

By Senator Campbell

32-813-06

1                                   A bill to be entitled

2           An act relating to the staffing of health care

3           facilities; creating ss. 395.051-395.057, F.S.;

4           creating the Safe Staffing for Quality Care

5           Act; providing legislative findings; defining

6           terms; prescribing safe staffing standards for

7           health care facilities; requiring licensed

8           facilities to submit an annual staffing plan to

9           the Agency for Health Care Administration;

10          providing standards for the required skill mix;

11          requiring compliance with the staffing plan;

12          requiring recordkeeping; prohibiting mandatory

13          overtime; providing applicability; providing to

14          employees the right to refuse certain

15          assignments and the right to report suspected

16          violations of safe staffing standards;

17          providing for the agency to enforce compliance

18          with the act; requiring the agency to develop

19          rules; providing an effective date.

21 Be It Enacted by the Legislature of the State of Florida:

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23           Section 1. Section 395.051, Florida Statutes, is

24           created to read:

25           395.051 Short title.--Sections 395.051-395.057 may be

26           cited as the "Safe Staffing for Quality Care Act."

27           Section 2. Section 395.052, Florida Statutes, is

28           created to read:

29           395.052 Legislative findings.--The Legislature finds

30           that:

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1       (1) The state has a substantial interest in ensuring  
2 that delivery of health care services to patients in health  
3 care facilities located in this state is adequate and safe and  
4 that health care facilities retain sufficient nursing staff so  
5 as to promote optimal health care outcomes.

6       (2) Recent changes in our health care delivery system  
7 are resulting in a higher acuity level among patients in  
8 health care facilities.

9       (3) Registered nurses constitute the highest  
10 percentage of direct health care staff in acute care  
11 facilities and have a central role in delivering health care.

12       (4) Extensive research indicates that inadequate  
13 registered nurse staffing in hospitals can result in increased  
14 patient death rates, dangerous medical errors, and increased  
15 length of stay.

16       (5) To ensure adequate protection and care for  
17 patients in health care facilities, it is essential that  
18 qualified registered nurses who are trained and authorized to  
19 deliver nursing services be accessible and available to meet  
20 the nursing needs of patients.

21       Section 3. Section 395.053, Florida Statutes, is  
22 created to read:

23       395.053 Definitions.--As used in this act, the term:

24       (1) "Acuity system" means an established measurement  
25 instrument that:

26       (a) Predicts nursing care requirements for individual  
27 patients based on the severity of patient illness, the need  
28 for specialized equipment and technology, the intensity of  
29 nursing interventions required, and the complexity of clinical  
30 nursing judgment needed to design, implement, and evaluate the  
31 patient's nursing care plan;

1        (b) Details the amount of nursing care needed, both in  
2 the number of registered nurses and in the skill mix of  
3 nursing personnel required daily for each patient in a nursing  
4 department or unit; and

5        (c) Is stated in terms that can be readily used and  
6 understood by direct-care nursing staff.

7        (2) "Assessment tool" means a measurement system that  
8 compares the staffing level in each nursing department or unit  
9 against actual patient nursing care requirements in order to  
10 review the accuracy of an acuity system.

11        (3) "Declared state of emergency" means an officially  
12 designated state of emergency which has been declared by a  
13 federal, state, or local government official who has the  
14 authority to declare that the state, county, municipality, or  
15 locality is in a state of emergency. The term does not include  
16 a state of emergency which results from a labor dispute in the  
17 health care industry.

18        (4) "Direct-care nurse" or "direct-care nursing staff"  
19 means any registered nurse who has direct responsibility to  
20 oversee or carry out medical regimens or nursing care for one  
21 or more patients. A nurse administrator, nurse supervisor,  
22 nurse educator, charge nurse, or other registered nurse who  
23 does not have a specific patient assignment may not be  
24 included in the calculation of the registered nurse-to-patient  
25 ratio.

26        (5) "Documented staffing plan" means a detailed  
27 written plan that sets forth the minimum number, skill mix,  
28 and classification of licensed nurses required in each nursing  
29 department or unit in the health care facility for a given  
30 year, based on reasonable projections derived from the patient  
31 census and average acuity level within each department or unit

1 during the previous year, the department or unit size and  
2 geography, the nature of services provided, and any  
3 foreseeable changes in department or unit size or function  
4 during the current year.

5 (6) "Health care facility" means an acute care  
6 hospital; an emergency care, ambulatory, or outpatient surgery  
7 facility licensed under s. 395.003; or a psychiatric facility  
8 licensed under chapter 394.

9 (7) "Nurse" means a registered nurse.

10 (8) "Nursing care" means care that falls within the  
11 scope of practice set forth in chapter 464 and other laws and  
12 rules or care that is otherwise encompassed within recognized  
13 professional standards of nursing practice, including  
14 assessment, nursing diagnosis, planning, intervention,  
15 evaluation, and patient advocacy.

16 (9) "On-call time" means time spent by an employee  
17 who:

18 (a) Is not working on the premises of the place of  
19 employment but who is compensated for availability; or

20 (b) As a condition of employment, has agreed to be  
21 available to return to the premises of the place of employment  
22 on short notice if the need arises.

23 (10) "Overtime" means the hours worked in excess of  
24 any of the following:

25 (a) An agreed-upon, predetermined, regularly scheduled  
26 shift;

27 (b) Twelve hours in a 24-hour period; or

28 (c) Eighty hours in a consecutive 14-day period.

29 (11) "Reasonable efforts," in reference to the  
30 prohibition on mandatory overtime, means that the employer is  
31 unable to obtain staff coverage even though the employer has:

1           (a) Sought, from among all available qualified staff  
2 who are working, individuals who would volunteer to work extra  
3 time;

4           (b) Contacted employees who have made themselves  
5 available to work extra time;

6           (c) Sought the use of per diem staff; and

7           (d) Sought personnel from a contracted temporary  
8 agency if such staffing is permitted by law or an applicable  
9 collective bargaining agreement.

10           (12) "Skill mix" means the differences in licensing,  
11 specialty, and experience among direct-care nurses.

12           (13) "Staffing level" means the actual numerical  
13 registered nurse-to-patient ratio within a nursing department  
14 or unit.

15           (14) "Unforeseeable emergent circumstance" means:

16           (a) An unforeseen declared national, state, or  
17 municipal emergency;

18           (b) A situation in which a health care disaster plan  
19 is activated; or

20           (c) An unforeseen disaster or other catastrophic event  
21 that substantially affects or increases the need for health  
22 care services.

23           Section 4. Section 395.054, Florida Statutes, is  
24 created to read:

25           395.054 Facility staffing standards.--

26           (1) STAFFING PRINCIPLES.--The basic principles of  
27 staffing in health care facilities should be focused on  
28 patient health care needs and based on consideration of  
29 patient acuity levels and services that need to be provided to  
30 ensure optimal outcomes. Safe staffing practices recognize the  
31 importance of all health care workers in providing quality

1 patient care. The setting of staffing standards for registered  
2 nurses is not to be interpreted as justifying the  
3 understaffing of other critical health care workers, including  
4 licensed practical nurses, social workers, and other licensed  
5 or unlicensed assistive personnel. Indeed, the availability of  
6 these other health care workers enables registered nurses to  
7 focus on the nursing care functions that only registered  
8 nurses, by law, are permitted to perform and thereby helps to  
9 ensure adequate staffing levels.

10 (2) SPECIFIC STANDARDS.--Health care facilities shall  
11 provide staffing by registered nurses in accordance with the  
12 minimum nurse-to-patient ratios that are set forth in this  
13 subsection. Staffing for care that does not require a  
14 registered nurse is not included within these ratios and must  
15 be determined pursuant to the patient classification system.  
16 Nurse-to-patient ratios represent the maximum number of  
17 patients which are assigned to one registered nurse during one  
18 shift. Only nurses providing direct patient care shall be  
19 included in the ratios. Nurse administrators, nurse  
20 supervisors, charge nurses, and other licensed nurses that do  
21 not have a specific patient care assignment may not be  
22 included in the calculation of the nurse-to-patient ratio.  
23 This section does not prohibit a registered nurse from  
24 providing care within the scope of his or her practice to a  
25 patient assigned to another nurse.

26 (a) No more than two patients may be assigned to each  
27 registered nurse, so that the minimum registered  
28 nurse-to-patient ratio in a critical care unit is 1 to 2 or  
29 fewer at any time. As used in this paragraph, the term  
30 "critical care unit" means a nursing unit of a general acute  
31 care hospital which provides one of the following services: an

1 intensive care service, a postanesthesia recovery service, a  
2 burn center service, a coronary care service, or an acute  
3 respiratory service. In the intensive care newborn nursery  
4 service, no more than two patients may be assigned to each  
5 nurse.

6 (b) In the surgical service operating room, no more  
7 than one patient-occupied operating room may be assigned to  
8 each registered nurse.

9 (c) No more than two patients may be assigned to each  
10 registered nurse in a labor/delivery unit of the perinatal  
11 service, so that the registered nurse-to-patient ratio is 1 to  
12 2 or fewer at any time.

13 (d) No more than three mother-baby couplets may be  
14 assigned to each registered nurse in a postpartum area of the  
15 perinatal unit at any time. If multiple births have occurred,  
16 the total number of mothers plus infants which are assigned to  
17 a single registered nurse may not exceed six.

18 (e) In a hospital that provides basic emergency  
19 medical services or comprehensive emergency medical services,  
20 no more than three patients who are receiving emergency  
21 services may be assigned to each registered nurse, so that the  
22 registered nurse-to-patient ratio in an emergency department  
23 is 1 to 3 or fewer at any time patients are receiving  
24 treatment. No fewer than two registered nurses must be  
25 physically present in the emergency department when a patient  
26 is present.

27 (f) The nurse assigned to triage patients may not have  
28 a patient assignment, may not be assigned the responsibility  
29 for the base ratio, and may not be counted in the registered  
30 nurse-to-patient ratio.

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1           (g) When nursing staff are attending critical care  
2 patients in the emergency department, no more than two  
3 patients may be assigned to each registered nurse. When  
4 nursing staff in the emergency department are attending trauma  
5 patients, no more than one patient may be assigned to each  
6 registered nurse at any time.

7           (h) No more than three patients may be assigned to  
8 each registered nurse in a step-down unit, so that the minimum  
9 registered nurse-to-patient ratio in a step-down unit is 1 to  
10 3 or fewer at any time. As used in this paragraph, the term:

11           1. "Artificial life support" means a system that uses  
12 medical technology to aid, support, or replace a vital  
13 function of the body which has been seriously damaged.

14           2. "Step-down unit" means a unit that is organized,  
15 operated, and maintained to provide for the monitoring and  
16 care of patients who have moderate or potentially severe  
17 physiologic instability that requires technical support but  
18 not necessarily artificial life support.

19           3. "Technical support" means specialized equipment or  
20 personnel, or both, that provides for invasive monitoring,  
21 telemetry, and mechanical ventilation, for the immediate  
22 amelioration or remediation of severe pathology for those  
23 patients who require less care than intensive care but more  
24 than that which is available from medical/surgical care.

25           (i) No more than three patients may be assigned to  
26 each registered nurse, so that the minimum registered  
27 nurse-to-patient ratio in a telemetry unit is 1 to 3 or fewer  
28 at any time. As used in this paragraph, the term "telemetry  
29 unit" means a unit designated for the electronic monitoring,  
30 recording, retrieval, and display of cardiac electrical  
31 signals.



1           (j) No more than four patients may be assigned to each  
2 registered nurse, so that the minimum registered  
3 nurse-to-patient ratio in medical/surgical care units is 1 to  
4 4 or fewer at any time. As used in this paragraph, the term  
5 "medical/surgical unit" means a unit that has beds classified  
6 as medical/surgical in which patients who require less care  
7 than that which is available in intensive care units or  
8 step-down units receive 24-hour inpatient general medical  
9 services, post-surgical services, or both general medical and  
10 post-surgical services. These units may include mixed patient  
11 populations of diverse diagnoses and diverse age groups.

12           (k) No more than four patients may be assigned to each  
13 registered nurse, so that the minimum registered  
14 nurse-to-patient ratio in a specialty care unit is 1 to 4 or  
15 fewer at any time. As used in this paragraph, the term  
16 "specialty care unit" means a unit that is organized,  
17 operated, and maintained to provide care for a specific  
18 medical condition or a specific patient population, is more  
19 comprehensive for the specific condition or disease process  
20 than the care that is available on medical/surgical units, and  
21 is not otherwise covered in this section.

22           (l) No more than four patients may be assigned to each  
23 registered nurse, so that the minimum registered  
24 nurse-to-patient ratio in an acute care psychiatric unit is 1  
25 to 4 or fewer at any time.

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27 Identifying a unit by a name or term other than those used in  
28 this subsection does not affect the requirement to provide  
29 staff for the unit at the ratio required for the level or type  
30 of care provided in the unit, as set forth in this subsection.

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1           (3) STAFFING PLAN.--Each facility licensed under this  
2 chapter shall ensure that it provides sufficient,  
3 appropriately qualified nursing staff of each classification  
4 in each department or unit within the facility in order to  
5 meet the individualized care needs of the patients. To  
6 accomplish this goal, each health care facility licensed under  
7 this chapter shall submit annually to the Agency for Health  
8 Care Administration a documented staffing plan together with a  
9 written certification that the staffing plan is sufficient to  
10 provide adequate and appropriate delivery of health care  
11 services to patients for the ensuing year. The staffing plan  
12 must:  
13           (a) Meet the minimum requirements set forth in  
14 subsection (2);  
15           (b) Be adequate to meet any additional requirements  
16 provided by other laws or rules;  
17           (c) Employ and identify an approved acuity system for  
18 addressing fluctuations in actual patient acuity levels and  
19 nursing care requirements requiring increased staffing levels  
20 above the minimums set forth in the plan;  
21           (d) Factor in other unit or department activity, such  
22 as discharges, transfers and admissions, and administrative  
23 support tasks, which direct-care nurses are expected to do in  
24 addition to performing direct nursing care;  
25           (e) Identify the assessment tool used to validate the  
26 acuity system relied on in the plan;  
27           (f) Identify the system that will be used to document  
28 actual daily staffing levels within each department or unit;  
29           (g) Include a written assessment of the accuracy of  
30 the previous year's staffing plan in light of actual staffing  
31 needs;

1           (h) Identify each nurse staff classification  
2 referenced in the staffing plan, together with a statement  
3 setting forth minimum qualifications for each such  
4 classification; and

5           (i) Be developed in consultation with the direct-care  
6 nursing staff within each department or unit or, if such staff  
7 is covered by a collective bargaining agreement, with the  
8 applicable recognized or certified collective bargaining  
9 representatives of the direct-care nursing staff.

10           (4) MINIMUM SKILL MIX.--The skill mix reflected in a  
11 documented staffing plan must assure that all of the following  
12 elements of the nursing process are performed in the planning  
13 and delivery of care for each patient: assessment, nursing  
14 diagnosis, planning, intervention, evaluation, and patient  
15 advocacy.

16           (a) The skill mix may not incorporate or assume that  
17 nursing care functions that are required by licensing law or  
18 rules or accepted standards of practice to be performed by a  
19 licensed nurse are to be performed by unlicensed assistant  
20 personnel.

21           (b) A nurse may not be assigned or included in the  
22 count of assigned nursing staff for purposes of compliance  
23 with minimum staffing requirements in a nursing department or  
24 unit or a clinical area within the health care facility unless  
25 the nurse is qualified in the area of practice to which the  
26 nurse is assigned.

27           (5) COMPLIANCE WITH PLAN.--As a condition of  
28 licensing, a health care facility must at all times provide  
29 staff in accordance with its documented staffing plan and the  
30 staffing standards set forth in this section; however, this  
31 section does not preclude a health care facility from

1 implementing higher direct-care, nurse-to-patient staffing  
2 levels.

3 (6) RECORDKEEPING.--The facility shall maintain  
4 records sufficient to allow the agency to determine the daily  
5 staffing ratios and skill mixes that the facility has  
6 maintained on each unit.

7 Section 5. Section 395.055, Florida Statutes, is  
8 created to read:

9 395.055 Mandatory overtime.--

10 (1) An employee of a health care facility may not be  
11 required to work overtime as defined in s. 395.053. Compelling  
12 or attempting to compel an employee to work overtime is  
13 contrary to public policy and is a violation of this section.  
14 The acceptance by any employee of overtime work is strictly  
15 voluntary, and the refusal of an employee to accept such  
16 overtime work may not be grounds for discrimination,  
17 dismissal, discharge, or any other penalty; threats of reports  
18 for discipline; or employment decisions adverse to the  
19 employee.

20 (2) This section does not apply to work that occurs:

21 (a) Because of an unforeseeable emergent circumstance;

22 (b) During prescheduled on-call time if, as of July 1,  
23 2006, such prescheduled on-call time was a customary and  
24 longstanding practice in the unit or department of the health  
25 care facility; or

26 (c) Because of unpredictable and unavoidable  
27 occurrences relating to health care delivery which occur at  
28 unscheduled intervals and require immediate action, if the  
29 employer shows that the employer has exhausted reasonable  
30 efforts to comply with the documented staffing plan. An

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1 employer has not used reasonable efforts if overtime work is  
2 used to fill vacancies resulting from chronic staff shortages.

3 (3) This section does not prohibit a health care  
4 employee from voluntarily working overtime.

5 Section 6. Section 395.056, Florida Statutes, is  
6 created to read:

7 395.056 Employee rights.--

8 (1) A health care facility may not penalize,  
9 discriminate against, or retaliate in any manner against a  
10 direct-care registered nurse for refusing an assignment that  
11 would violate requirements set forth in this act.

12 (2) A health care facility may not penalize,  
13 discriminate against, or retaliate in any manner against an  
14 employee with respect to compensation for, or terms,  
15 conditions, or privileges of, employment if such an employee  
16 in good faith, individually or in conjunction with another  
17 person or persons:

18 (a) Reports a violation or suspected violation of this  
19 act to a regulatory agency, a private accreditation body, or  
20 management personnel of the health care facility;

21 (b) Initiates, cooperates in, or otherwise  
22 participates in an investigation or proceeding brought by a  
23 regulatory agency or private accreditation body concerning  
24 matters covered by this act;

25 (c) Informs or discusses with any other employee, with  
26 any representative of the employees, with a patient or patient  
27 representative, or with the public violations or suspected  
28 violations of this act; or

29 (d) Otherwise avails himself or herself of the rights  
30 set forth in this act.

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1           (3) For purposes of this section, an employee is  
2 acting in good faith if the employee reasonably believes that  
3 the information reported or disclosed is true and that a  
4 violation has occurred or may occur.

5           Section 7. Section 395.057, Florida Statutes, is  
6 created to read:

7           395.057 Implementation and enforcement.--

8           (1) The Agency for Health Care Administration shall  
9 enforce compliance with the staffing plans and standards set  
10 forth in this act. The agency may adopt rules necessary to  
11 administer this act. At a minimum, the rules must provide for:

12           (a) Unannounced, random compliance site visits to  
13 licensed health care facilities subject to this act;

14           (b) An accessible and confidential system by which the  
15 public and nursing staff can report a health care facility's  
16 failure to comply with this act;

17           (c) A systematic means of investigating and correcting  
18 violations of this act;

19           (d) A graduated system of penalties, including fines,  
20 withholding of reimbursement, suspension of admission to  
21 specific units, and other appropriate measures, if violations  
22 are not corrected; and

23           (e) Public access to information regarding reports of  
24 inspections, results, deficiencies, and corrections.

25           (2) The agency shall develop rules for administering  
26 this act which require compliance with staffing standards for  
27 critical care units by July 1, 2007, and compliance with all  
28 provisions of this act by July 1, 2009.

29           Section 8. This act shall take effect July 1, 2006.  
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SENATE SUMMARY

Creates the "Safe Staffing for Quality Care Act."  
Provides legislative findings. Defines terms. Prescribes  
safe staffing standards for health care facilities.  
Requires licensed facilities to submit an annual staffing  
plan to the Agency for Health Care Administration.  
Provides standards for the required skill mix. Requires  
compliance with the staffing plan. Requires  
recordkeeping. Prohibits mandatory overtime. Provides  
applicability. Provides to employees the right to refuse  
certain assignments and the right to report suspected  
violations of safe staffing standards without incurring a  
penalty. Provides for the agency to enforce compliance  
with the act. Requires the agency to develop rules.