

34:11-56a31

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2001 **CHAPTER:** 300
NJSA: 34:11-56a31 (Health care facilities - Hourly employees and overtime)
BILL NO: S2093 (Substituted for A3303)

SPONSOR(S): Vitale and Bennett

DATE INTRODUCED: February 8, 2001

COMMITTEE: **ASSEMBLY:** Health
SENATE: Health; Budget

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 10, 2001
SENATE: June 28, 2001

DATE OF APPROVAL: January 2, 2002

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (2nd reprint enacted)

(Amendments during passage denoted by superscript numbers)

S2093

SPONSORS STATEMENT: (Begins on page 3 of original bill) Yes
COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes 3-15-2001(Health)
6-25-2001(Budget)

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: Yes

A3303

SPONSORS STATEMENT: (Begins on page 3 of original bill) Yes

Bill and Sponsors Statement identical to S2093

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"New law forced overtime for nurses," 1-3-2001 The Times, p.A10

"Legislation gives health workers right to say no..." 1-6-2002 The Press, p.A4

"Ban on forced overtime may ease nurse shortage," 1-6-2002 Asbury Park Press, p.A10

SENATE, No. 2093

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED FEBRUARY 8, 2001

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator JOHN O. BENNETT

District 12 (Monmouth)

Co-Sponsored by:

Senators Adler and Furnari

SYNOPSIS

Prohibits health care facilities from requiring certain hourly wage employees to perform overtime work.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning work hours for certain health care facility
2 employees and supplementing P.L.1966, c.113 (C.34:11-56a et
3 seq.).

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. It is declared to be the public policy of this State to establish
9 a maximum work day and work week for certain hourly wage health
10 care facility employees, beyond which the employees cannot be
11 required to perform overtime work, in order to safeguard their health,
12 efficiency, and general well-being as well as the health and general
13 well-being of the persons to whom these employees provide services.

14

15 2. As used in this act:

16 "Employee" means an individual employed by a health care facility
17 who is involved in direct patient care activities or clinical services and
18 who receives an hourly wage.

19 "Employer" means an individual, partnership, association,
20 corporation or person or group of persons acting directly or indirectly
21 in the interest of a health care facility.

22 "Health care facility" means a health care facility licensed by the
23 Department of Health and Senior Services pursuant to P.L.1971, c.136
24 (C.26:2H-1 et seq.).

25 "Unforeseeable emergent circumstance" means an unpredictable or
26 unavoidable occurrence at unscheduled intervals relating to health care
27 delivery that requires immediate action.

28

29 3. The requirement that an employee of a health care facility
30 accept work in excess of an agreed to, predetermined and regularly
31 scheduled daily work shift, not to exceed 40 hours per week, except
32 in the case of an unforeseeable emergent circumstance when the
33 overtime is required only as a last resort and is not used to fill
34 vacancies resulting from chronic short staffing, is declared to be
35 contrary to public policy and any such requirement contained in any
36 contract, agreement or understanding executed after the effective date
37 of this act shall be void.

38

39 4. a. Notwithstanding any provision of law to the contrary, no
40 health care facility shall require an employee to accept work in excess
41 of an agreed to, predetermined and regularly scheduled daily work
42 shift, not to exceed 40 hours per week.

43 b. The acceptance by any employee of such work in excess of an
44 agreed to, predetermined and regularly scheduled daily work shift, not
45 to exceed 40 hours per week, shall be strictly voluntary and the refusal
46 of any employee to accept such overtime work shall not be grounds

1 for discrimination, dismissal, discharge or any other penalty or
2 employment decision adverse to the employee.

3 c. The provisions of this section shall not apply in the case of an
4 unforeseeable emergent circumstance when the overtime is required
5 only as a last resort and is not used to fill vacancies resulting from
6 chronic short staffing.

7

8 5. An employer who violates the provisions of this act shall be
9 subject to the sanctions provided by law for violations of the "New
10 Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et
11 seq.).

12

13 6. This act shall take effect immediately.

14

15

16

STATEMENT

17

18 This bill supplements the "New Jersey State Wage and Hour Law"
19 by establishing a maximum work day and work week for hourly wage
20 health care facility employees.

21 Currently, health care facilities are not prohibited from requiring
22 that their hourly wage employees accept overtime work. Therefore,
23 although overtime work is generally viewed as a voluntary offering,
24 health care facilities can demand that their hourly wage employees
25 perform paid involuntary overtime services or be subject to
26 employment decisions adverse to the workers, such as discharge or
27 demotion.

28 This bill would make it a violation of the "New Jersey State Wage
29 and Hour Law" for a health care facility to require hourly wage
30 employees who are involved in direct patient care activities or clinical
31 services to accept work in excess of an agreed to, predetermined and
32 regularly scheduled daily work shift, not to exceed 40 hours per week,
33 except in the case of an unforeseeable emergent circumstance (defined
34 as "an unpredictable or unavoidable occurrence at unscheduled
35 intervals relating to health care delivery that requires immediate
36 action") when the overtime is required only as a last resort and is not
37 used to fill vacancies resulting from chronic short staffing. The bill
38 specifically provides that the acceptance of such overtime work would
39 be strictly voluntary and the refusal of such overtime work would not
40 expose employees to discrimination, dismissal, discharge or any other
41 penalty or employment decision adverse to the employee.

42 The bill specifies that the requirement that an employee of a health
43 care facility accept work in excess of an agreed to, predetermined and
44 regularly scheduled daily work shift, not to exceed 40 hours per week,
45 except in the case of an unforeseen emergent circumstance when the
46 overtime is required only as a last resort and is not used to fill

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4

1 vacancies resulting from chronic short staffing, is declared to be
2 contrary to public policy and any such requirement contained in any
3 contract, agreement or understanding executed after the effective date
4 of this bill shall be void.

5 Finally, the bill provides that health care facilities which require
6 these hourly wage employees to accept involuntary overtime work
7 shall be subject to the sanctions set forth in the "New Jersey State
8 Wage and Hour Law," which sanctions include payment of
9 administrative penalties, fines, and possible imprisonment as well as
10 reinstatement of wrongfully discharged employees with payment of any
11 lost wages.

SENATE HEALTH COMMITTEE

STATEMENT TO

SENATE, No. 2093

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 15, 2001

The Senate Health Committee reports favorably and with committee amendments Senate Bill No. 2093.

As amended by committee, this bill supplements the "New Jersey State Wage and Hour Law" by establishing a maximum work week for hourly wage health care facility employees. The bill defines "health care facility" to mean a health care facility licensed by the Department of Health and Senior Services, a State or county psychiatric hospital, a State developmental center or a health care service firm registered by the Division of Consumer Affairs in the Department of Law and Public Safety.

Currently, health care facilities are not prohibited from requiring that their hourly wage employees accept overtime work. Therefore, although overtime work is generally viewed as a voluntary offering, health care facilities can demand that their hourly wage employees perform paid involuntary overtime services or be subject to employment decisions adverse to the workers, such as discharge or demotion.

This bill would make it a violation of the "New Jersey State Wage and Hour Law" for a health care facility to require hourly wage employees who are involved in direct patient care activities or clinical services to accept work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week, except in the case of an unforeseeable emergent circumstance (defined as "any unforeseen declared national, State or municipal emergency or a disaster or other catastrophic event which substantially affects or increases the need for health care services") when the overtime is required only as a last resort and is not used to fill vacancies resulting from chronic short staffing. The bill specifically provides that the acceptance of such overtime work would be strictly voluntary, and the refusal of such overtime work would not expose employees to discrimination, dismissal, discharge or any other penalty or employment decision adverse to the employee.

The bill specifies that the requirement that an employee of a health care facility accept work in excess of an agreed to, predetermined and

regularly scheduled daily work shift, not to exceed 40 hours per week, except in the case of an unforeseen emergent circumstance when the overtime is required only as a last resort and is not used to fill vacancies resulting from chronic short staffing, is declared to be contrary to public policy, and any such requirement contained in any contract, agreement or understanding executed after the effective date of this bill shall be void. The bill specifies, however, that its provisions shall not be construed to impair or negate any employer-employee collective bargaining agreement or any other employer-employee contract in effect on the effective date of the bill.

The bill provides that health care facilities which require these hourly wage employees to accept involuntary overtime work in violation of the provisions of this bill shall be subject to the sanctions set forth in the "New Jersey State Wage and Hour Law," which sanctions include payment of administrative penalties, fines and possible imprisonment, as well as reinstatement of wrongfully discharged employees with payment of any lost wages.

The provisions of the bill shall not apply to employees of assisted living facilities licensed by the Department of Health and Senior Services who are provided with room and board as a benefit of their employment and reside in the facility on a full-time basis.

The bill directs the Departments of Health and Senior Services, Human Services and Law and Public Safety to each collect data from all health care facilities, except general hospitals, which the respective department licenses, operates or regulates, as to the potential impact of the mandatory overtime prohibition on employee availability and other considerations, and to jointly report their findings to the Senate and General Assembly Health Committees within 18 months of the date of enactment of this bill.

Finally, the bill takes effect 180 days after the date of enactment in the case of a general hospital and 18 months after the date of enactment in the case of all other health care facilities.

The committee amended the bill to:

- specify in the definition of "employee" that it shall not include a physician who receives an hourly wage;

- expand the definition of "health care facility" to include State and county psychiatric hospitals, State developmental centers, and health care service firms regulated by the Department of Law and Public Safety;

- revise the definition of "unforeseeable emergent circumstance" to mean any unforeseen declared national, State or municipal emergency or a disaster or other catastrophic event which substantially affects or increases the need for health care services;

- clarify that the provisions of the bill shall not be construed to impair any collective bargaining agreement or contract in effect on the effective date of the bill;

- specify that, in the event of an unforeseeable emergent circumstance when the overtime is required only as a last resort and is

not used to fill vacancies resulting from chronic short staffing, the employer shall provide the employee with necessary time, up to a maximum of one hour, to arrange for the care of the employee's minor children or elderly or disabled family members;

-- exempt from the provisions of the bill certain employees of assisted living facilities who reside on the premises of the facility;

-- direct the Departments of Health and Senior Services, Human Services, and Law and Public Safety to each collect data from all health care facilities, except general hospitals, as to the potential impact of the mandatory overtime prohibition on employee availability and other considerations, and to jointly report their findings to the Senate and General Assembly Health Committees within 18 months of the date of enactment of this bill;

-- direct the Commissioner of Health and Senior Services, in consultation with the Attorney General and the Commissioners of Human Services and Labor, to adopt rules and regulations to carry out the purposes of the bill, within six months of the date of enactment of the bill; and

-- delay the effective date of the bill from immediately to 180 days after enactment in the case of general hospitals, and to 18 months in the case of all other health care facilities.

[First Reprint]

SENATE, No. 2093

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED FEBRUARY 8, 2001

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator JOHN O. BENNETT

District 12 (Monmouth)

Co-Sponsored by:

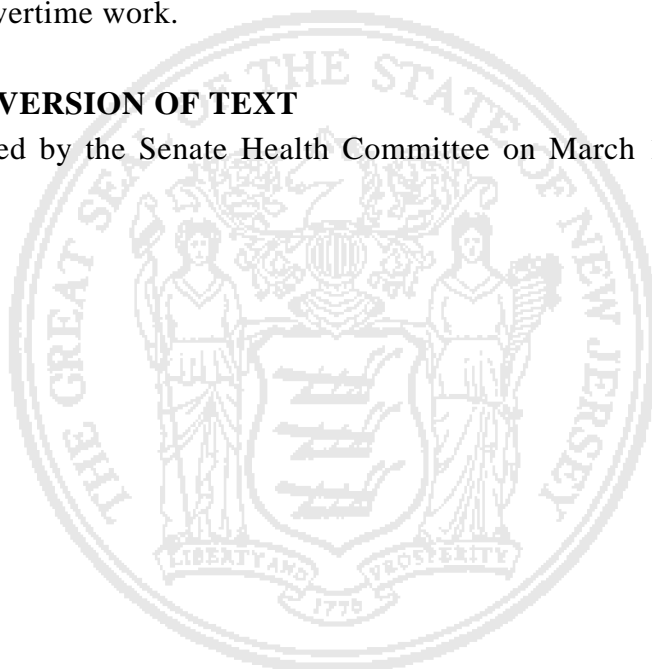
Senators Adler and Furnari

SYNOPSIS

Prohibits health care facilities from requiring certain hourly wage employees to perform overtime work.

CURRENT VERSION OF TEXT

As reported by the Senate Health Committee on March 15, 2001, with amendments.



1 AN ACT concerning work hours for certain health care facility
2 employees and supplementing P.L.1966, c.113 (C.34:11-56a et
3 seq.).

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. It is declared to be the public policy of this State to establish a
9 maximum ¹[work day and]¹ work week for certain hourly wage health
10 care facility employees, beyond which the employees cannot be
11 required to perform overtime work, in order to safeguard their health,
12 efficiency, and general well-being as well as the health and general
13 well-being of the persons to whom these employees provide services.

14
15 2. As used in this act:

16 "Employee" means an individual employed by a health care facility
17 who is involved in direct patient care activities or clinical services and
18 who receives an hourly wage¹, but shall not include a physician¹.

19 "Employer" means an individual, partnership, association,
20 corporation or person or group of persons acting directly or indirectly
21 in the interest of a health care facility.

22 "Health care facility" means a health care facility licensed by the
23 Department of Health and Senior Services pursuant to P.L.1971, c.136
24 (C.26:2H-1 et seq.)¹, a State or county psychiatric hospital, a State
25 developmental center, or a health care service firm registered by the
26 Division of Consumer Affairs in the Department of Law and Public
27 Safety pursuant to P.L.1960, c.39 (C.56:8-1 et seq.)¹.

28 "Unforeseeable emergent circumstance" means ¹[an unpredictable
29 or unavoidable occurrence at unscheduled intervals relating to health
30 care delivery that requires immediate action] any unforeseen declared
31 national, State or municipal emergency or a disaster or other
32 catastrophic event which substantially affects or increases the need for
33 health care services¹.

34
35 3. The requirement that an employee of a health care facility accept
36 work in excess of an agreed to, predetermined and regularly
37 scheduled daily work shift, not to exceed 40 hours per week, except
38 in the case of an unforeseeable emergent circumstance when the
39 overtime is required only as a last resort and is not used to fill
40 vacancies resulting from chronic short staffing, is declared to be
41 contrary to public policy and any such requirement contained in any

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SHH committee amendments adopted March 15, 2001.

1 contract, agreement or understanding executed after the effective date
2 of this act shall be void.

3

4 4. a. Notwithstanding any provision of law to the contrary, no
5 health care facility shall require an employee to accept work in excess
6 of an agreed to, predetermined and regularly scheduled daily work
7 shift, not to exceed 40 hours per week.

8 b. The acceptance by any employee of such work in excess of an
9 agreed to, predetermined and regularly scheduled daily work shift, not
10 to exceed 40 hours per week, shall be strictly voluntary and the refusal
11 of any employee to accept such overtime work shall not be grounds
12 for discrimination, dismissal, discharge or any other penalty or
13 employment decision adverse to the employee.

14 c. The provisions of this section shall not apply in the case of an
15 unforeseeable emergent circumstance when the overtime is required
16 only as a last resort and is not used to fill vacancies resulting from
17 chronic short staffing. ¹In the event of such an unforeseeable emergent
18 circumstance, the employer shall provide the employee with necessary
19 time, up to a maximum of one hour, to arrange for the care of the
20 employee's minor children or elderly or disabled family members.¹

21

22 5. An employer who violates the provisions of this act shall be
23 subject to the sanctions provided by law for violations of the "New
24 Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et
25 seq.).

26

27 ¹6. a. The provisions of this act shall not be construed to impair
28 or negate any employer-employee collective bargaining agreement or
29 any other employer-employee contract in effect on the effective date
30 of this act.

31 b. The provisions of this act shall not apply to employees of
32 assisted living facilities licensed by the Department of Health and
33 Senior Services who are provided with room and board as a benefit of
34 their employment and reside in the facility on a full-time basis.¹

35

36 ¹7. The Departments of Health and Senior Services, Human
37 Services, and Law and Public Safety shall each collect data from all
38 health care facilities, except general hospitals, which the respective
39 department licenses, operates or regulates, as to the potential impact
40 of the mandatory overtime prohibition on employee availability and
41 other considerations, and shall jointly report their findings to the
42 Senate and General Assembly Health Committees within 18 months of
43 the date of enactment of this act.¹

44

45 ¹8. The Commissioner of Health and Senior Services, in
46 consultation with the Attorney General and the Commissioners of

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4

1 Human Services and Labor, shall adopt rules and regulations, pursuant
2 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
3 et seq.), within six months of the date of enactment of this act, to carry
4 out the purposes of this act.¹

5

6 ¹[6.] 9.¹ This act shall take effect ¹[immediately] 180 days after
7 the date of enactment in the case of a general hospital and 18 months
8 after the date of enactment in the case of all other health care
9 facilities¹.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2093

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 25, 2001

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 2093 (1R).

This bill establishes, under the "New Jersey State Wage and Hour Law," a cap on the number of hours per week that hourly health care employees can be required to work.

The bill would apply to hourly employees of any health care facility who are involved in direct patient care or clinical services, but not to physicians. The bill defines "health care facility" to mean (i) a health care facility licensed by the Department of Health and Senior Services, (ii) a State or county psychiatric hospital, (iii) a State developmental center, or (iv) a health care service firm registered by the Division of Consumer Affairs in the Department of Law and Public Safety.

Currently, health care facilities may require their hourly wage employees to accept overtime work; that is, the facilities can ask these hourly workers to perform paid involuntary overtime services or risk sanctions, such as discharge or demotion.

This bill would make it a violation of the Wage and Hour Law for a health care facility to require covered hourly employees to accept work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week. The bill declares any requirement that a covered employee of a health care facility accept work in excess of 40 hours per week to be contrary to public policy, and provides that any such requirement in a contract executed or renewed after the legislation takes effect as law shall be void.

An exception to this prohibition against mandatory overtime would be allowed in the event of an "unforeseeable emergent circumstance," defined as "an unpredictable or unavoidable occurrence at unscheduled intervals relating to health care delivery that requires immediate action." This "emergency exception" could not be invoked simply to fill vacancies resulting from chronic short staffing; it would apply only if (i) the overtime were required as a last resort, and (ii) the employer, except in cases of an officially declared emergency or disaster, has exhausted reasonable efforts to obtain staffing. The bill directs an

employer requiring emergency overtime work to prepare written documentation of those "reasonable efforts" and to make that documentation available for review by the Departments of Health and Senior Services and Labor.

The bill specifically provides that an hourly health care worker's acceptance of overtime work would be strictly voluntary, and that the refusal of such overtime work would not expose employees to discrimination, dismissal, discharge or any other penalty or employment decision adverse to the employee.

The bill provides that health care facilities that demand involuntary overtime service in violation of the legislation shall be subject to the sanctions set forth in the "New Jersey State Wage and Hour Law," including liability for administrative penalties and fines and possible imprisonment, as well as having to reinstatement wrongfully discharged employees with payment of any lost wages.

The provisions of the bill would not apply to employees of assisted living facilities licensed by the Department of Health and Senior Services who are provided with room and board as a benefit of their employment and reside in the facility on a full-time basis.

The bill directs the Departments of Health and Senior Services, Human Services and Law and Public Safety to collect data from all health care facilities that the respective department licenses, operates or regulates, as to the potential impact of the mandatory overtime prohibition on employee availability and other considerations, and jointly to report their findings to the Senate and General Assembly Health Committees within 18 months of the enactment of the bill.

The legislation is to take effect 12 months after enactment in the case of an acute care hospital and 18 months after enactment in the case of long term care facilities and all other health care facilities.

COMMITTEE AMENDMENTS

Committee amendments to this bill:

(1) Broaden the "emergency exception" to the ban on involuntary overtime so that it covers any unpredictable situation demanding immediate provision of health care, thereby restoring the exception to the form it took in the bill as originally introduced;

(2) Incorporate the requirement that an employer seeking to invoke the bill's "emergency exception" must (absent an official emergency declaration) first have exhausted reasonable efforts to obtain staffing, and also document those efforts in writing;

(3) Clarify that the bill does not apply to bona fide "on-call" time, as defined in the legislation;

(4) Eliminate an exception, for general hospitals, from inclusion in the study that health care regulatory agencies are to prepare on the potential impact of the mandatory overtime ban; and

(5) With respect to hospitals, delay the time frame for implementing the legislation from 180 days to 12 months from the date of enactment.

FISCAL IMPACT

This bill covers hourly wage direct health care workers at a broad range of facilities, including hospitals, nursing homes, assisted living facilities, home health agencies, the five State psychiatric hospitals and Ann Klein Forensic Center, the six county psychiatric hospitals, the six State developmental centers and Brisbane Child Center, and the State-run veterans' nursing homes.

The Office of Legislative Services is unable to determine the fiscal impact of the legislation because:

- C No data are readily available regarding the total number of overtime hours that are incurred at the affected health care facilities, the number of overtime hours that are voluntary or incorporated within an employer-employee collective bargaining agreement or any other employer-employee contract, and the number of overtime hours that are required of employees.
- C The number of additional employees health care facilities may have to hire to compensate for the loss of required overtime cannot be determined. Whether health care facilities would be able to employ sufficient additional staff to compensate for the loss of required overtime is not known. To the extent that health care facilities are not able to employ sufficient additional staff, their license, accreditation or ability to operate may be jeopardized due to a loss of third-party reimbursements, primarily federal Medicare and Medicaid revenues.
- C Additional administrative costs DHSS, DHS and DLPS would incur collecting data from all affected health care facilities to assess the potential impact of the mandatory overtime prohibition on employee availability cannot be determined, but are potentially significant as there are more than 1,000 affected facilities.
- C Additional costs DOL may incur investigating complaints filed under the legislation cannot be determined. Once the law is implemented and complaints are filed and investigated, costs associated with investigating these type of complaints can be determined.

The OLS also notes that private health care facilities that sustain increased compensation costs through adaptive staffing mechanisms could be entitled to higher State reimbursement for care to their Medicaid-eligible patients.

LEGISLATIVE FISCAL ESTIMATE
 [First Reprint]
SENATE, No. 2093
STATE OF NEW JERSEY
209th LEGISLATURE

DATED: JULY 19, 2001

SUMMARY

Synopsis: Prohibits health care facilities from requiring certain hourly wage employees to perform overtime work.

Type of Impact: Indeterminate.

Agencies Affected: Departments of Health and Senior Services (DHSS), Human Services (DHS), Labor (DOL), Law and Public Safety (DLPS) and Military and Veterans Affairs. All counties and municipalities that operate health care facilities.

Office of Legislative Services Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost	Indeterminate	Indeterminate	Indeterminate
Local Cost	Indeterminate	Indeterminate	Indeterminate

- ! Information on the total number of overtime hours worked at all affected health care facilities is not available. Of the number of overtime hours worked, it is not known how many hours are required and how many hours are voluntary or incorporated within an employer-employee collective bargaining agreement or contract.
- ! It is not known how many additional personnel in affected health care facilities would have to be employed to compensate for the loss of required overtime, or whether the facilities would be able to hire the additional personnel to compensate for the loss of required overtime. If health care facilities are unable to employ sufficient numbers of additional personnel, their license, accreditation or ability to operate may be jeopardized. This would result in a loss of revenues, primarily from the federal Medicare and Medicaid programs.
- ! Administrative costs DHSS, DHS and DLPS may incur collecting data to assess the potential impact of the mandatory overtime prohibition on employee availability cannot be determined, but may be significant. Administrative costs DOL would incur investigating alleged violations cannot be determined, but may be significant depending on the number of investigations that would have to be conducted and the amount of time each investigation requires.

BILL DESCRIPTION

Senate Bill No. 2093 (1R) of 2001 would make it a violation of the "New Jersey State Wage and Hour Law" for a health care facility to require hourly wage employees who are involved in direct patient care activities or clinical services to accept work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week, except in the case of an unforeseeable emergent circumstance (as defined in the bill) when the overtime is required only as a last resort and is not used to fill vacancies resulting from chronic short staffing. Acceptance of overtime work would be strictly voluntary; employees refusing overtime work would not be exposed to discrimination, dismissal, discharge or any other penalty or employment decision adverse to the employee. Overtime would also be permitted as part of an employer-employee collective bargaining agreement or contract.

With the exception of assisted living facilities licensed by DHSS, all health care facilities licensed by DHSS, State and county psychiatric hospitals, State developmental centers, and health care service firms registered with DLPS are subject to the legislation.

DHSS, DHS and DLPS are directed to collect data from all health care facilities, except general hospitals, to assess the potential impact of the mandatory overtime prohibition on employee availability and other considerations, and to report their findings to various legislative committees within 18 months of the legislation's enactment.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services is unable to determine the fiscal impact of the legislation because:

- C No data are readily available regarding the total number of overtime hours that are incurred at the affected health care facilities, the number of overtime hours that are voluntary or incorporated within an employer-employee collective bargaining agreement or any other employer-employee contract, and the number of overtime hours that are required of employees.
- C The number of additional employees health care facilities may have to hire to compensate for the loss of required overtime cannot be determined. Whether health care facilities would be able to employ sufficient additional staff to compensate for the loss of required overtime is not known. To the extent that health care facilities are not able to employ sufficient additional staff, their license, accreditation or ability to operate may be jeopardized due to a loss of third-party reimbursements, primarily federal Medicare and Medicaid revenues.
- C Additional administrative costs DHSS, DHS and DLPS would incur collecting data from all affected health care facilities to assess the potential impact of the mandatory overtime prohibition on employee availability cannot be determined, but are potentially significant as there are more than 1,000 affected facilities.
- C Additional costs DOL may incur investigating complaints filed under the legislation cannot be determined. Once the law is implemented and complaints are filed and investigated, costs associated with investigating these type of complaints can be determined.

Section: *Human Services*

Analyst: *Jay Hershberg*
Principal Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

[Second Reprint]
SENATE, No. 2093

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED FEBRUARY 8, 2001

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator JOHN O. BENNETT

District 12 (Monmouth)

Co-Sponsored by:

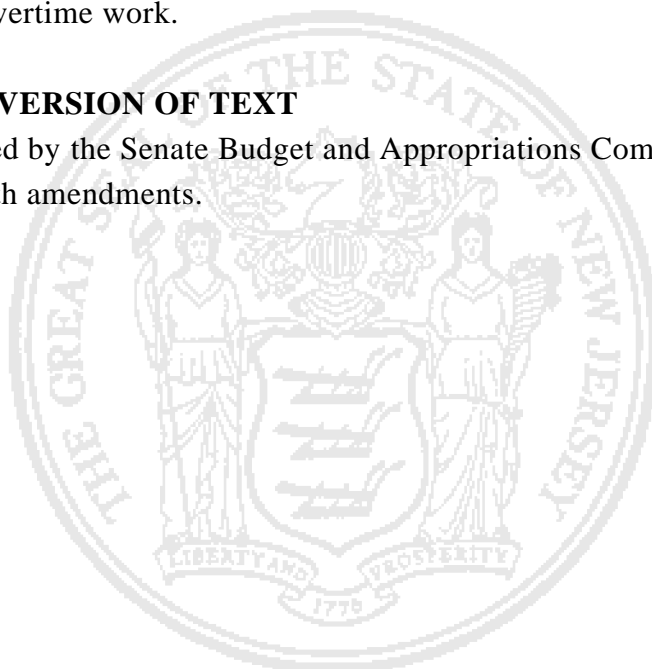
Senators Adler and Furnari

SYNOPSIS

Prohibits health care facilities from requiring certain hourly wage employees to perform overtime work.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on June 25, 2001, with amendments.



1 AN ACT concerning work hours for certain health care facility
2 employees and supplementing P.L.1966, c.113 (C.34:11-56a et
3 seq.).

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. It is declared to be the public policy of this State to establish a
9 maximum ¹[work day and]¹ work week for certain hourly wage health
10 care facility employees, beyond which the employees cannot be
11 required to perform overtime work, in order to safeguard their health,
12 efficiency, and general well-being as well as the health and general
13 well-being of the persons to whom these employees provide services.

14
15 2. As used in this act:

16 "Employee" means an individual employed by a health care facility
17 who is involved in direct patient care activities or clinical services and
18 who receives an hourly wage¹, but shall not include a physician¹.

19 "Employer" means an individual, partnership, association,
20 corporation or person or group of persons acting directly or indirectly
21 in the interest of a health care facility.

22 "Health care facility" means a health care facility licensed by the
23 Department of Health and Senior Services pursuant to P.L.1971, c.136
24 (C.26:2H-1 et seq.)¹, a State or county psychiatric hospital, a State
25 developmental center, or a health care service firm registered by the
26 Division of Consumer Affairs in the Department of Law and Public
27 Safety pursuant to P.L.1960, c.39 (C.56:8-1 et seq.)¹.

28 ²"On-call time" means time spent by an employee who is not
29 currently working on the premises of the place of employment, but
30 who is compensated for availability, or as a condition of employment
31 has agreed to be available, to return to the premises of the place of
32 employment on short notice if the need arises.

33 "Reasonable efforts" means that the employer shall: a. seek persons
34 who volunteer to work extra time from all available qualified staff who
35 are working at the time of the unforeseeable emergent circumstance;
36 b. contact all qualified employees who have made themselves available
37 to work extra time; c. seek the use of per diem staff; and d. seek
38 personnel from a contracted temporary agency when such staff is
39 permitted by law or regulation.²

40 "Unforeseeable emergent circumstance" means ¹[an unpredictable
41 or unavoidable occurrence at unscheduled intervals relating to health

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SHH committee amendments adopted March 15, 2001.

² Senate SBA committee amendments adopted June 25, 2001.

1 care delivery that requires immediate action] ²[any unforeseen
2 declared national, State or municipal emergency or a disaster or other
3 catastrophic event which substantially affects or increases the need for
4 health care services¹] an unpredictable or unavoidable occurrence at
5 unscheduled intervals relating to health care delivery that requires
6 immediate action².

7
8 3. The requirement that an employee of a health care facility accept
9 work in excess of an agreed to, predetermined and regularly
10 scheduled daily work shift, not to exceed 40 hours per week, except
11 in the case of an unforeseeable emergent circumstance when the
12 overtime is required only as a last resort and is not used to fill
13 vacancies resulting from chronic short staffing ²and the employer has
14 exhausted reasonable efforts to obtain staffing², is declared to be
15 contrary to public policy and any such requirement contained in any
16 contract, agreement or understanding executed ²or renewed² after the
17 effective date of this act shall be void.

18
19 4. a. Notwithstanding any provision of law to the contrary, no
20 health care facility shall require an employee to accept work in excess
21 of an agreed to, predetermined and regularly scheduled daily work
22 shift, not to exceed 40 hours per week.

23 b. The acceptance by any employee of such work in excess of an
24 agreed to, predetermined and regularly scheduled daily work shift, not
25 to exceed 40 hours per week, shall be strictly voluntary and the refusal
26 of any employee to accept such overtime work shall not be grounds
27 for discrimination, dismissal, discharge or any other penalty or
28 employment decision adverse to the employee.

29 c. The provisions of this section shall not apply in the case of an
30 unforeseeable emergent circumstance when²: (1)² the overtime is
31 required only as a last resort and is not used to fill vacancies resulting
32 from chronic short staffing², and (2) the employer has exhausted
33 reasonable efforts to obtain staffing². ¹In the event of such an
34 unforeseeable emergent circumstance, the employer shall provide the
35 employee with necessary time, up to a maximum of one hour, to
36 arrange for the care of the employee's minor children or elderly or
37 disabled family members.¹

38 ²The requirement that the employer shall exhaust reasonable efforts
39 to obtain staffing shall not apply in the event of any declared national,
40 State or municipal emergency or a disaster or other catastrophic event
41 which substantially affects or increases the need for health care
42 services.

43 d. In the event that an employer requires an employee to work
44 overtime pursuant to subsection c. of this section, the employer shall
45 document in writing the reasonable efforts it has exhausted. The
46 documentation shall be made available for review by the Department

1 of Health and Senior Services and the Department of Labor.²

2

3 5. An employer who violates the provisions of this act shall be
4 subject to the sanctions provided by law for violations of the "New
5 Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et
6 seq.).

7

8 ¹6. a. The provisions of this act shall not be construed to impair
9 or negate any employer-employee collective bargaining agreement or
10 any other employer-employee contract in effect on the effective date
11 of this act.

12 b. The provisions of this act shall not apply to employees of
13 assisted living facilities licensed by the Department of Health and
14 Senior Services who are provided with room and board as a benefit of
15 their employment and reside in the facility on a full-time basis.¹

16 ²c. The provisions of this act shall not apply to on-call time, but
17 nothing in this act shall be construed to permit an employer to use on-
18 call time as a substitute for mandatory overtime.²

19

20 ¹7. The Departments of Health and Senior Services, Human
21 Services, and Law and Public Safety shall each collect data from all
22 health care facilities²[, except general hospitals,]² which the
23 respective department licenses, operates or regulates, as to the
24 potential impact of the mandatory overtime prohibition on employee
25 availability and other considerations, and shall jointly report their
26 findings to the Senate and General Assembly Health Committees
27 within 18 months of the date of enactment of this act.¹

28 b. The provisions of this act shall not apply to employees of
29 assisted living facilities licensed by the Department of Health and
30 Senior Services who are provided with room and board as a benefit of
31 their employment and reside in the facility on a full-time basis.¹

32 ²c. The provisions of this act shall not apply to on-call time, but
33 nothing in this act shall be construed to permit an employer to use on-
34 call time as a substitute for mandatory overtime.²

35

36 ¹8. The Commissioner of Health and Senior Services, in
37 consultation with the Attorney General and the Commissioners of
38 Human Services and Labor, shall adopt rules and regulations, pursuant
39 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
40 et seq.), within six months of the date of enactment of this act, to carry
41 out the purposes of this act.¹

42

43 ¹[6.] ^{9.}¹ This act shall take effect ¹[immediately] ²[180 days] ¹²
44 months² after the date of enactment in the case of ²[a general] an
45 acute care² hospital and 18 months after the date of enactment in the
46 case of ²long-term care facilities and² all other health care facilities¹.

ASSEMBLY HEALTH COMMITTEE
STATEMENT TO

[Second Reprint]
SENATE, No. 2093

STATE OF NEW JERSEY

DATED: NOVEMBER 19, 2001

The Assembly Health Committee reports favorably Senate Bill No. 2093 (2R).

This bill establishes, under the "New Jersey State Wage and Hour Law," a cap on the number of hours per week that hourly health care employees can be required to work.

The bill would apply to hourly employees of any health care facility who are involved in direct patient care or clinical services, but not to physicians. The bill defines "health care facility" to mean: a health care facility licensed by the Department of Health and Senior Services, a State or county psychiatric hospital, a State developmental center, or a health care service firm registered by the Division of Consumer Affairs in the Department of Law and Public Safety. (This would include hospitals, nursing homes, assisted living facilities, home health agencies, the five State psychiatric hospitals and the Ann Klein Forensic Center, the six county psychiatric hospitals, the six State developmental centers and the Arthur Brisbane Child Center, and the State-operated veterans' nursing homes.)

Currently, health care facilities may require their hourly wage employees to accept overtime work; that is, the facilities can ask these hourly workers to perform paid involuntary overtime services or risk sanctions, such as discharge or demotion.

This bill would make it a violation of the Wage and Hour Law for a health care facility to require covered hourly employees to accept work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week. The bill declares any requirement that a covered employee of a health care facility accept work in excess of 40 hours per week to be contrary to public policy, and provides that any such requirement in a contract executed or renewed after the effective date of the bill shall be void.

An exception to the prohibition against mandatory overtime would be allowed in the event of an "unforeseeable emergent circumstance," which the bill defines as "an unpredictable or unavoidable occurrence at unscheduled intervals relating to health care delivery that requires immediate action." This "emergency exception" could not be invoked simply to fill vacancies resulting from chronic short staffing, but would apply only if: the overtime were required as a last resort; and the

employer, except in cases of an officially declared emergency or disaster, had exhausted reasonable efforts to obtain staffing. The bill directs an employer requiring emergency overtime work to prepare written documentation of those "reasonable efforts," and to make that documentation available for review by the Departments of Health and Senior Services and Labor.

The bill specifically provides that (except in the case of an "unforeseeable emergent circumstance") an hourly health care worker's acceptance of overtime work would be strictly voluntary, and that the refusal of such overtime work would not expose employees to discrimination, dismissal, discharge or any other penalty or employment decision adverse to the employee.

The bill provides that health care facilities that demand involuntary overtime service in violation of the provisions of this bill shall be subject to the sanctions set forth in the "New Jersey State Wage and Hour Law," including liability for administrative penalties and fines and possible imprisonment, as well as having to reinstate wrongfully discharged employees with payment of any lost wages.

The provisions of the bill are not to be construed to impair any collective bargaining agreement or contract in effect on the effective date of the bill and would not apply to employees of assisted living facilities licensed by the Department of Health and Senior Services who are provided with room and board as a benefit of their employment and reside in the facility on a full-time basis.

The bill directs the Departments of Health and Senior Services, Human Services and Law and Public Safety to collect data from all health care facilities that the respective department licenses, operates or regulates, as to the potential impact of the mandatory overtime prohibition on employee availability and other considerations, and to jointly report their findings to the Senate and General Assembly Health Committees within 18 months of the enactment of the bill.

The bill takes effect: 12 months after enactment, in the case of an acute care hospital; and 18 months after enactment, in the case of long term care facilities and all other health care facilities.

This bill is identical to Assembly Bill No. 3303 ACA (Collins/Conners), which the committee also reported on this date.

[Corrected Copy]

[Second Reprint]

SENATE, No. 2093

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED FEBRUARY 8, 2001

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator JOHN O. BENNETT

District 12 (Monmouth)

Co-Sponsored by:

**Senators Adler, Furnari, Cafiero, Turner, Girgenti, Assemblymen Collins,
Conners, Kelly, Corodemus and Assemblywoman Greenstein**

SYNOPSIS

Prohibits health care facilities from requiring certain hourly wage employees to perform overtime work.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on June 25, 2001, with amendments.

(Sponsorship Updated As Of: 12/11/2001)

1 AN ACT concerning work hours for certain health care facility
2 employees and supplementing P.L.1966, c.113 (C.34:11-56a et
3 seq.).

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. It is declared to be the public policy of this State to establish a
9 maximum ¹[work day and]¹ work week for certain hourly wage health
10 care facility employees, beyond which the employees cannot be
11 required to perform overtime work, in order to safeguard their health,
12 efficiency, and general well-being as well as the health and general
13 well-being of the persons to whom these employees provide services.

14
15 2. As used in this act:

16 "Employee" means an individual employed by a health care facility
17 who is involved in direct patient care activities or clinical services and
18 who receives an hourly wage¹, but shall not include a physician¹.

19 "Employer" means an individual, partnership, association,
20 corporation or person or group of persons acting directly or indirectly
21 in the interest of a health care facility.

22 "Health care facility" means a health care facility licensed by the
23 Department of Health and Senior Services pursuant to P.L.1971, c.136
24 (C.26:2H-1 et seq.)¹, a State or county psychiatric hospital, a State
25 developmental center, or a health care service firm registered by the
26 Division of Consumer Affairs in the Department of Law and Public
27 Safety pursuant to P.L.1960, c.39 (C.56:8-1 et seq.)¹.

28 ²"On-call time" means time spent by an employee who is not
29 currently working on the premises of the place of employment, but
30 who is compensated for availability, or as a condition of employment
31 has agreed to be available, to return to the premises of the place of
32 employment on short notice if the need arises.

33 "Reasonable efforts" means that the employer shall: a. seek persons
34 who volunteer to work extra time from all available qualified staff who
35 are working at the time of the unforeseeable emergent circumstance;
36 b. contact all qualified employees who have made themselves available
37 to work extra time; c. seek the use of per diem staff; and d. seek
38 personnel from a contracted temporary agency when such staff is
39 permitted by law or regulation.²

40 "Unforeseeable emergent circumstance" means ¹[an unpredictable
41 or unavoidable occurrence at unscheduled intervals relating to health

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SHH committee amendments adopted March 15, 2001.

² Senate SBA committee amendments adopted June 25, 2001.

1 care delivery that requires immediate action] ²[any unforeseen
2 declared national, State or municipal emergency or a disaster or other
3 catastrophic event which substantially affects or increases the need for
4 health care services¹] an unpredictable or unavoidable occurrence at
5 unscheduled intervals relating to health care delivery that requires
6 immediate action².

7
8 3. The requirement that an employee of a health care facility accept
9 work in excess of an agreed to, predetermined and regularly
10 scheduled daily work shift, not to exceed 40 hours per week, except
11 in the case of an unforeseeable emergent circumstance when the
12 overtime is required only as a last resort and is not used to fill
13 vacancies resulting from chronic short staffing ²and the employer has
14 exhausted reasonable efforts to obtain staffing², is declared to be
15 contrary to public policy and any such requirement contained in any
16 contract, agreement or understanding executed ²or renewed² after the
17 effective date of this act shall be void.

18
19 4. a. Notwithstanding any provision of law to the contrary, no
20 health care facility shall require an employee to accept work in excess
21 of an agreed to, predetermined and regularly scheduled daily work
22 shift, not to exceed 40 hours per week.

23 b. The acceptance by any employee of such work in excess of an
24 agreed to, predetermined and regularly scheduled daily work shift, not
25 to exceed 40 hours per week, shall be strictly voluntary and the refusal
26 of any employee to accept such overtime work shall not be grounds
27 for discrimination, dismissal, discharge or any other penalty or
28 employment decision adverse to the employee.

29 c. The provisions of this section shall not apply in the case of an
30 unforeseeable emergent circumstance when²: (1)² the overtime is
31 required only as a last resort and is not used to fill vacancies resulting
32 from chronic short staffing², and (2) the employer has exhausted
33 reasonable efforts to obtain staffing². ¹In the event of such an
34 unforeseeable emergent circumstance, the employer shall provide the
35 employee with necessary time, up to a maximum of one hour, to
36 arrange for the care of the employee's minor children or elderly or
37 disabled family members.¹

38 ²The requirement that the employer shall exhaust reasonable efforts
39 to obtain staffing shall not apply in the event of any declared national,
40 State or municipal emergency or a disaster or other catastrophic event
41 which substantially affects or increases the need for health care
42 services.

43 d. In the event that an employer requires an employee to work
44 overtime pursuant to subsection c. of this section, the employer shall
45 document in writing the reasonable efforts it has exhausted. The
46 documentation shall be made available for review by the Department

1 of Health and Senior Services and the Department of Labor.²

2

3 5. An employer who violates the provisions of this act shall be
4 subject to the sanctions provided by law for violations of the "New
5 Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et
6 seq.).

7

8 ¹6. a. The provisions of this act shall not be construed to impair
9 or negate any employer-employee collective bargaining agreement or
10 any other employer-employee contract in effect on the effective date
11 of this act.

12 b. The provisions of this act shall not apply to employees of
13 assisted living facilities licensed by the Department of Health and
14 Senior Services who are provided with room and board as a benefit of
15 their employment and reside in the facility on a full-time basis.¹

16 ²c. The provisions of this act shall not apply to on-call time, but
17 nothing in this act shall be construed to permit an employer to use on-
18 call time as a substitute for mandatory overtime.²

19

20 ¹7. The Departments of Health and Senior Services, Human
21 Services, and Law and Public Safety shall each collect data from all
22 health care facilities²[, except general hospitals,]² which the
23 respective department licenses, operates or regulates, as to the
24 potential impact of the mandatory overtime prohibition on employee
25 availability and other considerations, and shall jointly report their
26 findings to the Senate and General Assembly Health Committees
27 within 18 months of the date of enactment of this act.¹

28

29 ¹8. The Commissioner of Health and Senior Services, in
30 consultation with the Attorney General and the Commissioners of
31 Human Services and Labor, shall adopt rules and regulations, pursuant
32 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
33 et seq.), within six months of the date of enactment of this act, to carry
34 out the purposes of this act.¹

35

36 ¹[6.] ^{9.}¹ This act shall take effect ¹[immediately] ²[180 days] ¹²
37 months² after the date of enactment in the case of ¹[a general] an
38 acute care² hospital and 18 months after the date of enactment in the
39 case of ²long-term care facilities and² all other health care facilities¹.

ASSEMBLY, No. 3303

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED MARCH 22, 2001

Sponsored by:

Assemblyman JACK COLLINS

District 3 (Salem, Cumberland and Gloucester)

Assemblyman JACK CONNERS

District 7 (Burlington and Camden)

Co-Sponsored by:

Assemblyman Kelly

SYNOPSIS

Prohibits health care facilities from requiring certain hourly wage employees to perform overtime work.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/4/2001)

A3303 COLLINS, CONNERS

2

1 AN ACT concerning work hours for certain health care facility
2 employees and supplementing P.L.1966, c.113 (C.34:11-56a et
3 seq.).

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. It is declared to be the public policy of this State to establish
9 a maximum work day and work week for certain hourly wage health
10 care facility employees, beyond which the employees cannot be
11 required to perform overtime work, in order to safeguard their health,
12 efficiency, and general well-being as well as the health and general
13 well-being of the persons to whom these employees provide services.

14

15 2. As used in this act:

16 "Employee" means an individual employed by a health care facility
17 who is involved in direct patient care activities or clinical services and
18 who receives an hourly wage.

19 "Employer" means an individual, partnership, association,
20 corporation or person or group of persons acting directly or indirectly
21 in the interest of a health care facility.

22 "Health care facility" means a health care facility licensed by the
23 Department of Health and Senior Services pursuant to P.L.1971, c.136
24 (C.26:2H-1 et seq.).

25 "Unforeseeable emergent circumstance" means an unpredictable or
26 unavoidable occurrence at unscheduled intervals relating to health care
27 delivery that requires immediate action.

28

29 3. The requirement that an employee of a health care facility
30 accept work in excess of an agreed to, predetermined and regularly
31 scheduled daily work shift, not to exceed 40 hours per week, except
32 in the case of an unforeseeable emergent circumstance when the
33 overtime is required only as a last resort and is not used to fill
34 vacancies resulting from chronic short staffing, is declared to be
35 contrary to public policy and any such requirement contained in any
36 contract, agreement or understanding executed after the effective date
37 of this act shall be void.

38

39 4. a. Notwithstanding any provision of law to the contrary, no
40 health care facility shall require an employee to accept work in excess
41 of an agreed to, predetermined and regularly scheduled daily work
42 shift, not to exceed 40 hours per week.

43 b. The acceptance by any employee of such work in excess of an
44 agreed to, predetermined and regularly scheduled daily work shift, not
45 to exceed 40 hours per week, shall be strictly voluntary and the refusal
46 of any employee to accept such overtime work shall not be grounds

1 for discrimination, dismissal, discharge or any other penalty or
2 employment decision adverse to the employee.

3 c. The provisions of this section shall not apply in the case of an
4 unforeseeable emergent circumstance when the overtime is required
5 only as a last resort and is not used to fill vacancies resulting from
6 chronic short staffing.

7

8 5. An employer who violates the provisions of this act shall be
9 subject to the sanctions provided by law for violations of the "New
10 Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et
11 seq.).

12

13 6. This act shall take effect immediately.

14

15

16

STATEMENT

17

18 This bill supplements the "New Jersey State Wage and Hour Law"
19 by establishing a maximum work day and work week for hourly wage
20 health care facility employees.

21 Currently, health care facilities are not prohibited from requiring
22 that their hourly wage employees accept overtime work. Therefore,
23 although overtime work is generally viewed as a voluntary offering,
24 health care facilities can demand that their hourly wage employees
25 perform paid involuntary overtime services or be subject to
26 employment decisions adverse to the workers, such as discharge or
27 demotion.

28 This bill would make it a violation of the "New Jersey State Wage
29 and Hour Law" for a health care facility to require hourly wage
30 employees who are involved in direct patient care activities or clinical
31 services to accept work in excess of an agreed to, predetermined and
32 regularly scheduled daily work shift, not to exceed 40 hours per week,
33 except in the case of an unforeseeable emergent circumstance (defined
34 as "an unpredictable or unavoidable occurrence at unscheduled
35 intervals relating to health care delivery that requires immediate
36 action") when the overtime is required only as a last resort and is not
37 used to fill vacancies resulting from chronic short staffing. The bill
38 specifically provides that the acceptance of such overtime work would
39 be strictly voluntary and the refusal of such overtime work would not
40 expose employees to discrimination, dismissal, discharge or any other
41 penalty or employment decision adverse to the employee.

42 The bill specifies that the requirement that an employee of a health
43 care facility accept work in excess of an agreed to, predetermined and
44 regularly scheduled daily work shift, not to exceed 40 hours per week,
45 except in the case of an unforeseen emergent circumstance when the
46 overtime is required only as a last resort and is not used to fill

A3303 COLLINS, CONNERS

1 vacancies resulting from chronic short staffing, is declared to be
2 contrary to public policy and any such requirement contained in any
3 contract, agreement or understanding executed after the effective date
4 of this bill shall be void.

5 Finally, the bill provides that health care facilities which require
6 these hourly wage employees to accept involuntary overtime work
7 shall be subject to the sanctions set forth in the "New Jersey State
8 Wage and Hour Law," which sanctions include payment of
9 administrative penalties, fines, and possible imprisonment as well as
10 reinstatement of wrongfully discharged employees with payment of any
11 lost wages.

ASSEMBLY HEALTH COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3303

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 19, 2001

The Assembly Health Committee reports favorably and with committee amendments Assembly Bill No. 3303.

As amended by the committee, this bill establishes, under the "New Jersey State Wage and Hour Law," a cap on the number of hours per week that hourly health care employees can be required to work.

The bill would apply to hourly employees of any health care facility who are involved in direct patient care or clinical services, but not to physicians. The bill defines "health care facility" to mean: a health care facility licensed by the Department of Health and Senior Services, a State or county psychiatric hospital, a State developmental center, or a health care service firm registered by the Division of Consumer Affairs in the Department of Law and Public Safety. (This would include hospitals, nursing homes, assisted living facilities, home health agencies, the five State psychiatric hospitals and the Ann Klein Forensic Center, the six county psychiatric hospitals, the six State developmental centers and the Arthur Brisbane Child Center, and the State-operated veterans' nursing homes.)

Currently, health care facilities may require their hourly wage employees to accept overtime work; that is, the facilities can ask these hourly workers to perform paid involuntary overtime services or risk sanctions, such as discharge or demotion.

This bill would make it a violation of the Wage and Hour Law for a health care facility to require covered hourly employees to accept work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week. The bill declares any requirement that a covered employee of a health care facility accept work in excess of 40 hours per week to be contrary to public policy, and provides that any such requirement in a contract executed or renewed after the effective date of the bill shall be void.

An exception to the prohibition against mandatory overtime would be allowed in the event of an "unforeseeable emergent circumstance," which the bill defines as "an unpredictable or unavoidable occurrence at unscheduled intervals relating to health care delivery that requires immediate action." This "emergency exception" could not be invoked simply to fill vacancies resulting from chronic short staffing, but would

apply only if: the overtime were required as a last resort; and the employer, except in cases of an officially declared emergency or disaster, had exhausted reasonable efforts to obtain staffing. The bill directs an employer requiring emergency overtime work to prepare written documentation of those "reasonable efforts," and to make that documentation available for review by the Departments of Health and Senior Services and Labor.

The bill specifically provides that (except in the case of an "unforeseeable emergent circumstance") an hourly health care worker's acceptance of overtime work would be strictly voluntary, and that the refusal of such overtime work would not expose employees to discrimination, dismissal, discharge or any other penalty or employment decision adverse to the employee.

The bill provides that health care facilities that demand involuntary overtime service in violation of the provisions of this bill shall be subject to the sanctions set forth in the "New Jersey State Wage and Hour Law," including liability for administrative penalties and fines and possible imprisonment, as well as having to reinstate wrongfully discharged employees with payment of any lost wages.

The provisions of the bill are not to be construed to impair any collective bargaining agreement or contract in effect on the effective date of the bill and would not apply to employees of assisted living facilities licensed by the Department of Health and Senior Services who are provided with room and board as a benefit of their employment and reside in the facility on a full-time basis.

The bill directs the Departments of Health and Senior Services (DHSS), Human Services (DHS) and Law and Public Safety (DLPS) to collect data from all health care facilities that the respective department licenses, operates or regulates, as to the potential impact of the mandatory overtime prohibition on employee availability and other considerations, and to jointly report their findings to the Senate and General Assembly Health Committees within 18 months of the enactment of the bill.

The bill takes effect: 12 months after enactment, in the case of an acute care hospital; and 18 months after enactment, in the case of long-term care facilities and all other health care facilities.

The committee amendments:

- C specify in the definition of "employee" that it shall not include a physician who receives an hourly wage;
- C expand the definition of "health care facility" to include State and county psychiatric hospitals, State developmental centers, and health care service firms regulated by DLPS;
- C clarify that the provisions of the bill shall not be construed to impair any collective bargaining agreement or contract in effect on the effective date of the bill;
- C specify that, in the event of an unforeseeable emergent circumstance when the overtime is required only as a last resort and is not used to fill vacancies resulting from chronic short

- staffing, the employer shall provide the employee with necessary time, up to a maximum of one hour, to arrange for the care of the employee's minor children or elderly or disabled family members;
- C require that an employer seeking to invoke the "emergency exception" provisions of the bill must first have exhausted reasonable efforts to obtain staffing, and also document those efforts in writing, except in the case of an officially declared emergency or disaster;
 - C clarify that the bill does not apply to bona fide "on-call" time, as defined in the bill;
 - C exempt from the provisions of the bill certain employees of assisted living facilities who reside on the premises of the facility;
 - C direct DHSS, DHS and DLPS to each collect data from all health care facilities as to the potential impact of the mandatory overtime prohibition on employee availability and other considerations, and to jointly report their findings to the Senate and General Assembly Health Committees within 18 months of the date of enactment of this bill;
 - C direct the Commissioner of Health and Senior Services, in consultation with the Attorney General and the Commissioners of Human Services and Labor, to adopt rules and regulations to carry out the purposes of the bill, within six months of the date of enactment of the bill; and
 - C delay the effective date of the bill from immediately to 180 days after enactment in the case of acute care hospitals, and to 18 months after enactment in the case of all other health care facilities.

As reported by the committee, this bill is identical to Senate Bill No. 2093 (2R) (Vitale/Bennett), which the committee also reported on this date.

[First Reprint]

ASSEMBLY, No. 3303

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MARCH 22, 2001

Sponsored by:

Assemblyman JACK COLLINS

District 3 (Salem, Cumberland and Gloucester)

Assemblyman JACK CONNERS

District 7 (Burlington and Camden)

Co-Sponsored by:

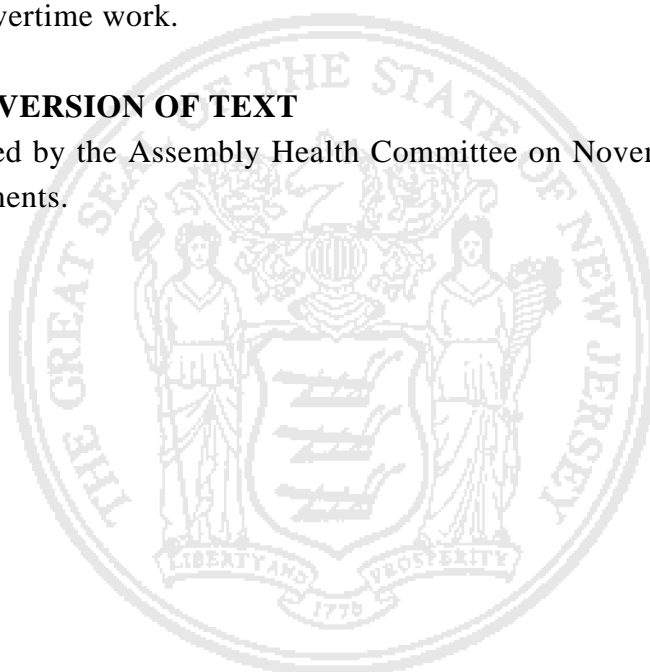
Assemblymen Kelly, Corodemus and Assemblywoman Greenstein

SYNOPSIS

Prohibits health care facilities from requiring certain hourly wage employees to perform overtime work.

CURRENT VERSION OF TEXT

As reported by the Assembly Health Committee on November 19, 2001, with amendments.



(Sponsorship Updated As Of: 12/11/2001)

1 AN ACT concerning work hours for certain health care facility
2 employees and supplementing P.L.1966, c.113 (C.34:11-56a et
3 seq.).

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. It is declared to be the public policy of this State to establish a
9 maximum ¹[work day and]¹ work week for certain hourly wage health
10 care facility employees, beyond which the employees cannot be
11 required to perform overtime work, in order to safeguard their health,
12 efficiency, and general well-being as well as the health and general
13 well-being of the persons to whom these employees provide services.

14
15 2. As used in this act:

16 "Employee" means an individual employed by a health care facility
17 who is involved in direct patient care activities or clinical services and
18 who receives an hourly wage¹, but shall not include a physician¹.

19 "Employer" means an individual, partnership, association,
20 corporation or person or group of persons acting directly or indirectly
21 in the interest of a health care facility.

22 "Health care facility" means a health care facility licensed by the
23 Department of Health and Senior Services pursuant to P.L.1971, c.136
24 (C.26:2H-1 et seq.)¹, a State or county psychiatric hospital, a State
25 developmental center, or a health care service firm registered by the
26 Division of Consumer Affairs in the Department of Law and Public
27 Safety pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

28 "On-call time" means time spent by an employee who is not
29 currently working on the premises of the place of employment, but
30 who is compensated for availability, or as a condition of employment
31 has agreed to be available, to return to the premises of the place of
32 employment on short notice if the need arises.

33 "Reasonable efforts" means that the employer shall: a. seek persons
34 who volunteer to work extra time from all available qualified staff who
35 are working at the time of the unforeseeable emergent circumstance;
36 b. contact all qualified employees who have made themselves available
37 to work extra time; c. seek the use of per diem staff; and d. seek
38 personnel from a contracted temporary agency when such staff is
39 permitted by law or regulation¹.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AHL committee amendments adopted November 19, 2001.

1 "Unforeseeable emergent circumstance" means an unpredictable or
2 unavoidable occurrence at unscheduled intervals relating to health care
3 delivery that requires immediate action.

4
5 3. The requirement that an employee of a health care facility accept
6 work in excess of an agreed to, predetermined and regularly
7 scheduled daily work shift, not to exceed 40 hours per week, except
8 in the case of an unforeseeable emergent circumstance when the
9 overtime is required only as a last resort and is not used to fill
10 vacancies resulting from chronic short staffing ¹and the employer has
11 exhausted reasonable efforts to obtain staffing¹, is declared to be
12 contrary to public policy and any such requirement contained in any
13 contract, agreement or understanding executed ¹or renewed¹ after the
14 effective date of this act shall be void.

15
16 4. a. Notwithstanding any provision of law to the contrary, no
17 health care facility shall require an employee to accept work in excess
18 of an agreed to, predetermined and regularly scheduled daily work
19 shift, not to exceed 40 hours per week.

20 b. The acceptance by any employee of such work in excess of an
21 agreed to, predetermined and regularly scheduled daily work shift, not
22 to exceed 40 hours per week, shall be strictly voluntary and the refusal
23 of any employee to accept such overtime work shall not be grounds
24 for discrimination, dismissal, discharge or any other penalty or
25 employment decision adverse to the employee.

26 c. The provisions of this section shall not apply in the case of an
27 unforeseeable emergent circumstance when¹: (1)¹ the overtime is
28 required only as a last resort and is not used to fill vacancies resulting
29 from chronic short staffing¹, and (2) the employer has exhausted
30 reasonable efforts to obtain staffing. In the event of such an
31 unforeseeable emergent circumstance, the employer shall provide the
32 employee with necessary time, up to a maximum of one hour, to
33 arrange for the care of the employee's minor children or elderly or
34 disabled family members.

35 The requirement that the employer shall exhaust reasonable efforts
36 to obtain staffing shall not apply in the event of any declared national,
37 State or municipal emergency or a disaster or other catastrophic event
38 which substantially affects or increases the need for health care
39 services.

40 d. In the event that an employer requires an employee to work
41 overtime pursuant to subsection c. of this section, the employer shall
42 document in writing the reasonable efforts it has exhausted. The
43 documentation shall be made available for review by the Department
44 of Health and Senior Services and the Department of Labor¹.

1 5. An employer who violates the provisions of this act shall be
2 subject to the sanctions provided by law for violations of the "New
3 Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et
4 seq.).

5
6 ¹6. a. The provisions of this act shall not be construed to impair
7 or negate any employer-employee collective bargaining agreement or
8 any other employer-employee contract in effect on the effective date
9 of this act.

10 b. The provisions of this act shall not apply to employees of
11 assisted living facilities licensed by the Department of Health and
12 Senior Services who are provided with room and board as a benefit of
13 their employment and reside in the facility on a full-time basis.

14 c. The provisions of this act shall not apply to on-call time, but
15 nothing in this act shall be construed to permit an employer to use on-
16 call time as a substitute for mandatory overtime.¹

17
18 ¹7. The Departments of Health and Senior Services, Human
19 Services, and Law and Public Safety shall each collect data from all
20 health care facilities which the respective department licenses, operates
21 or regulates, as to the potential impact of the mandatory overtime
22 prohibition on employee availability and other considerations, and shall
23 jointly report their findings to the Senate and General Assembly Health
24 Committees within 18 months of the date of enactment of this act.¹

25
26 ¹8. The Commissioner of Health and Senior Services, in
27 consultation with the Attorney General and the Commissioners of
28 Human Services and Labor, shall adopt rules and regulations, pursuant
29 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
30 et seq.), within six months of the date of enactment of this act, to carry
31 out the purposes of this act.¹

32
33 ¹[6.] 9.¹ This act shall take effect ¹[immediately] 12 months after
34 the date of enactment in the case of an acute care hospital and 18
35 months after the date of enactment in the case of long-term care
36 facilities and all other health care facilities¹.

P.L. 2001, CHAPTER 300, *approved January 2, 2002*
Senate No. 2093 (*Second Reprint*)
(CORRECTED COPY)

1 AN ACT concerning work hours for certain health care facility
2 employees and supplementing P.L.1966, c.113 (C.34:11-56a et
3 seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. It is declared to be the public policy of this State to establish a
9 maximum ¹[work day and]¹ work week for certain hourly wage health
10 care facility employees, beyond which the employees cannot be
11 required to perform overtime work, in order to safeguard their health,
12 efficiency, and general well-being as well as the health and general
13 well-being of the persons to whom these employees provide services.
14

15 2. As used in this act:

16 "Employee" means an individual employed by a health care facility
17 who is involved in direct patient care activities or clinical services and
18 who receives an hourly wage¹, but shall not include a physician¹.

19 "Employer" means an individual, partnership, association,
20 corporation or person or group of persons acting directly or indirectly
21 in the interest of a health care facility.

22 "Health care facility" means a health care facility licensed by the
23 Department of Health and Senior Services pursuant to P.L.1971, c.136
24 (C.26:2H-1 et seq.)¹, a State or county psychiatric hospital, a State
25 developmental center, or a health care service firm registered by the
26 Division of Consumer Affairs in the Department of Law and Public
27 Safety pursuant to P.L.1960, c.39 (C.56:8-1 et seq.)¹.

28 ²"On-call time" means time spent by an employee who is not
29 currently working on the premises of the place of employment, but
30 who is compensated for availability, or as a condition of employment
31 has agreed to be available, to return to the premises of the place of
32 employment on short notice if the need arises.

33 "Reasonable efforts" means that the employer shall: a. seek persons
34 who volunteer to work extra time from all available qualified staff who
35 are working at the time of the unforeseeable emergent circumstance;
36 b. contact all qualified employees who have made themselves available

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SHH committee amendments adopted March 15, 2001.

² Senate SBA committee amendments adopted June 25, 2001.

1 to work extra time; c. seek the use of per diem staff; and d. seek
2 personnel from a contracted temporary agency when such staff is
3 permitted by law or regulation.²

4 "Unforeseeable emergent circumstance" means ¹[an unpredictable
5 or unavoidable occurrence at unscheduled intervals relating to health
6 care delivery that requires immediate action] ²[any unforeseen
7 declared national, State or municipal emergency or a disaster or other
8 catastrophic event which substantially affects or increases the need for
9 health care services¹] an unpredictable or unavoidable occurrence at
10 unscheduled intervals relating to health care delivery that requires
11 immediate action².

12

13 3. The requirement that an employee of a health care facility accept
14 work in excess of an agreed to, predetermined and regularly
15 scheduled daily work shift, not to exceed 40 hours per week, except
16 in the case of an unforeseeable emergent circumstance when the
17 overtime is required only as a last resort and is not used to fill
18 vacancies resulting from chronic short staffing ²and the employer has
19 exhausted reasonable efforts to obtain staffing², is declared to be
20 contrary to public policy and any such requirement contained in any
21 contract, agreement or understanding executed ²or renewed² after the
22 effective date of this act shall be void.

23

24 4. a. Notwithstanding any provision of law to the contrary, no
25 health care facility shall require an employee to accept work in excess
26 of an agreed to, predetermined and regularly scheduled daily work
27 shift, not to exceed 40 hours per week.

28 b. The acceptance by any employee of such work in excess of an
29 agreed to, predetermined and regularly scheduled daily work shift, not
30 to exceed 40 hours per week, shall be strictly voluntary and the refusal
31 of any employee to accept such overtime work shall not be grounds
32 for discrimination, dismissal, discharge or any other penalty or
33 employment decision adverse to the employee.

34 c. The provisions of this section shall not apply in the case of an
35 unforeseeable emergent circumstance when²: (1)² the overtime is
36 required only as a last resort and is not used to fill vacancies resulting
37 from chronic short staffing², and (2) the employer has exhausted
38 reasonable efforts to obtain staffing². ¹In the event of such an
39 unforeseeable emergent circumstance, the employer shall provide the
40 employee with necessary time, up to a maximum of one hour, to
41 arrange for the care of the employee's minor children or elderly or
42 disabled family members.¹

43 ²The requirement that the employer shall exhaust reasonable efforts
44 to obtain staffing shall not apply in the event of any declared national,
45 State or municipal emergency or a disaster or other catastrophic event
46 which substantially affects or increases the need for health care

1 services.

2 d. In the event that an employer requires an employee to work
3 overtime pursuant to subsection c. of this section, the employer shall
4 document in writing the reasonable efforts it has exhausted. The
5 documentation shall be made available for review by the Department
6 of Health and Senior Services and the Department of Labor.²

7

8 5. An employer who violates the provisions of this act shall be
9 subject to the sanctions provided by law for violations of the "New
10 Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et
11 seq.).

12

13 ¹6. a. The provisions of this act shall not be construed to impair
14 or negate any employer-employee collective bargaining agreement or
15 any other employer-employee contract in effect on the effective date
16 of this act.

17 b. The provisions of this act shall not apply to employees of
18 assisted living facilities licensed by the Department of Health and
19 Senior Services who are provided with room and board as a benefit of
20 their employment and reside in the facility on a full-time basis.¹

21 ²c. The provisions of this act shall not apply to on-call time, but
22 nothing in this act shall be construed to permit an employer to use on-
23 call time as a substitute for mandatory overtime.²

24

25 ¹7. The Departments of Health and Senior Services, Human
26 Services, and Law and Public Safety shall each collect data from all
27 health care facilities² [except general hospitals.]² which the
28 respective department licenses, operates or regulates, as to the
29 potential impact of the mandatory overtime prohibition on employee
30 availability and other considerations, and shall jointly report their
31 findings to the Senate and General Assembly Health Committees
32 within 18 months of the date of enactment of this act.¹

33

34 ¹8. The Commissioner of Health and Senior Services, in
35 consultation with the Attorney General and the Commissioners of
36 Human Services and Labor, shall adopt rules and regulations, pursuant
37 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
38 et seq.), within six months of the date of enactment of this act, to carry
39 out the purposes of this act.¹

40

41 ¹[6.] ²9.¹ This act shall take effect ¹[immediately] ²[180 days] 12
42 months² after the date of enactment in the case of ²[a general] an
43 acute care² hospital and 18 months after the date of enactment in the
44 case of ²long-term care facilities and² all other health care facilities¹.

1

2

3 Prohibits health care facilities from requiring certain hourly wage
4 employees to perform overtime work.

CHAPTER 300

AN ACT concerning work hours for certain health care facility employees and supplementing P.L.1966, c.113 (C.34:11-56a et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.34:11-56a31 Establishment of maximum work week for certain health care facility employees.

1. It is declared to be the public policy of this State to establish a maximum work week for certain hourly wage health care facility employees, beyond which the employees cannot be required to perform overtime work, in order to safeguard their health, efficiency, and general well-being as well as the health and general well-being of the persons to whom these employees provide services.

C.34:11-56a32 Definitions relative to work hours for certain health care facility employees.

2. As used in this act:

"Employee" means an individual employed by a health care facility who is involved in direct patient care activities or clinical services and who receives an hourly wage, but shall not include a physician.

"Employer" means an individual, partnership, association, corporation or person or group of persons acting directly or indirectly in the interest of a health care facility.

"Health care facility" means a health care facility licensed by the Department of Health and Senior Services pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a State or county psychiatric hospital, a State developmental center, or a health care service firm registered by the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

"On-call time" means time spent by an employee who is not currently working on the premises of the place of employment, but who is compensated for availability, or as a condition of employment has agreed to be available, to return to the premises of the place of employment on short notice if the need arises.

"Reasonable efforts" means that the employer shall: a. seek persons who volunteer to work extra time from all available qualified staff who are working at the time of the unforeseeable emergent circumstance; b. contact all qualified employees who have made themselves available to work extra time; c. seek the use of per diem staff; and d. seek personnel from a contracted temporary agency when such staff is permitted by law or regulation.

"Unforeseeable emergent circumstance" means an unpredictable or unavoidable occurrence at unscheduled intervals relating to health care delivery that requires immediate action.

C.34:11-56a33 Excessive work shift contrary to public policy.

3. The requirement that an employee of a health care facility accept work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week, except in the case of an unforeseeable emergent circumstance when the overtime is required only as a last resort and is not used to fill vacancies resulting from chronic short staffing and the employer has exhausted reasonable efforts to obtain staffing, is declared to be contrary to public policy and any such requirement contained in any contract, agreement or understanding executed or renewed after the effective date of this act shall be void.

C.34:11-56a34 Health care facility employee work shift determined; exceptions voluntary.

4. a. Notwithstanding any provision of law to the contrary, no health care facility shall require an employee to accept work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week.

b. The acceptance by any employee of such work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week, shall be strictly voluntary and the refusal of any employee to accept such overtime work shall not be grounds for discrimination, dismissal, discharge or any other penalty or employment decision adverse to the employee.

c. The provisions of this section shall not apply in the case of an unforeseeable emergent circumstance when: (1) the overtime is required only as a last resort and is not used to fill vacancies resulting from chronic short staffing, and (2) the employer has exhausted reasonable

efforts to obtain staffing. In the event of such an unforeseeable emergent circumstance, the employer shall provide the employee with necessary time, up to a maximum of one hour, to arrange for the care of the employee's minor children or elderly or disabled family members.

The requirement that the employer shall exhaust reasonable efforts to obtain staffing shall not apply in the event of any declared national, State or municipal emergency or a disaster or other catastrophic event which substantially affects or increases the need for health care services.

d. In the event that an employer requires an employee to work overtime pursuant to subsection c. of this section, the employer shall document in writing the reasonable efforts it has exhausted. The documentation shall be made available for review by the Department of Health and Senior Services and the Department of Labor.

C.34:11-56a35 Violations, sanctions.

5. An employer who violates the provisions of this act shall be subject to the sanctions provided by law for violations of the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.).

C.34:11-56a36 Construction, applicability of act.

6. a. The provisions of this act shall not be construed to impair or negate any employer-employee collective bargaining agreement or any other employer-employee contract in effect on the effective date of this act.

b. The provisions of this act shall not apply to employees of assisted living facilities licensed by the Department of Health and Senior Services who are provided with room and board as a benefit of their employment and reside in the facility on a full-time basis.

c. The provisions of this act shall not apply to on-call time, but nothing in this act shall be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

C.34:11-56a37 Collection of data relative to mandatory overtime prohibition, report.

7. The Departments of Health and Senior Services, Human Services, and Law and Public Safety shall each collect data from all health care facilities which the respective department licenses, operates or regulates, as to the potential impact of the mandatory overtime prohibition on employee availability and other considerations, and shall jointly report their findings to the Senate and General Assembly Health Committees within 18 months of the date of enactment of this act.

C.34:11-56a38 Rules, regulations.

8. The Commissioner of Health and Senior Services, in consultation with the Attorney General and the Commissioners of Human Services and Labor, shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), within six months of the date of enactment of this act, to carry out the purposes of this act.

9. This act shall take effect 12 months after the date of enactment in the case of an acute care hospital and 18 months after the date of enactment in the case of long-term care facilities and all other health care facilities

Approved January 2, 2002.