LRBa2148

2003 DRAFTING REQUEST

Assembly Amendment (AA-SA1-AB67)

Received: **02/06/2004**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **DuWayne Johnsrud (608) 266-3534**

By/Representing: **Jill**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Employ Priv - health and safety**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Johnsrud@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Prohibition of mandatory overtime for health care workers

Instructions:

Redraft AB 451 as amendment to SA 1 to AB 67.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	gmalaise 02/06/2004	jdyer 02/16/2004 jdyer 02/17/2004		_____ _____ _____ _____			
/1			rschluet 02/17/2004	_____ _____	mbarman 02/17/2004	mbarman 02/17/2004	

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required

FE Sent For:

<END>

LRBa2148

2003 DRAFTING REQUEST

Assembly Amendment (AA-SA1-AB67)

Received: **02/06/2004**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **DuWayne Johnsrud (608) 266-3534**

By/Representing: **Jill**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Employ Priv - health and safety**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Johnsrud@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Prohibition of mandatory overtime for health care workers

Instructions:

Redraft AB 451 as amendment to SA 1 to AB 67.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	gmalaise	1/2/17 jld					

FE Sent For:

<END>

2003 Date (time) needed SOON LRBa 2149 / 1

AMENDMENT

DNOTE GM : jld :

See form **AMENDMENTS — COMPONENTS & ITEMS.**

~~S~~ (A) [AMENDMENT]

TO (S) ~~A~~ [AMENDMENT] 1 ~~(LRBa /)~~,

~~TO S A SUBSTITUTE AMENDMENT (LRBs /)~~,

TO 2003 ~~SB SJR SR~~ (AB) ~~AJR AR~~ 67 ~~(LRB /)~~

At the locations indicated, amend the amendment as follows:

(fill ONLY if "engrossed ...." or "as shown by .....")

before that line insert:

#. Page 1, line 3: ~~delete lines 3 and 4 and substitute~~

frzn

"1d. Page 1, line 10: delete "and power" and substitute "power".

1g. Page 1, line 12: after "tubes" insert ~~"mand~~ "; ~~and~~ mandatory overtime hours worked by health care ~~prov~~ workers employed by health care facilities; and providing penalties".

~~#. Page ...., line ...:~~

~~#. Page ...., line ...:~~

~~#. Page ...., line ...:~~

~~#. Page ...., line ...:~~

frzn

1m. Page 2, line 1: delete lines 1 and 2 and substitute:

[rev: 9/17/02 2003DF04(fm)]

of a health care worker to refuse to work overtime, or for testifying or assisting in any action or proceeding to enforce that right.

A health care worker who is discharged or discriminated against in violation of the bill may file a complaint with the Department of Workforce Development (DWD) or, in the case of a state employee, the Personnel Commission, and DWD or the Personnel Commission must process the complaint in the same manner that employment discrimination complaints are processed under current law, which processing may include the ordering of back pay, reinstatement, costs, and attorney fees. In addition, a health care facility that discharges or discriminates against a health care worker in violation of the bill may be required to forfeit not more than $1,000 for a first violation, not more than $5,000 for a violation committed within 12 months of a previous violation, and not more than $10,000 for a violation committed within 12 months of two or more previous violations.

The bill defines a "health care facility" as any hospital, nursing home, community–based residential facility, county home, county infirmary, county hospital, county mental health center, adult family home, assisted living facility, residential care apartment complex, rural medical center, hospice, mental health treatment facility, public dispensary for the diagnosis and treatment of tuberculosis or facility providing care under a continuing care contract; the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Veterans Home at King, the Southern Wisconsin Veterans Retirement Center, the Mendota Mental Health Institute, the Winnebago Mental Health Institute, the Milwaukee County Mental Health Complex, or the northern, central, and southern centers for the developmentally disabled; or a state prison, county jail, or county house of correction.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

12

1 **SECTION 1.** 106.54 (8) of the statutes is created to read:

2 106.54 **(8)** The division shall receive complaints under s. 146.999 (4) of

3 violations of s. 146.999 (2) and (3) and shall process those complaints in the same

4 manner that employment discrimination complaints are processed under s. 111.39.

19

5 **SECTION 2.** 111.322 (2m) (a) of the statutes is amended to read:

6 111.322 **(2m)** (a) The individual files a complaint or attempts to enforce any

7 right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12,

109.03, 109.07, 109.075 ~~or~~, 146.997, or 146.999 or ss. 101.58 to 101.599 or 103.64 to 103.82.

SECTION 3. 111.322 (2m) (b) of the statutes is amended to read:

111.322 **(2m)** (b) The individual testifies or assists in any action or proceeding held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03, 109.07, 109.075 ~~or~~, 146.997, or 146.999 or ss. 101.58 to 101.599 or 103.64 to 103.82.

Insert 3-7

SECTION 4. 111.91 (2) (t) of the statutes is created to read:

111.91 **(2)** (t) Hours of work above the maximum hours specified in s. 146.999 (2) for health care workers, as defined in s. 146.999 (1) (c), employed by a health care facility, as defined in s. 146.999 (1) (b). Nothing in this paragraph prohibits a health care facility from bargaining on fewer hours of work than the hours provided in s. 146.999 (2).

SECTION 5. 146.999 of the statutes is created to read:

146.999 Health care worker overtime. (1) DEFINITIONS. In this section:

(a) "Department" means the department of workforce development.

(b) "Health care facility" means a facility, as defined in s. 647.01 (4); any hospital, nursing home, community–based residential facility, county home, county hospital, county infirmary, county mental health center, assisted living facility, residential care apartment complex, rural medical center, hospice, treatment facility, or other place licensed, certified, or approved by the department of health and family services under s. 49.70, 49.71, 49.72, 50.02, 50.03, 50.034, 50.35, 50.52, 50.90, 51.04, 51.08, or 51.09; an adult family home licensed or certified by the department of health and family services or a county department under s. 50.032 or

50.033; a facility under s. 45.365, 51.05, 51.06, or 252.10 or under ch. 233; or a state prison, county jail, or county house of corrections.

(c) "Health care worker" means an employee of a health care facility who is involved in providing direct health care for patients or residents or in providing clinical or laboratory services.

or in cases in which the health care worker consents

(2) MANDATORY OVERTIME LIMITED. Except in cases of unforeseeable emergency in which a health care facility has first exhausted all other options, a health care facility may not require a health care worker who is paid an hourly wage to work for more than a work shift of 8, 10, or 12 hours that has been determined and agreed to before the performance of the work or to work for more than 40 hours per week ~~without the consent of the health care worker.~~

(3) RETALIATION PROHIBITED. A health care facility may not discharge or discriminate against a health care worker in promotion, in compensation, or in the terms, conditions, or privileges of employment for refusing to work for more than the hours specified in sub. (2), opposing a practice prohibited under sub. (2), filing a complaint or attempting to enforce any right under sub. (2), or testifying or assisting in any action or proceeding to enforce any right under sub. (2).

(4) ENFORCEMENT. ~~(a) Subject to par. (b), any~~ Any health care worker who is discharged or discriminated against in violation of sub. (3) may file a complaint with the department, and the department shall process the complaint in the same manner that employment discrimination complaints are processed under s. 111.39. If the department finds that a violation of sub. (3) has been committed, the department may order the health care facility to take such action under s. 111.39 as will effectuate the purpose of this section.

(b) Any health care worker employed by an agency, as defined in s. 111.32 (6), of the state who is discharged or discriminated against in violation of sub. (3) may file a complaint with the personnel commission, and the personnel commission shall process the complaint in the same manner that employment discrimination complaints are processed under s. 111.39. If the personnel commission finds that a violation of sub. (3) has been committed, the personnel commission may order the health care facility to take such action under s. 111.39 as will effectuate the purpose of this section.

(c) Section 111.322 (2m) applies to discharge or other discriminatory acts arising in connection with any proceeding under par. (a) or (b).

(5) CIVIL PENALTY. In addition to ordering a health care facility that has violated sub. (3) to take such action as will effectuate the purpose of this section, the department or personnel commission may require the health care facility to forfeit not more than $1,000 for a first violation, not more than $5,000 for a violation committed within 12 months of a previous violation, and not more than $10,000 for a violation committed within 12 months of 2 or more previous violations. The 12–month period shall be measured by using the dates of the violations that resulted in convictions.

(6) POSTING OF NOTICE. Each health care facility shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth the rights of health care workers under this section. Any health care facility that violates this subsection shall forfeit not more than $100 for each offense.

SECTION 6. 230.45 (1) (n) of the statutes is created to read:

SECTION 4p. CR; 154.12 ".

~~230.45 (1) (n) Receive complaints under s. 146.999 (4) (b) of violations of s. 146.999 (2) and (3) and, except as provided in sub. (1m), process those complaints in the same manner that employment discrimination complaints are processed under s. 111.39.~~

"(3t)

~~SECTION 7. Initial applicability.~~

MOVE

~~(1)~~ COLLECTIVE BARGAINING AGREEMENTS. This act first applies to a health care worker, as defined in section 146.999 (1) (c) of the statutes, as created by this act, who is affected by a collective bargaining agreement that contains provisions inconsistent with this act on the day on which the collective bargaining agreement expires or is extended, modified, or renewed, whichever occurs first. " "

(END)

d-note

Page 3, line 12: after that line insert:

3m. ← frzn

" Page 16, line 24: before "The treatment" (use twice) ~~after "(1)"~~ insert "REFUSALS BASED ON MORAL OR RELIGIOUS GROUNDS." "

Page 3, line 15: ~~after~~ insert "POWERS OF ATTORNEY FOR HEALTH CARE AND PATIENT DECLARATIONS." "

Page 3, line 17: delete "subsection." "

and substitute "subsection." "

Page 3, line 18: before that line insert:

Insert 3-7

SECTION 1m. RA; 111.337(1); 111.337(1r) (intro.) "

~~1r. Page 3, line 22: delete the material beginning with that line and ending with page 5, line 10, and substitute:~~

#. Page 1, line 3: substitute "1r," for "1".

#. Page 1, line 5: (delete that line and substitute:) ~~after that line insert~~

(end ins 3-7)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa2148/1dn
GMM...:...:...

Representative Johnsrud:

The only proposals that are before the assembly at this stage are the amendments adopted by the senate. Accordingly, your proposal is drafted as an assembly amendment to SA 1 to AB 67.

Assembly Rule 54 (1) provides that generally the assembly may not consider an amendment that relates to a different subject or is intended to accomplish a different purpose than that of the original proposal or that would require a substantially different relating clause from the relating clause of the original proposal. Assembly Rule 54 (5) further provides that an amendment to an amendment must be germane to both the amendment and the original proposal.

It is possible that the presiding officer might rule that your proposal is not germane to AB 67 or to SA 1 to AB 67 because your proposal, which relates to prohibiting mandatory overtime for health care workers, arguably relates to a different subject and is intended to accomplish a different purpose than AB 67 and SA 1 to AB 67, which relate to exempting from liability a health care provider who refuses to perform certain procedures based on moral or religious grounds. The presiding officer might also rule that your proposal is nongermane on the grounds that your proposal requires a substantially different relating clause from the relating clause of AB 67.

If you have any questions about this draft, please do not hesitate to contact me at the number or e-mail address listed below.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa2148/1dn
GMM:jld:rs

February 17, 2004

Representative Johnsrud:

The only proposals that are before the assembly at this stage are the amendments adopted by the senate. Accordingly, your proposal is drafted as an assembly amendment to SA 1 to AB–67.

Assembly Rule 54 (1) provides that generally the assembly may not consider an amendment that relates to a different subject or is intended to accomplish a different purpose than that of the original proposal or that would require a substantially different relating clause from the relating clause of the original proposal. Assembly Rule 54 (5) further provides that an amendment to an amendment must be germane to both the amendment and the original proposal.

It is possible that the presiding officer might rule that your proposal is not germane to AB–67 or to SA 1 to AB–67 because your proposal, which relates to prohibiting mandatory overtime for health care workers, arguably relates to a different subject and is intended to accomplish a different purpose than AB–67 and SA 1 to AB–67, which relate to exempting from liability a health care provider who refuses to perform certain procedures based on moral or religious grounds. The presiding officer might also rule that your proposal is nongermane on the grounds that your proposal requires a substantially different relating clause from the relating clause of AB–67.

If you have any questions about this draft, please do not hesitate to contact me at the number or e–mail address listed below.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266–9738
E–mail: gordon.malaise@legis.state.wi.us