).

17 "Nurse" means any advanced practice nurse, registered
18 professional nurse, or licensed practical nurse, as defined in
19 the Nursing and Advanced Practice Nursing Act, who receives an
20 hourly wage and has direct responsibility to oversee or carry
21 out nursing care or related duties.

22 "Unforeseen emergent circumstance" means (i) any declared
23 national, State, or municipal disaster or other catastrophic
24 event, or any implementation of a disaster plan, that will
25 substantially affect or increase the need for health care
26 services or (ii) any circumstance in which patient care needs
27 require specialized nursing skills through the completion of a
28 procedure. An "unforeseen emergent circumstance" does not
29 include situations in which the Department fails to have enough
30 nursing staff to meet its usual and reasonably predictable
31 nursing needs.

32 (b) Mandated overtime prohibited. No nurse may be required

1 to work mandated overtime except in the case of an unforeseen
2 emergent circumstance when such overtime is required only as a
3 last resort. Such mandated overtime shall not exceed 4 hours
4 beyond an agreed-to, predetermined work shift.

5 (c) Off-duty period. When a nurse is mandated to work up to
6 12 consecutive hours, the nurse must be allowed at least 8
7 consecutive hours of off-duty time immediately following the
8 completion of a shift.

9 (d) Retaliation prohibited. The Department may not
10 discipline, discharge, or take any other adverse employment
11 action against a nurse solely because the nurse refused to work
12 mandated overtime as prohibited under subsection (b).

13 (e) Violations. Any employee of the Department of Children
14 and Family Services who is subject to this Section may file a
15 complaint with the Department of Labor regarding an alleged
16 violation of this Section. The complaint must be filed within
17 45 days following the occurrence of the incident giving rise to
18 the alleged violation. The Department of Labor must forward
19 notification of the alleged violation to the Department of
20 Children and Family Services within 3 business days after the
21 complaint is filed. The Department of Labor shall work with the
22 Department of Children and Family Services to resolve the
23 alleged violation.

24 (f) Proof of violation. Any violation of this Section must
25 be proved by clear and convincing evidence that a nurse was
26 required or compelled to work overtime against his or her will.
27 The Department may defeat the claim of a violation by
28 presenting clear and convincing evidence that an unforeseen
29 emergent circumstance, which required overtime work, existed
30 at the time the employee was required or compelled to work.

31 Section 10. The Mental Health and Developmental
32 Disabilities Administrative Act is amended by adding Section
33 4.2a as follows:

34 (20 ILCS 1705/4.2a new)

1 Sec. 4.2a. Nurse mandated overtime prohibited.

2 (a) Definitions. As used in this Section:

3 "Mandated overtime" means work that is required by a
4 facility described in subsection (a) of Section 4 of this Act
5 in excess of an agreed-to, predetermined work shift. Time spent
6 by nurses required to be available as a condition of employment
7 in specialized units shall not be counted or considered in
8 calculating the amount of time worked for the purpose of
9 applying the prohibition against mandated overtime under
10 subsection (b).

11 "Nurse" means any advanced practice nurse, registered
12 professional nurse, or licensed practical nurse, as defined in
13 the Nursing and Advanced Practice Nursing Act, who receives an
14 hourly wage and has direct responsibility to oversee or carry
15 out nursing care or related duties.

16 "Unforeseen emergent circumstance" means (i) any declared
17 national, State, or municipal disaster or other catastrophic
18 event, or any implementation of the disaster plan of a facility
19 described in subsection (a) of Section 4, that will
20 substantially affect or increase the need for health care
21 services or (ii) any circumstance in which patient care needs
22 require specialized nursing skills through the completion of a
23 procedure. An "unforeseen emergent circumstance" does not
24 include situations in which a facility fails to have enough
25 nursing staff to meet the usual and reasonably predictable
26 nursing needs of its recipients.

27 (b) Mandated overtime prohibited. No nurse may be required
28 to work mandated overtime except in the case of an unforeseen
29 emergent circumstance when such overtime is required only as a
30 last resort. Such mandated overtime shall not exceed 4 hours
31 beyond an agreed-to, predetermined work shift.

32 (c) Off-duty period. When a nurse is mandated to work up to
33 12 consecutive hours, the nurse must be allowed at least 8
34 consecutive hours of off-duty time immediately following the
35 completion of a shift.

36 (d) Retaliation prohibited. No facility may discipline,

1 discharge, or take any other adverse employment action against
2 a nurse solely because the nurse refused to work mandated
3 overtime as prohibited under subsection (b).

4 (e) Violations. Any employee of a facility that is subject
5 to this Act may file a complaint with the Department of Labor
6 regarding an alleged violation of this Section. The complaint
7 must be filed within 45 days following the occurrence of the
8 incident giving rise to the alleged violation. The Department
9 of Labor must forward notification of the alleged violation to
10 the Department of Human Services or the Department of Public
11 Health, whichever is responsible for regulating the facility in
12 question, and to the facility in question within 3 business
13 days after the complaint is filed. The Department of Labor
14 shall work with the facility to resolve the alleged violation.

15 (f) Proof of violation. Any violation of this Section must
16 be proved by clear and convincing evidence that a nurse was
17 required or compelled to work overtime against his or her will.
18 The facility may defeat the claim of a violation by presenting
19 clear and convincing evidence that an unforeseen emergent
20 circumstance, which required overtime work, existed at the time
21 the employee was required or compelled to work.

22 Section 15. The Department of Public Health Powers and
23 Duties Law of the Civil Administrative Code of Illinois is
24 amended by adding Section 2310-12 as follows:

25 (20 ILCS 2310/2310-12 new)

26 Sec. 2310-12. Nurse mandated overtime prohibited.

27 (a) Definitions. As used in this Section:

28 "Mandated overtime" means work that is required by the
29 Department in excess of an agreed-to, predetermined work shift.
30 Time spent by nurses required to be available as a condition of
31 employment in specialized units shall not be counted or
32 considered in calculating the amount of time worked for the
33 purpose of applying the prohibition against mandated overtime
34 under subsection (b).

1 "Nurse" means any advanced practice nurse, registered
2 professional nurse, or licensed practical nurse, as defined in
3 the Nursing and Advanced Practice Nursing Act, who receives an
4 hourly wage and has direct responsibility to oversee or carry
5 out nursing care or related duties.

6 "Unforeseen emergent circumstance" means (i) any declared
7 national, State, or municipal disaster or other catastrophic
8 event, or any implementation of a disaster plan, that will
9 substantially affect or increase the need for health care
10 services or (ii) any circumstance in which patient care needs
11 require specialized nursing skills through the completion of a
12 procedure. An "unforeseen emergent circumstance" does not
13 include situations in which the Department fails to have enough
14 nursing staff to meet its usual and reasonably predictable
15 nursing needs.

16 (b) Mandated overtime prohibited. No nurse may be required
17 to work mandated overtime except in the case of an unforeseen
18 emergent circumstance when such overtime is required only as a
19 last resort. Such mandated overtime shall not exceed 4 hours
20 beyond an agreed-to, predetermined work shift.

21 (c) Off-duty period. When a nurse is mandated to work up to
22 12 consecutive hours, the nurse must be allowed at least 8
23 consecutive hours of off-duty time immediately following the
24 completion of a shift.

25 (d) Retaliation prohibited. The Department may not
26 discipline, discharge, or take any other adverse employment
27 action against a nurse solely because the nurse refused to work
28 mandated overtime as prohibited under subsection (b).

29 (e) Violations. Any employee of the Department of Public
30 Health who is subject to this Section may file a complaint with
31 the Department of Labor regarding an alleged violation of this
32 Section. The complaint must be filed within 45 days following
33 the occurrence of the incident giving rise to the alleged
34 violation. The Department of Labor must forward notification of
35 the alleged violation to the Department of Public Health within
36 3 business days after the complaint is filed. The Department of

1 Labor shall work with the Department of Public Health to
2 resolve the alleged violation.

3 (f) Proof of violation. Any violation of this Section must
4 be proved by clear and convincing evidence that a nurse was
5 required or compelled to work overtime against his or her will.
6 The Department may defeat the claim of a violation by
7 presenting clear and convincing evidence that an unforeseen
8 emergent circumstance, which required overtime work, existed
9 at the time the employee was required or compelled to work.

10 Section 20. The Department of Veterans Affairs Act is
11 amended by adding Section 2.09 as follows:

12 (20 ILCS 2805/2.09 new)

13 Sec. 2.09. Nurse mandated overtime prohibited.

14 (a) Definitions. As used in this Section:

15 "Mandated overtime" means work that is required by a
16 facility in excess of an agreed-to, predetermined work shift.
17 Time spent by nurses required to be available as a condition of
18 employment in specialized units shall not be counted or
19 considered in calculating the amount of time worked for the
20 purpose of applying the prohibition against mandated overtime
21 under subsection (b).

22 "Nurse" means any advanced practice nurse, registered
23 professional nurse, or licensed practical nurse, as defined in
24 the Nursing and Advanced Practice Nursing Act, who receives an
25 hourly wage and has direct responsibility to oversee or carry
26 out nursing care or related duties.

27 "Unforeseen emergent circumstance" means (i) any declared
28 national, State, or municipal disaster or other catastrophic
29 event, or any implementation of a facility's disaster plan,
30 that will substantially affect or increase the need for health
31 care services or (ii) any circumstance in which patient care
32 needs require specialized nursing skills through the
33 completion of a procedure. An "unforeseen emergent
34 circumstance" does not include situations in which a facility

1 fails to have enough nursing staff to meet the usual and
2 reasonably predictable nursing needs of its residents.

3 (b) Mandated overtime prohibited. No nurse may be required
4 to work mandated overtime except in the case of an unforeseen
5 emergent circumstance when such overtime is required only as a
6 last resort. Such mandated overtime shall not exceed 4 hours
7 beyond an agreed-to, predetermined work shift.

8 (c) Off-duty period. When a nurse is mandated to work up to
9 12 consecutive hours, the nurse must be allowed at least 8
10 consecutive hours of off-duty time immediately following the
11 completion of a shift.

12 (d) Retaliation prohibited. No facility may discipline,
13 discharge, or take any other adverse employment action against
14 a nurse solely because the nurse refused to work mandated
15 overtime as prohibited under subsection (b).

16 (e) Violations. Any employee of a facility that is subject
17 to this Act may file a complaint with the Department of Labor
18 regarding an alleged violation of this Section. The complaint
19 must be filed within 45 days following the occurrence of the
20 incident giving rise to the alleged violation. The Department
21 of Labor must forward notification of the alleged violation to
22 the Department of Veterans' Affairs and to the facility in
23 question within 3 business days after the complaint is filed.
24 The Department of Labor shall work with the facility to resolve
25 the alleged violation.

26 (f) Proof of violation. Any violation of this Section must
27 be proved by clear and convincing evidence that a nurse was
28 required or compelled to work overtime against his or her will.
29 The facility may defeat the claim of a violation by presenting
30 clear and convincing evidence that an unforeseen emergent
31 circumstance, which required overtime work, existed at the time
32 the employee was required or compelled to work.

33 Section 25. The Illinois Public Aid Code is amended by
34 adding Section 12-4.36 as follows:

1 (305 ILCS 5/12-4.36 new)

2 Sec. 12-4.36. Nurse mandated overtime prohibited.

3 (a) Definitions. As used in this Section:

4 "Mandated overtime" means work that is required by the
5 Department of Healthcare and Family Services in excess of an
6 agreed-to, predetermined work shift. Time spent by nurses
7 required to be available as a condition of employment in
8 specialized units shall not be counted or considered in
9 calculating the amount of time worked for the purpose of
10 applying the prohibition against mandated overtime under
11 subsection (b).

12 "Nurse" means any advanced practice nurse, registered
13 professional nurse, or licensed practical nurse, as defined in
14 the Nursing and Advanced Practice Nursing Act, who receives an
15 hourly wage and has direct responsibility to oversee or carry
16 out nursing care or related duties.

17 "Unforeseen emergent circumstance" means (i) any declared
18 national, State, or municipal disaster or other catastrophic
19 event, or any implementation of a disaster plan, that will
20 substantially affect or increase the need for health care
21 services or (ii) any circumstance in which patient care needs
22 require specialized nursing skills through the completion of a
23 procedure. An "unforeseen emergent circumstance" does not
24 include situations in which the Department fails to have enough
25 nursing staff to meet its usual and reasonably predictable
26 nursing needs.

27 (b) Mandated overtime prohibited. No nurse may be required
28 to work mandated overtime except in the case of an unforeseen
29 emergent circumstance when such overtime is required only as a
30 last resort. Such mandated overtime shall not exceed 4 hours
31 beyond an agreed-to, predetermined work shift.

32 (c) Off-duty period. When a nurse is mandated to work up to
33 12 consecutive hours, the nurse must be allowed at least 8
34 consecutive hours of off-duty time immediately following the
35 completion of a shift.

36 (d) Retaliation prohibited. The Department may not

1 discipline, discharge, or take any other adverse employment
2 action against a nurse solely because the nurse refused to work
3 mandated overtime as prohibited under subsection (b).

4 (e) Violations. Any employee of the Department who is
5 subject to this Section may file a complaint with the
6 Department of Labor regarding an alleged violation of this
7 Section. The complaint must be filed within 45 days following
8 the occurrence of the incident giving rise to the alleged
9 violation. The Department of Labor must forward notification of
10 the alleged violation to the Department of Healthcare and
11 Family Services within 3 business days after the complaint is
12 filed. The Department of Labor shall work with the Department
13 of Healthcare and Family Services to resolve the alleged
14 violation.

15 (f) Proof of violation. Any violation of this Section must
16 be proved by clear and convincing evidence that a nurse was
17 required or compelled to work overtime against his or her will.
18 The Department of Healthcare and Family Services may defeat the
19 claim of a violation by presenting clear and convincing
20 evidence that an unforeseen emergent circumstance, which
21 required overtime work, existed at the time the employee was
22 required or compelled to work.

23 Section 30. The Unified Code of Corrections is amended by
24 adding Section 3-6-2.10 as follows:

25 (730 ILCS 5/3-6-2.10 new)

26 Sec. 3-6-2.10. Nurse mandated overtime prohibited.

27 (a) Definitions. As used in this Section:

28 "Mandated overtime" means work that is required by a
29 correctional facility regulated under this Code in excess of an
30 agreed-to, predetermined work shift. Time spent by nurses
31 required to be available as a condition of employment in
32 specialized units shall not be counted or considered in
33 calculating the amount of time worked for the purpose of
34 applying the prohibition against mandated overtime under

1 subsection (b).

2 "Nurse" means any advanced practice nurse, registered
3 professional nurse, or licensed practical nurse, as defined in
4 the Nursing and Advanced Practice Nursing Act, who receives an
5 hourly wage and has direct responsibility to oversee or carry
6 out nursing care or related duties.

7 "Unforeseen emergent circumstance" means (i) any declared
8 national, State, or municipal disaster or other catastrophic
9 event, or any implementation of the disaster plan of a
10 correctional facility regulated under this Code, that will
11 substantially affect or increase the need for health care
12 services or (ii) any circumstance in which patient care needs
13 require specialized nursing skills through the completion of a
14 procedure. An "unforeseen emergent circumstance" does not
15 include situations in which a correctional facility fails to
16 have enough nursing staff to meet the usual and reasonably
17 predictable nursing needs of its committed persons.

18 (b) Mandated overtime prohibited. No nurse may be required
19 to work mandated overtime except in the case of an unforeseen
20 emergent circumstance when such overtime is required only as a
21 last resort. Such mandated overtime shall not exceed 4 hours
22 beyond an agreed-to, predetermined work shift.

23 (c) Off-duty period. When a nurse is mandated to work up to
24 12 consecutive hours, the nurse must be allowed at least 8
25 consecutive hours of off-duty time immediately following the
26 completion of a shift.

27 (d) Retaliation prohibited. No correctional facility may
28 discipline, discharge, or take any other adverse employment
29 action against a nurse solely because the nurse refused to work
30 mandated overtime as prohibited under subsection (b).

31 (e) Violations. Any employee of a correctional facility
32 that is subject to this Act may file a complaint with the
33 Department of Labor regarding an alleged violation of this
34 Section. The complaint must be filed within 45 days following
35 the occurrence of the incident giving rise to the alleged
36 violation. The Department of Labor must forward notification of

1 the alleged violation to the Department of Corrections and to
2 the correctional facility in question within 3 business days
3 after the complaint is filed. The Department of Labor shall
4 work with the correctional facility to resolve the alleged
5 violation.

6 (f) Proof of violation. Any violation of this Section must
7 be proved by clear and convincing evidence that a nurse was
8 required or compelled to work overtime against his or her will.
9 The correctional facility may defeat the claim of a violation
10 by presenting clear and convincing evidence that an unforeseen
11 emergent circumstance, which required overtime work, existed
12 at the time the employee was required or compelled to work.

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.