

2003 SENATE BILL 177

May 23, 2003 – Introduced by Senators ROBSON, CARPENTER, CHVALA, ERPENBACH, HANSEN, MOORE, PLALE, RISSER and WIRCH, cosponsored by Representatives JOHNSRUD, BALOW, BERCEAU, BLACK, COGGS, COLON, CULLEN, KRUG, J. LEHMAN, MILLER, MORRIS, PLOUFF, POCAN, POPE-ROBERTS, RICHARDS, SHILLING, SINICKI, STASKUNAS, TAYLOR, TURNER, VAN AKKEREN, WASSERMAN, A. WILLIAMS and ZEPNICK. Referred to Committee on Labor, Small Business Development and Consumer Affairs.

1 **AN ACT to amend** 111.322 (2m) (a) and 111.322 (2m) (b); and **to create** 106.54
2 (8), 111.91 (2) (t), 146.999 and 230.45 (1) (n) of the statutes; **relating to:**
3 mandatory overtime hours worked by health care workers employed by health
4 care facilities and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, subject to certain exceptions, an employer must pay an employee who receives an hourly wage one and one-half times the employee's regular rate of pay for all hours worked in excess of 40 hours per week. Current law, however, subject to certain exceptions for child labor, does not prohibit an employer from requiring an employee to work in excess of 40 hours per week.

This bill prohibits a health care facility from requiring an employee who is involved in providing direct health care services for patients or residents or in providing clinical or laboratory services (health care worker) and 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 (overtime) without the consent of the health care worker, except in cases of unforeseeable emergency in which the health care facility has first exhausted all other options. The bill also prohibits a health care facility from discharging or discriminating against a health care worker in promotion, in compensation, or in the terms, conditions, or privileges of employment for refusing to work overtime, for opposing a health care facility's practice of requiring health care workers to work overtime, for filing a complaint or attempting to enforce the right

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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:

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) (a) 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.

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,

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1 109.03, 109.07, 109.075 ~~or~~, 146.997, or 146.999 or ss. 101.58 to 101.599 or 103.64 to
2 103.82.

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

4 111.322 **(2m)** (b) The individual testifies or assists in any action or proceeding
5 held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32,
6 103.455, 103.50, 104.12, 109.03, 109.07, 109.075 ~~or~~, 146.997, or 146.999 or ss. 101.58
7 to 101.599 or 103.64 to 103.82.

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

9 111.91 **(2)** (t) Hours of work above the maximum hours specified in s. 146.999
10 (2) for health care workers, as defined in s. 146.999 (1) (c), employed by a health care
11 facility, as defined in s. 146.999 (1) (b). Nothing in this paragraph prohibits a health
12 care facility from bargaining on fewer hours of work than the hours provided in s.
13 146.999 (2).

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

15 **146.999 Health care worker overtime. (1) DEFINITIONS.** In this section:

16 (a) “Department” means the department of workforce development.

17 (b) “Health care facility” means a facility, as defined in s. 647.01 (4); any
18 hospital, nursing home, community-based residential facility, county home, county
19 hospital, county infirmary, county mental health center, assisted living facility,
20 residential care apartment complex, rural medical center, hospice, treatment
21 facility, or other place licensed, certified, or approved by the department of health
22 and family services under s. 49.70, 49.71, 49.72, 50.02, 50.03, 50.034, 50.35, 50.52,
23 50.90, 51.04, 51.08, or 51.09; an adult family home licensed or certified by the
24 department of health and family services or a county department under s. 50.032 or

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1 50.033; a facility under s. 45.365, 51.05, 51.06, or 252.10 or under ch. 233; or a state
2 prison, county jail, or county house of corrections.

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

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

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

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

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

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

11 **(5) CIVIL PENALTY.** In addition to ordering a health care facility that has violated
12 sub. (3) to take such action as will effectuate the purpose of this section, the
13 department or personnel commission may require the health care facility to forfeit
14 not more than \$1,000 for a first violation, not more than \$5,000 for a violation
15 committed within 12 months of a previous violation, and not more than \$10,000 for
16 a violation committed within 12 months of 2 or more previous violations. The
17 12-month period shall be measured by using the dates of the violations that resulted
18 in convictions.

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

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

