



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2195

Introduced 2/14/2008, by Sen. M. Maggie Crotty

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 5/12-4.37 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.

LRB095 15671 DRJ 41676 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 Nurse Practice Act, who receives an hourly wage and has
20 direct responsibility to oversee or carry out nursing care or
21 related duties.

22 "Unforeseen emergent circumstance" means (i) any declared
23 national, State, or municipal disaster or other catastrophic

1 event, or any implementation of a disaster plan, that will
2 substantially affect or increase the need for health care
3 services or (ii) any circumstance in which patient care needs
4 require specialized nursing skills through the completion of a
5 procedure. An "unforeseen emergent circumstance" does not
6 include situations in which the Department fails to have enough
7 nursing staff to meet its usual and reasonably predictable
8 nursing needs.

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

14 (c) Off-duty period. When a nurse is mandated to work up to
15 12 consecutive hours, the nurse must be allowed at least 8
16 consecutive hours of off-duty time immediately following the
17 completion of a shift.

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

22 (e) Violations. Any employee of the Department of Children
23 and Family Services who is subject to this Section may file a
24 complaint with the Department of Labor regarding an alleged
25 violation of this Section. The complaint must be filed within
26 45 days following the occurrence of the incident giving rise to

1 the alleged violation. The Department of Labor must forward
2 notification of the alleged violation to the Department of
3 Children and Family Services within 3 business days after the
4 complaint is filed. The Department of Labor shall work with the
5 Department of Children and Family Services to resolve the
6 alleged violation.

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

14 Section 10. The Mental Health and Developmental
15 Disabilities Administrative Act is amended by adding Section
16 4.2a as follows:

17 (20 ILCS 1705/4.2a new)

18 Sec. 4.2a. Nurse mandated overtime prohibited.

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

20 "Mandated overtime" means work that is required by a
21 facility described in subsection (a) of Section 4 of this Act
22 in excess of an agreed-to, predetermined work shift. Time spent
23 by nurses required to be available as a condition of employment
24 in specialized units shall not be counted or considered in

1 calculating the amount of time worked for the purpose of
2 applying the prohibition against mandated overtime under
3 subsection (b).

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

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

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

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

1 completion of a shift.

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

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

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

24 Section 15. The Department of Public Health Powers and
25 Duties Law of the Civil Administrative Code of Illinois is

1 amended by adding Section 2310-12 as follows:

2 (20 ILCS 2310/2310-12 new)

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

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

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

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

1 nursing needs.

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

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

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

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

25 (f) Proof of violation. Any violation of this Section must
26 be proved by clear and convincing evidence that a nurse was

1 required to work overtime against his or her will. The
2 Department may defeat the claim of a violation by presenting
3 clear and convincing evidence that an unforeseen emergent
4 circumstance, which required overtime work, existed at the time
5 the employee was required or compelled to work.

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

8 (20 ILCS 2805/2.09 new)

9 Sec. 2.09. Nurse mandated overtime prohibited.

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

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

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

22 "Unforeseen emergent circumstance" means (i) any declared
23 national, State, or municipal disaster or other catastrophic
24 event, or any implementation of a facility's disaster plan,

1 that will substantially affect or increase the need for health
2 care services or (ii) any circumstance in which patient care
3 needs require specialized nursing skills through the
4 completion of a procedure. An "unforeseen emergent
5 circumstance" does not include situations in which a facility
6 fails to have enough nursing staff to meet the usual and
7 reasonably predictable nursing needs of its patients.

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

13 (c) Off-duty period. When a nurse is mandated to work up to
14 12 consecutive hours, the nurse must be allowed at least 8
15 consecutive hours of off-duty time immediately following the
16 completion of a shift.

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

21 (e) Violations. Any employee of a facility that is subject
22 to this Act may file a complaint with the Department of Labor
23 regarding an alleged violation of this Section. The complaint
24 must be filed within 45 days following the occurrence of the
25 incident giving rise to the alleged violation. The Department
26 of Labor must forward notification of the alleged violation to

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

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

12 Section 25. The Illinois Public Aid Code is amended by
13 adding Section 12-4.37 as follows:

14 (305 ILCS 5/12-4.37 new)

15 Sec. 12-4.37. Nurse mandated overtime prohibited.

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

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

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

1 action against a nurse solely because the nurse refused to work
2 mandated overtime as prohibited under subsection (b).

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

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

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

24 (730 ILCS 5/3-6-2.10 new)

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

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

3 "Mandated overtime" means work that is required by a
4 correctional facility regulated under this Code in excess of an
5 agreed-to, predetermined work shift. Time spent by nurses
6 required to be available as a condition of employment in
7 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 Nurse Practice Act, who receives an hourly wage and has
14 direct responsibility to oversee or carry out nursing care.

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

26 (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. No correctional facility may
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 a correctional facility
14 that is subject to this Act may file a complaint with the
15 Department of Labor regarding an alleged violation of this
16 Section. The complaint must be filed within 45 days following
17 the occurrence of the incident giving rise to the alleged
18 violation. The Department of Labor must forward notification of
19 the alleged violation to the Department of Corrections and to
20 the correctional facility in question within 3 business days
21 after the complaint is filed. The Department of Labor shall
22 work with the correctional facility to resolve the alleged
23 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 to work overtime against his or her will. The

1 correctional facility may defeat the claim of a violation by
2 presenting clear and convincing evidence that an unforeseen
3 emergent circumstance, which required overtime work, existed
4 at the time the employee was required or compelled to work.

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.