



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1164

Introduced 02/08/11, by Rep. Richard Morthland

SYNOPSIS AS INTRODUCED:

20 ILCS 510/510-40 new
20 ILCS 1705/4.2a new
20 ILCS 2310/2310-13 new
20 ILCS 2805/2.09 new
305 ILCS 5/12-4.43 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.

LRB097 05316 KTG 45371 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 or compelled to work overtime against his or her will.
10 The Department may defeat the claim of a violation by
11 presenting clear and convincing evidence that an unforeseen
12 emergent circumstance, which required overtime work, existed
13 at the time 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 or
8 related duties.

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

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

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

1 consecutive hours of off-duty time immediately following the
2 completion of a shift.

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

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

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

25 Section 15. The Department of Public Health Powers and

1 Duties Law of the Civil Administrative Code of Illinois is
2 amended by adding Section 2310-13 as follows:

3 (20 ILCS 2310/2310-13 new)

4 Sec. 2310-13. Nurse mandated overtime prohibited.

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

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

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

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

1 nursing staff to meet its usual and reasonably predictable
2 nursing needs.

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

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

26 (f) Proof of violation. Any violation of this Section must

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

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

9 (20 ILCS 2805/2.09 new)

10 Sec. 2.09. Nurse mandated overtime prohibited.

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

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

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

24 "Unforeseen emergent circumstance" means (i) any declared

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

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

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

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

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

1 incident giving rise to the alleged violation. The Department
2 of Labor must forward notification of the alleged violation to
3 the Department of Veterans' Affairs and to the facility in
4 question within 3 business days after the complaint is filed.
5 The Department of Labor shall work with the facility to resolve
6 the 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 or compelled to work overtime against his or her will.
10 The facility 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 25. The Illinois Public Aid Code is amended by
15 adding Section 12-4.43 as follows:

16 (305 ILCS 5/12-4.43 new)

17 Sec. 12-4.43. Nurse mandated overtime prohibited.

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

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

1 applying the prohibition against mandated overtime under
2 subsection (b).

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

8 "Unforeseen emergent circumstance" means (i) any declared
9 national, State, or municipal disaster or other catastrophic
10 event, or any implementation of a disaster plan, 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 the Department fails to have enough
16 nursing staff to meet its usual and reasonably predictable
17 nursing needs.

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.

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

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

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

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

1 (730 ILCS 5/3-6-2.10 new)

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

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

4 "Mandated overtime" means work that is required by a
5 correctional facility regulated under this Code 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 Nurse Practice Act, who receives an hourly wage and has
15 direct responsibility to oversee or carry out nursing care or
16 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 the disaster plan of a
20 correctional facility regulated under this Code, that will
21 substantially affect or increase the need for health care
22 services or (ii) any circumstance in which patient care needs
23 require specialized nursing skills through the completion of a
24 procedure. An "unforeseen emergent circumstance" does not
25 include situations in which a correctional facility fails to

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

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 correctional facility may
13 discipline, discharge, or take any other adverse employment
14 action against a nurse solely because the nurse refused to work
15 mandated overtime as prohibited under subsection (b).

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

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

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.