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## A BILL FOR AN ACT

RELATING TO LIMITATIONS ON MANDATORY OVERTIME FOR NURSES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that the State has a  
2       substantial interest in ensuring that the delivery of health  
3       care services to patients by nurses throughout the State is  
4       adequate and safe.

5       The legislature further finds that limits on work hours  
6       have long existed in high-risk occupational settings where long  
7       work hours can adversely affect safety and performance as well  
8       as job satisfaction and quality of life. Since the 1930s, when  
9       these limits were first instituted, various federal agencies  
10      have placed limits on the work hours of flight crews, railroad  
11      workers, commercial drivers, and nurses who work for the United  
12      States Department of Veterans Affairs.

13      Nevertheless, the adoption of regulations on work hours for  
14      workers in the health care sector has been slow. A 2019 study  
15      funded by the Robert Wood Johnson Foundation concluded that new  
16      nurses are predominantly scheduled for twelve-hour shifts and  
17      nearly half of new nurses work weekly overtime, which are trends



1 that have remained relatively stable over the past ten years.  
2 Nurse managers, policymakers, and researchers should pay  
3 attention to new nurses' schedules and shift preferences and  
4 guard against mandatory overtime hours.

5 The legislature also finds that a review of existing  
6 literature indicates that nurse overtime is common and increases  
7 the incidence of adverse events among nurses and patients. The  
8 work year for registered nurses is substantially longer than the  
9 national average by two hundred work hours. A 2019 study from  
10 New York University reports twelve per cent of nurses report  
11 working mandatory overtime, and nearly half work voluntary  
12 overtime at an average of three hours in a workweek. The 2019  
13 Hawaii Nursing Workforce Supply report by the Hawaii state  
14 center for nursing reveals twenty-six per cent of nurses in the  
15 State report working more than forty-one hours a week.

16 The legislature additionally finds that mandated overtime  
17 for nurses is necessitated by staffing practices that emphasize  
18 bare minimum, skeleton crew with no back-up or relief in place  
19 to absorb any changes such as an increase in patient admissions  
20 or a nurse calling in sick. Registered nurses and employers  
21 have an ethical responsibility to carefully consider the need



1 for adequate rest and sleep when deciding whether to offer or  
2 accept work assignments, including on-call or voluntary or  
3 mandatory overtime.

4 The legislature finds that a systemic review of nursing and  
5 health care literature found a conclusive relationship between  
6 excessive nurse work hours and adverse patient outcomes. This  
7 review highlights the importance of managing adverse nurse  
8 schedules, such as long daily and weekly work hours, to improve  
9 patient safety and prevent adverse patient outcomes. Study  
10 findings support the importance of monitoring and regulating  
11 nurse work schedules and adverse scheduling practices to improve  
12 nurse well-being and health and prevent adverse patient  
13 outcomes.

14 Nurses frequently working under a twelve-hour shift  
15 schedule not only work extended hours but also return to work  
16 often without sufficient time for rest. Nurses working long  
17 hours often experience fatigue, poor sleep quality, impaired  
18 vigilance, and lack of alertness, which contributes to medical  
19 errors and results in other consequences that compromise  
20 occupational and patient safety, even after controlling for  
21 staffing levels and hospital characteristics. Relationships



1 between nurses working long hours and nurse injury have been  
2 established in research.

3 The National Institute for Occupational Safety and Health  
4 recognizes that work-related fatigue can decrease reaction  
5 times, reduce attention or concentration, limit short term  
6 memory, and impair judgement. In the case of nurses working  
7 long hours, fatigue not only adversely affects the health of the  
8 nurse, but also the quality of care their patients receive.

9 Examples in the literature of nurse outcomes negatively  
10 impacted by nurses working long hours include an increase in  
11 musculoskeletal and needlestick injuries, fatigues, illness,  
12 burnout, job dissatisfaction, absenteeism, and turnover intent.  
13 Statistically significant associations between nurses working  
14 long hours and negative patient outcomes, such as falls,  
15 pressure injuries, catheter-associated urinary tract infections  
16 and nosocomial infections, also exist.

17 Nurses working long hours contributes to low work  
18 satisfaction (involuntary overtime). Decreased morale and  
19 increases in turnover intent result from fatigue related to  
20 nurses working long hours. This exacerbates organizational  
21 costs.



1       The legislature further finds that at least eighteen states  
2   have passed legislation or adopted rules restricting mandatory  
3   overtime for nurses. Research funded by the Health Research and  
4   Educational Trust examined the degree to which states' work hour  
5   regulations for nurses, such as policies regarding mandatory  
6   overtime and consecutive work hours, decrease mandatory overtime  
7   practice and hours of work among registered nurses. The  
8   research concluded that state mandatory overtime and consecutive  
9   work hour policies are effective in reducing nurse work hours.

10       Therefore, the legislature believes it is time for the  
11   State to join these states that have protective legislation in  
12   place for nursing staff and patients.

13       Accordingly, the purpose of this Act is to regulate  
14   mandated overtime for nurses.

15       SECTION 2. Chapter 387, Hawaii Revised Statutes, is  
16   amended as follows:

17       1. By designating sections 387-1 through 387-15 as part I  
18   and inserting a title before section 387-1 to read:

19                   **"PART I. GENERAL PROVISIONS"**

20       2. By adding a new part to be appropriately designated and  
21   to read:



**"PART II. OVERTIME FOR NURSES**

**§387-A Definitions.** As used in this part:

"Declared state of emergency" means a state of emergency as declared by the governor pursuant to chapter 127A. "Declared state of emergency" does not include an emergency that results from a labor dispute in the health care industry or consistent understaffing.

"Health care provider-employer" includes a private, municipal, or state hospital; independent diagnostic testing facility; hospital outpatient department or primary care outpatient facility; health care clinic; skilled nursing facility; kidney disease treatment center, including freestanding hemodialysis units; intermediate care facility; ambulatory surgical facility; rehabilitation agency; correctional facility owned or administered by the state; private, municipal, or state facility employing one or more public health nurses; long-term care facility; psychiatric hospital; residential psychiatric treatment center, secure residential psychiatric treatment center; juvenile detention facility or juvenile treatment facility; or any other provider of health care services that employs a nurse.



1 "Nurse" means a person licensed as a registered nurse  
2 pursuant to section 457-7 or licensed as a licensed practical  
3 nurse pursuant to section 457-8 who provides nursing services  
4 through direct patient care or clinical services. "Nurse"  
5 includes a nurse manager when delivering patient care services.

6 "On-call" means a status in which a nurse is ready to  
7 report to the health care facility and may be called to work by  
8 the health care facility.

9 "Overtime" means the hours worked in excess of a  
10 predetermined and regularly scheduled shift that is agreed to by  
11 a nurse and health care provider-employer.

12 "Standards of safe patient care" means the recognized  
13 professional standards governing the profession of the nurse  
14 involved.

15 **§387-B Limitations on overtime for nurses.** (a) Except as  
16 provided in subsection (c), no nurse employed by a health care  
17 provider-employer shall be required or coerced to, directly or  
18 indirectly:

19 (1) Work in excess of:

20 (A) A previously scheduled work shift or duty period  
21 agreed to by the nurse and the health care



provider-employer, regardless of the length of  
the shift;

(B) Forty-eight hours in any workweek; or

(C) Sixteen hours in any twenty-four-hour period;

(2) Work during the eight-hour period immediately  
following the completion of a shift consisting of  
sixteen consecutive hours; or

(3) Accept an assignment of overtime, if the overtime  
would, in the nurse's judgment:

(A) Be inconsistent with professional standards of  
safe patient care; or

(B) Create an unreasonable risk to the physical  
safety of the nurse, a patient, or an employee of  
the health care provider-employer.

(b) For purposes of subsection (a), time spent by a nurse  
in the following shall be included as hours worked:

(1) Attending required meetings or receiving professional  
education or training related to employment;

(2) Being on call or on standby when the nurse is required  
to be at the health care provider-employer; and





- 1 (3) Working regularly scheduled hours in fulfillment of
- 2 primary duties of employment.
- 3 (c) Subsection (a) shall not apply:
- 4 (1) During a declared state of emergency, if the health
- 5 care provider-employer is requested, or otherwise
- 6 expected, to provide an exceptional level of emergency
- 7 or other medical services to the community; provided
- 8 that this paragraph shall not apply when a health care
- 9 provider-employer has reasonable knowledge of
- 10 increased patient volume because of some other
- 11 foreseeable cause or inadequate staffing because of
- 12 some other foreseeable cause;
- 13 (2) If the health care provider-employer has a scheduling
- 14 problem caused by unforeseen weather conditions that
- 15 prevent a second nurse from arriving at the facility
- 16 to relieve the nurse on duty. For purposes of this
- 17 paragraph, "unforeseen weather conditions" means
- 18 unusual, unpredictable, or unforeseen weather so
- 19 extreme as to impair travel to the health care
- 20 provider-employer. "Unforeseen weather conditions"
- 21 does not include a situation in which the health care



1 provider-employer has knowledge of the weather  
2 conditions far enough in advance to act so that a  
3 scheduling problem under this paragraph can reasonably  
4 be avoided;

5 (3) To a nurse fulfilling on-call time that is agreed on  
6 by the nurse and a health care provider-employer  
7 before the on-call time is scheduled, unless  
8 fulfilling the on-call time would, in the nurse's  
9 judgment, create an unreasonable risk to the physical  
10 safety of the nurse, a patient, or another employee;  
11 and

12 (4) To the first two hours on overtime status when the  
13 health care provider-employer is obtaining another  
14 nurse to work in place of the nurse in overtime  
15 status, so long as the nurse in overtime status is not  
16 on duty for more than sixteen consecutive hours.

17 (d) Nothing in subsection (a) shall be construed to  
18 preclude a nurse from volunteering to work overtime; provided  
19 that no health care provider-employer shall employ a nurse,  
20 regardless of whether the nurse volunteers, to work:

21 (1) Overtime, if:



(A) The work is not consistent with professional standards of safe patient care; or

(B) The nurse will be on duty for more than sixteen consecutive hours; or

(2) In excess of forty-eight hours in a workweek, if:

(A) The work is not consistent with professional standards of safe patient care; or

(B) The nurse will be on duty during the eight-hour period immediately following the completion of a shift consisting of sixteen consecutive hours.

(e) This section shall not apply to a nurse employed by a health care provider-employer that is operated by the federal government.

**§387-C Retaliation prohibited.** A health care provider-employer shall not discharge, discipline, threaten, discriminate against, penalize, or file a report with the board of nursing against a nurse for exercising rights under section 387-B or for the good faith reporting of an alleged violation of section 387-B.

**§387-D Notice.** Each health care provider-employer shall conspicuously post in an appropriate location a sign, in a form



1 specified by the director, that specifies the rights of nurses  
2 under this part and the prohibition against retaliation by a  
3 health care provider-employer. The sign shall include a  
4 statement that a nurse may file a complaint with the director or  
5 the director's authorized representative against a health care  
6 provider-employer that violates this part and information with  
7 respect to the manner of filing a complaint.

8       **§387-E Enforcement; offenses; penalties.** (a) The  
9 director shall adopt rules pursuant to chapter 91 necessary for  
10 the administration, implementation, and enforcement of this  
11 part.

12       (b) A complaint alleging a violation of section 387-B  
13 shall be filed by the nurse with the director within thirty days  
14 after the date of the alleged violation. The director shall  
15 provide a copy of the complaint to the health care provider-  
16 employer named in the filing within three business days after  
17 receipt of the complaint.

18       (c) If the director finds that a health care provider-  
19 employer has knowingly violated section 387-B, the following  
20 civil penalties shall apply:



(1) For a first violation, the director shall reprimand the health care provider-employer;

(2) For a second violation within the fiscal year July 1 through June 30, the director shall reprimand the health care provider-employer and impose a fine of \$500;

(3) For a third violation within the fiscal year July 1 through June 30, the director shall reprimand the health care provider-employer and impose a fine of no less than \$2,500 but no more than \$5,000; and

(4) For each subsequent violation within the fiscal year July 1 through June 30, the director shall reprimand the health care provider-employer and impose a fine of no less than \$5,000 but no more than \$25,000.

(d) A health care provider-employer knowingly violates section 387-B when the health care provider-employer is either aware that its conduct is of a nature prohibited by section 387-B or aware that the circumstances described in section 387-B exist. However, when actual knowledge of the existence of a particular fact is required to establish a knowing violation of section 387-B, the health care provider-employer shall be deemed



1 to have actual knowledge when the health care provider-employer  
2 discovers facts sufficient to indicate that there is a  
3 significant probability that the violation exists.

4 (e) Penalties collected pursuant to this section or rules  
5 adopted by the director pursuant to this part shall be deposited  
6 to the credit of the center for nursing special fund,  
7 established pursuant to section 304A-2163, for use in nursing  
8 education and scholarship, in keeping with the center for  
9 nursing's mandate to address nursing workforce issues and  
10 mission to support excellence in nursing practice and leadership  
11 development.

12 **§387-F Semiannual reporting requirement.** (a) A health  
13 care provider-employer shall file with the department a  
14 semiannual report on a form provided by the department. The  
15 report for the six-month period ending June 30 shall be  
16 submitted no later than August 1 immediately following the six-  
17 month period covered by the report. The report for the six-  
18 month period ending December 31 shall be submitted no later than  
19 February 1 immediately following the six-month period covered by  
20 the report.



1 (b) Each report shall include, for each nurse employed by  
2 the health care provider-employer or under contract with the  
3 health care provider-employer, the number of overtime hours  
4 worked.

5 (c) A health care provider-employer that does not employ a  
6 nurse who worked overtime hours during the reporting period  
7 shall not be required to describe hours worked as overtime hours  
8 for individual nurses but may instead complete the report by  
9 stating on the form that there are no reportable hours.

10 **§387-G Construction.** Nothing in this part shall be  
11 construed to modify or alter the application of part I."

12 SECTION 3. In codifying the new sections added by section  
13 2 of this Act, the revisor of statutes shall substitute  
14 appropriate section numbers for the letters used in designating  
15 the new sections in this Act.

16 SECTION 4. This Act shall take effect on January 1, 2023.  
17

INTRODUCED BY: 

JAN 24 2022



# H.B. NO. 1985

**Report Title:**

Nurses; Registered Nurses; Licensed Practical Nurses; Work Hours; Mandatory Overtime; Health Care Provider-employer; Penalties

**Description:**

Establishes limitations on mandatory and voluntary overtime for registered nurses and licensed practical nurses. Effective 1/1/2023.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

