

SECOND REGULAR SESSION

# HOUSE BILL NO. 1977

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES BURNETT (Sponsor), SCHAAF,  
LeVOTA AND PAGE (Co-sponsors).

Read 1st time March 8, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

5429L.01I

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### AN ACT

To amend chapter 197, RSMo, by adding thereto one new section relating to the safe patient care act, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 197, RSMo, is amended by adding thereto one new section, to be  
2 known as section 197.290, to read as follows:

**197.290. 1. This section shall be known and may be cited as the "Safe Patient Care  
2 Act".**

**3 2. The general assembly finds that:**

**4 (1) The state of Missouri is experiencing a critical shortage of qualified, competent  
5 health care workers. As a result, registered nurses are increasingly required to work back-  
6 to-back eight-hour shifts, or four hours in addition to a twelve-hour shift due to  
7 understaffed hospitals using mandatory overtime as a routine way to staff their facilities;**

**8 (2) The use of mandatory overtime has led many nurses to leave hospital jobs  
9 because they are unable to give patients high quality care, contributing to a growing  
10 shortage of nurses;**

**11 (3) The widespread practice of requiring health care workers to work extended  
12 shifts and forego days off causes health care workers to frequently provide care in a state  
13 of fatigue, contributing to medical errors and other consequences that compromise patient  
14 safety;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15           (4) The use of mandatory overtime puts severe pressure on families, as many nurses  
16 who care for children or aging parents at home are unexpectedly required to work  
17 additional hours beyond their scheduled shift;

18           (5) To safeguard the health of patients as well as the health, efficiency, and general  
19 well-being of health care workers, as a matter of public policy, mandatory overtime should  
20 be prohibited except in the case of unforeseeable emergency to ensure that the public will  
21 continue to receive safe, quality care; and

22           (6) Limitations on mandatory overtime will ensure that health care facilities  
23 throughout the state operate in a manner that safeguards public safety, guarantees the  
24 delivery of quality health care services, and facilitates the retention and recruitment of  
25 health care workers.

26           3. As used in this section, the following terms shall mean:

27           (1) "Employee", an individual employed by a health care facility who is involved  
28 in direct patient care activities or clinical services, but shall not include physicians;

29           (2) "Employer", an individual, partnership, association, corporation, or person or  
30 group of persons acting directly or indirectly in the interest of the health care facility;

31           (3) "Health care facility", a health care facility licensed in this state, a  
32 developmental disability or rehabilitation center, blood bank, assisted living facility, or any  
33 agency licensed or registered with the state or local government to provide health or mental  
34 health care;

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

39           (5) "Overtime", the hours worked in excess of an agreed upon, predetermined,  
40 regularly scheduled shift or hours worked in excess of twelve hours in a twenty-four-hour  
41 period or eighty hours in a consecutive fourteen-day period;

42           (6) "Qualified", employees with requisite credentials in the same job classification;

43           (7) "Reasonable efforts", the employer shall:

44           (a) Seek persons who volunteer to work extra time from all available qualified staff  
45 who are working at the time of the unforeseeable emergency circumstance;

46           (b) Contact all qualified employees who have made themselves available to work  
47 extra time; and

48           (c) Seek the use of qualified per diem or agency staff;

49           (8) "Unforeseeable emergency circumstance", any unforeseen declared nations,  
50 state, or municipal emergency or disaster, or other catastrophic event which substantially  
51 affects or increases the need for health care services.

52           4. (1) The requirement or attempt to compel, coerce, or force an employee of a  
53 health care facility to work overtime, except in the case of an unforeseeable emergency  
54 circumstance, is contrary to public policy and any such requirement contained in a  
55 contract, agreement, or understanding is void.

56           (2) The acceptance by any employee of overtime is strictly voluntary.

57           (3) No employer shall retaliate; discriminate; discharge; dismiss; threaten; report  
58 to any regulatory agency, licensing authority, or accrediting body; or engage in any other  
59 adverse employment action against an employee who:

60           (a) Refuses to accept overtime work, and reporting by the employer of a health care  
61 worker to a state regulatory board after the employee refuses to accept overtime work shall  
62 be considered prima facie evidence of retaliatory conduct; or

63           (b) a. Reports a violation or suspected violation of this section;

64           b. Initiates, cooperates, or otherwise participates in an investigation or proceeding  
65 brought by a regulatory agency, licensing authority, or accrediting body concerning  
66 matters covered by this section; or

67           c. Informs or discusses with other employees, with representatives of such  
68 employees, or with representatives of associations of health care professionals, violations  
69 or suspected violations of this subsection.

70           (4) The provisions of this section shall not apply in the case of unforeseeable  
71 emergency circumstances where:

72           (a) The employer has exhausted all reasonable efforts to obtain staffing; and

73           (b) Overtime is not required to fill vacancies resulting from chronic staff shortages.

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75 The requirement that the employer shall exhaust reasonable efforts to obtain staffing shall  
76 not apply in the event of any declared national, state, or municipal disaster, or other  
77 catastrophic event which substantially affects or increases the need for health care services.  
78 In the event of such unforeseeable circumstances, the employer shall provide the employee  
79 with such necessary time of not less than one hour prior to the commencement of overtime  
80 work to arrange for the care of the employee's minor children, or sick, elderly, or disabled  
81 family members.

82           (5) If an employer requires an employee to work overtime under subdivision (4) of  
83 this subsection, the employer shall document in writing the reasonable efforts the employer

84 has used to obtain staffing. Such documentation shall be made available for review by the  
85 department of health and senior services.

86 (6) The provisions of this section shall not be construed to impair or negate any  
87 employer-employee collective bargaining agreement or any other employer-employee  
88 contract in effect on August 28, 2006.

89 (7) Nothing in this section shall be construed to permit an employer to use on-call  
90 time as a substitute for mandatory overtime.

91 5. (1) The department of health and senior services may investigate complaints of  
92 violations of subsection 4 of this section and may issue notices and citations as provided in  
93 this section. An employee may file a complaint with the department of health and senior  
94 services against a health care facility that violations the provisions of this section.

95 (2) Upon investigation, the department shall notify the health care facility of all  
96 deficiencies in its compliance with this section and the rules adopted thereunder. Such  
97 notice may include an order to take corrective action within a specific time, including but  
98 not limited to:

99 (a) Revising the facility staffing plan;

100 (b) Reducing the number of patients within a health care facility;

101 (c) Temporarily closing a health care facility, department, or unit; or

102 (d) Temporarily transferring patients to another health care facility, department,  
103 or unit within the facility until corrections are made.

104 (3) An employer that violates the provisions of subsection 4 of this section shall be  
105 subject to citation and a civil penalty not to exceed ten thousand dollars per violation. An  
106 employer that violates any provision of subsection 4 of this section on four or more  
107 occasions shall be subject to a citation and a civil penalty not to exceed fifteen thousand  
108 dollars per violation.

109 (4) In addition to the penalties set forth in subdivision (3) of this subsection:

110 (a) An employer that violates subdivision (4) of subsection 4 of this section shall be  
111 liable for providing the employee with reinstatement, promotion, payment of lost wages  
112 and benefits, and such other equitable relief as may be appropriate; and

113 (b) The department of health and senior services is authorized, after notice and  
114 opportunity for a hearing, to suspend or revoke the license of a health care facility that  
115 repeatedly violates the provisions of subsection 4 of this section.

116 6. (1) Each health care facility shall post, and maintain posted, a notice of the  
117 definitions, prohibitions, investigatory actions, sanctions, and remedies required in this  
118 section in a public place. The department of health and senior services shall prescribe the  
119 format of the notice within six months of the effective date of this section. The notice shall

120 include, but is not limited to, the following language: "This facility is prohibited from  
121 taking any action against any employee involved in direct patient care activities or clinical  
122 services who declines to work additional hours at the facility in excess of the normal work  
123 period.". The notice shall also include a statement that an employee may file a complaint  
124 with the department of health and senior services against a health care facility that violates  
125 the provisions of this section, as well as information about how to file such a complaint.

126 (2) A health care facility that fails to post the notice required under subdivision (1)  
127 of this subsection within ten days of the publication of the regulations contained in  
128 subdivision (1) of this subsection shall be subject to a fine of one thousand dollars per day  
129 for each day that the required notice is not posted.

130 7. The department of health and senior services, in consultation with the attorney  
131 general, shall adopt rules within six months of the effective date of this section to  
132 implement the provisions of this section. Any rule or portion of a rule, as that term is  
133 defined in section 536.010, RSMo, that is created under the authority delegated in this  
134 section shall become effective only if it complies with and is subject to all of the provisions  
135 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter  
136 536, RSMo, are nonseverable and if any of the powers vested with the general assembly  
137 pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and  
138 annul a rule are subsequently held unconstitutional, then the grant of rulemaking  
139 authority and any rule proposed or adopted after August 28, 2006, shall be invalid and  
140 void.

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