

TO: Representative Gayle Manning, Chair  
Commerce and Labor Committee

FROM: Janet Gray Michaelis, RN, Independent Nurse Advocate

DATE: April 10, 2019

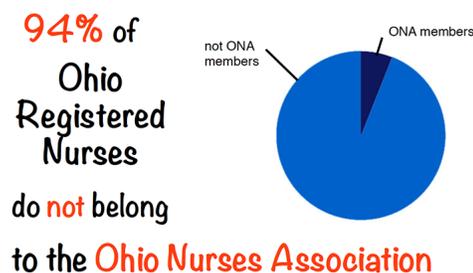
RE: Opposition to H.B.144

As an Ohio Registered Nurse for over 40 years, I offer this testimony OPPOSING HB 144, the Ohio Nurses Association endorsed bill regarding “mandatory nurse overtime.”

Like the 2008 legislation (2008 HB346 09-12-2008) that created the Ohio revised code sections 3727.50 through 3727.57 related to nurse staffing in hospitals, this bill’s proposals do not include any requirements for the kinds of routine monitoring and public reporting that are fundamental to assuring hospital compliance.

Likewise, there are no enforcement measures or penalties described for violation of any of the requirements or prohibitions. The 2008 legislation, also endorsed by the Ohio Nurses Association, has proven that without specific oversight, accountability, and penalty, there has been no enforcement of meaningful compliance by hospitals with that law. Labor unions have tried, through their contracts, to give the requirements some force, but that has only happened in the handful of facilities where collective bargaining units operate.

## Did you Know...?



It’s extremely important to understand this about Ohio Nurses Association endorsed legislation: **Only about 6% of nurses in Ohio actually belong to the Ohio Nurses Association.**

Nationally, the total percentage of nurses who subscribe to the parent organization, American Nurses Association, is approximately 5%. Both of these legacy organizations claim to speak on behalf of nurses, but the vast majority of nurses have never authorized either of these organizations to speak for them.

In Ohio, most nurses who belong to ONA are members by virtue of being in one of the affiliate organizations’ collective bargaining units; they belong because membership is connected to their employment. Most ONA members come from the unionized hospitals in Columbus and Cincinnati.

This means that at least 94% of Ohio’s nurses are “at will” employees. Unlike the union nurses, we don’t have any kind of written contract, so there’s no documentation in place that even attempts to enforce the provisions of the 2008 staffing law. We’re expected to work when and

where we're told to. It's a condition of continued employment. The staffing law in effect now only required hospitals to take specific steps to *produce* a staffing plan, but did not require them to actually follow it. Without a reporting mechanism, it's impossible for you, as legislators, much less members of the public, to know what hospital staffing practices are. In the absence of legal accountability or contractual requirements regarding staffing, hospitals treat all nursing assignments as non-negotiable. Consequently "mandatory overtime" is almost exclusively a problem for unionized nurses, because they're the only ones with contracts requiring hospitals to *follow* the state-mandated staffing plan.

So it seems that union nurses are by far the most likely to benefit from HB 144. But what will it actually do for them??

If you read past the news reports and between the lines of the LSC bill analysis, you will find that the new legislation before you, HB 144, "prevents" nothing.

Starting at line 8, HB 144 restates section 3727.53 "Written nursing services staffing plan" of the Ohio Revised Code. The staffing plans mandated in this law have never been transparently monitored, reported to the public, or otherwise enforced since the law's passage in 2008. To this rather pointless law, HB 144 now proposes to add a new section, 3727.58 with a very specific "prohibition," along with caveats detailed in a long list of "exceptions" to the prohibition.

- The "prohibition" in this proposed legislation, like the extant law it is appended to, carries no provision for reporting, oversight, accountability or penalty for violation. In the instance of a nurse being dismissed for refusing an overtime assignment, the onus for enforcing this law will fall on the individual nurse (or possibly for the 6% of nurses represented by a union, on their union) and can only be invoked *after* they've been disciplined, retaliated against or terminated. *This is a recourse bill, with very low probability that many nurses will both meet the narrow criteria for qualifying and also have the resources to seek recourse.*

- It "prohibits" disciplining or terminating a nurse "**solely** because the nurse chooses not to work overtime."

*All an employer need do is identify some seemingly unrelated minor infraction, which is simple enough to do, and the prohibition no longer applies.*

- Within the very narrowly defined circumstances, the bill's language further allows hospitals to game the law by defining "exceptions to the rule" in ways that exempt them.

ie. The prohibition will apply "Except as provided in division (C)..."

"(c) There is an **emergency, unforeseen event** , or influx of patients and all of the following apply to the emergency, unforeseen event, or influx of patients:

(i) It results in patient care needs **beyond reasonable, predictable levels;**

(ii) It increases the need for health care personnel at the hospital to provide safe patient care;

(iii) It **could not reasonably be anticipated** by the hospital."

*"Unforeseen event" could be "Oh, we didn't anticipate this many call-offs."*

*Influx beyond "reasonable, predicable levels" might be "Our analysts' predictions said these patients would not be here, so you have to stay." There are countless obvious ways for hospitals to easily disqualify themselves from the prohibition.*

Ohio's hospital nurses are working in conditions that are dangerous for us and for our patients in ways you cannot readily imagine, and that you are not going to learn about by listening only to lobbyists from the healthcare industry and legacy nursing organizations, including the labor unions. We face many widespread, major problems in hospitals that hinder our ability to provide the kind of excellent care we've been trained to give, but "mandatory overtime" is not a major problem. Even if it were, this toothless bill is designed to minimize the probability that hospitals will experience any negative consequence from continuing to use mandatory overtime as a convenient way to make up for any kind of staffing shortage.

HB 144 *does* offer the opportunity for some parties to look good. ONA would be able to say they passed "new staffing legislation," and its relative applicability to union nurses would play well with the ONA's largest constituency. Legislators voting in favor of HB 144 would likewise be able to claim they're "supporting nurses," confident that impotent "prohibition" legislation like this leaves hospitals free to continue their current practices with impunity. It's a "pro-nurse vote" that's unlikely to antagonize the powerful Ohio Hospital Association. If this bill becomes law, the losers will be the nurses and our patients, who will continue to face the same dangerous staffing practices this bill pretends to address.

Sadly much money, time and political capital has already been spent by the ONA, crafting and promoting this bill, which by design, will do next-to-nothing for the vast majority of Ohio's nurses and our patients. I urge the committee to vote against HB 144.