STATE OF NEW YORK

8874--B

IN ASSEMBLY

January 19, 2022

Introduced by M. of A. JOYNER, OTIS, DARLING -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to restrictions on consecutive hours of work for nurses

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 3 and 4 of section 167 of the labor law, as added by chapter 493 of the laws of 2008, are amended to read as follows:

3. The limitations provided for in this section shall not apply in the case of:

a. a health care disaster, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affecting the county in which the nurse is employed or in a contiguous county**. The limitations on mandatory overtime shall be reinstated at the end of the health care disaster and shall not exceed three consecutive days**; or

b. a federal, state or county declaration of emergency in effect in the county in which the nurse is employed or in a contiguous county**. The limitations on mandatory overtime shall be reinstated at the end of the declared emergency or after thirty consecutive days, whichever is shorter, provided that, pursuant to section twenty-nine-a of the executive law, nothing in this subdivision shall limit the power of the governor to suspend the provisions of this subdivision while a federal, state, or county declaration of emergency is in effect**; or

c. where a health care employer determines there is an emergency, necessary to provide safe patient care, in which case the health care provider shall, before requiring an on-duty employee to remain, make a good faith effort to have overtime covered on a voluntary basis, including, but not limited to, calling per diems, agency nurses, assigning floats, or requesting an additional day of work from off-duty employees, to the extent such staffing options exist. For the purposes of this

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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paragraph, "emergency", including an unanticipated staffing emergency, is defined as an unforeseen event that could not be prudently planned for by an employer [~~and~~], does not regularly occur**, and does not include routine nurse staffing needs that arose due to typical staffing patterns, typical levels of absenteeism, and time off typically approved by the employer for vacations, holidays, sick leave, and personal leave**; or

d. an ongoing medical or surgical procedure in which the nurse is actively engaged and whose continued presence through the completion of the procedure is needed to ensure the health and safety of the patient.

4. **The department shall assess an employer a civil penalty of not more than one thousand dollars for a first violation, no more than two thousand five hundred dollars for a second violation within three years, and no more than five thousand dollars for a third or subsequent violation within three years where an employer requires a nurse to work more than such nurse's regularly scheduled work hours; provided, further, that the employee shall receive an additional fifteen percent of the overtime payment from the employer for each violation.**

5. The provisions of this section are intended as a remedial measure to protect the public health and the quality of patient care, and shall not be construed to diminish or waive any rights of any nurse pursuant to any other law, regulation, or collective bargaining agreement.

§ 2. This act shall take effect immediately.