

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 430

BY SENATORS TAKUBO AND BOSO

[Introduced February 24, 2017; Referred

to the Committee on Health and Human Resources;
and then to the Committee on the Judiciary]

1 A BILL to amend and reenact §16-5G-2, §16-5G-3, §16-5G-4 and §16-5G-6 of the Code of West
2 Virginia, 1931, as amended, all relating to hospital open meetings; expanding the definition
3 of a hospital's "governing body"; requiring notice to those persons who are the subject of
4 the proceedings; setting forth what the notice must contain; providing for a time frame of
5 the notice; providing that an affected party may attend an executive session of the
6 hospital's governing body; and eliminating a requirement that a person who brings a
7 frivolous action against the governing body may have to pay the governing body's costs
8 and attorney fees.

Be it enacted by the Legislature of West Virginia:

1 That §16-5G-2, §16-5G-3, §16-5G-4 and §16-5G-6 of the Code of West Virginia, 1931, as
2 amended, be amended and reenacted, all to read as follows:

ARTICLE 5G. OPEN HOSPITAL PROCEEDINGS.

§16-5G-2. Definitions.

1 As used in this article:

2 (1) "Decision" means any determination, action, vote or final disposition of a motion,
3 proposal, resolution, order or measure on which a vote of the governing body is required at any
4 meeting at which a quorum is present;

5 (2) "Executive session" means any meeting or part of a meeting of the governing body of
6 a hospital that is closed to the public;

7 (3) "Governing body" means:

8 (A) With respect to a hospital owned or operated by a nonprofit corporation, the board of
9 directors established pursuant to section eight hundred one, article eight, chapter thirty-one-e of
10 this code, or any other group of governing board members having the authority to make decisions
11 concerning the management and control of a hospital, including, but not limited to, the executive
12 committee of the medical staff of a hospital and any other committee or subcommittee of the
13 medical staff of a hospital;

14 (B) With respect to a county hospital, the board of trustees established pursuant to section
15 fifteen, article three, chapter seven of this code, or any group of governing board members having
16 the authority to make decisions concerning the management and control of a hospital, including,
17 but not limited to, the executive committee of the medical staff of a hospital and any other
18 committee or subcommittee of the medical staff of a hospital; or

19 (C) With respect to all other hospitals subject to this article, the ~~single~~ board of directors,
20 board of trustees, ~~or, if given another name, the single~~ or any group of governing board members
21 having the authority to make decisions concerning the management and control of a hospital,
22 including, but not limited to, the executive committee of the medical staff of a hospital and any
23 other committee or subcommittee of the medical staff of a hospital; *Provided*, That the medical
24 staff of a hospital, the executive committee of the medical staff of a hospital and any other
25 committee or subcommittee of the medical staff of a hospital are not a governing body of any
26 hospital described in paragraphs (A), (B) and (C) of this subdivision

27 (4) "Hospital" means any hospital owned or operated by a nonprofit corporation, nonprofit
28 association or local governmental unit;

29 (5) "Meeting" means the convening of the governing body of a hospital for which a quorum
30 is required in order to make a decision or to deliberate toward a decision on any matter: *Provided*,
31 That the convening of a committee, subcommittee or other subcomponent of the governing body
32 or the convening of any group other than the governing body that makes recommendations to the
33 governing body is not a meeting within the meaning of this article unless the committee,
34 subcommittee, subcomponent or group is vested with independent decision-making authority and
35 exercises the independent decision-making authority at any convening; and

36 (6) "Quorum" means, unless otherwise defined by applicable law, a simple majority of the
37 constituent membership of the governing body.

§16-5G-3. Proceedings to be open; public notice of meetings.

1 (a) Except as expressly and specifically otherwise provided by law, and except as provided

2 in section four of this article, all meetings of a governing body of a hospital shall be open to the
3 public. Any governing body may make and enforce reasonable rules and regulations for
4 attendance and presentation at any meeting where there is not room enough for all members of
5 the public who wish to attend. This article does not prohibit the removal from a meeting of any
6 member of the public who is disrupting the meeting to the extent that orderly conduct of the
7 meeting is compromised: *Provided*, That persons who desire to address the governing body may
8 not be required to register to address the body more than fifteen minutes prior to time the
9 scheduled meeting is to commence.

10 **(b)** Each governing body shall promulgate rules by which the date, time and place of all
11 regularly scheduled meetings and the date, time, place and purpose of all special meetings are
12 made available, in advance, to the public and news media, except in the event of an emergency
13 requiring immediate official action.

14 **(c)** Each governing body shall file a notice of any meeting by causing a notice of the
15 meeting to be printed in a local newspaper: *Provided*, That the governing body may otherwise
16 provide by rule or regulation an alternative procedure that will reasonably provide the public with
17 notice. Each notice shall state the date, time, place and purpose of the meeting.

18 **(d) An executive committee of the medical staff of a hospital shall provide notice of its**
19 **meeting by mail or hand delivery, with no less than fourteen days' notice, to any individual who is**
20 **the subject of that proceeding by the governing body of the meeting. The notice shall include the**
21 **time and place of the meeting, it's agenda, and a statement of the matters affecting that individual**
22 **to be addressed at the meeting.**

23 **(e)** In the event of an emergency requiring immediate official action, any governing body
24 may provide an emergency meeting notice at any time prior to the meeting. The emergency
25 meeting notice shall state the date, time, place and purpose of the meeting and the facts and
26 circumstances of the emergency.

27 **(f)** Upon petition by any adversely affected party, any court of competent jurisdiction may

28 invalidate any action taken at any meeting for which notice did not comply with the requirements
29 of this section.

§16-5G-4. Exceptions.

1 (a) This article does not prevent the governing body of a hospital from holding an executive
2 session during a regular, special or emergency meeting, after the presiding officer has identified
3 the authorization under this article for the holding of the executive session and has presented it
4 to the governing body and to the general public, but no official action may be made in the
5 executive session, except as is necessary:

6 (1) To protect the confidentiality of protected health information as defined by the Health
7 Insurance Portability and Accountability Act of 1996;

8 (2) To preserve the privilege and confidentiality of peer review information as provided in
9 article three-c, chapter thirty of this code;

10 (3) To approve confidential legal settlements or otherwise act in connection with matters
11 described in subdivision (5), subsection (b) of this section; or

12 (4) To end an executive session and readmit the public to a meeting.

13 (b) An executive session may be held only upon a majority affirmative vote of the members
14 present of the governing body of a hospital as defined in this article for the following:

15 (1) The appointment, employment, retirement, promotion, demotion, disciplining,
16 resignation, discharge, dismissal or compensation of any officer or employee, or other personnel
17 matters, or for the purpose of conducting a hearing on a complaint against an officer or employee,
18 unless the officer or employee requests an open meeting: Provided, That any individual who is
19 the subject of any matter in an executive session may attend and observe that portion of the
20 executive session which pertains to him or her:

21 (2) The disciplining, suspension or expulsion of any student or trainee enrolled in a
22 program conducted by the hospital, unless the student or trainee requests an open meeting;

23 (3) Investigations and proceedings involving the issuance, denial, suspension or

24 revocation of the authority or privilege of a medical practitioner to use the hospital and to engage
25 in particular kinds of practice or to perform particular kinds of operations, unless the person
26 seeking the authority or privilege or whose authority or privilege was denied, suspended or
27 revoked requests an open meeting;

28 (4) Matters concerning the failure or refusal of a medical practitioner to comply with
29 reasonable regulations of a hospital with respect to the conditions under which operations are
30 performed and other medical services are delivered;

31 (5) To conduct privileged attorney-client communications or to consider the work product
32 of the hospital's attorney or the hospital administration, including materials prepared by an
33 attorney or others in anticipation of litigation, litigation strategies and reports, confidential legal
34 settlements and discussions, negotiations and alternative dispute resolution proceedings
35 conducted in pursuit of a legal settlement;

36 (6) The physical or mental health of any person, unless the person requests an open
37 meeting;

38 (7) Matters which, if discussed in public, would be likely to affect adversely the reputation
39 of any person;

40 (8) Any official investigation or matters relating to crime prevention or law enforcement;

41 (9) The development of security personnel or devices;

42 (10) Matters involving or affecting the purchase, sale or lease of property, advance
43 construction planning, the investment of public funds or other matters involving competition which,
44 if made public, might adversely affect the financial or other interest of the state or any political
45 subdivision or the hospital; or

46 (11) To consider or act upon the matters described in subdivisions (1), (2), (3) and (4),
47 subsection (a) of this section.

§16-5G-6. Enforcement by injunctions; actions in violation of article voidable.

1 (a) The circuit court in the county where a hospital is located has jurisdiction to enforce

2 this article upon civil action commenced by any citizen of this state within one hundred twenty
3 days after the action complained of was taken or the decision complained of was made. Where
4 the action seeks injunctive relief, no bond may be required unless the petition appears to be
5 without merit or made with the sole intent of harassing or delaying or avoiding return by the
6 governing body.

7 **(b)** The court is empowered to compel compliance or enjoin noncompliance with the
8 provisions of this article and to annul a decision made in violation of this article. An injunction may
9 also order that subsequent actions be taken or decisions be made in conformity with the
10 provisions of this article.

11 **(c)** Any order which compels compliance or enjoins noncompliance with the provisions of
12 this article, or which annuls a decision made in violation of this article shall include findings of fact
13 and conclusions of law and shall be recorded in the minutes of the governing body.

14 **(d)** Upon entry of an order, the court may, where the court finds that the governing body
15 intentionally violated the provisions of this article, order the governing body to pay the complaining
16 person's necessary attorney fees and expenses. ~~Where the court, upon denying the relief sought~~
~~by the complaining person in the action, finds that the action was frivolous or commenced with~~
~~the primary intent of harassing the governing body or any member thereof or, in the absence of~~
~~good faith, of delaying any meetings or decisions of the governing body, the court may require~~
~~the complaining person to pay the governing body's necessary attorney fees and expenses~~

21 **(e)** Any person who intentionally violates the provisions of this article is liable in an action
22 for compensatory and punitive damages not to exceed a total of \$500.

NOTE: The purpose of this bill concerns hospital open meetings. The bill expands the definition of a hospital's "governing body." The bill requires notice to those persons who are the subject of the proceedings. The bill sets out what is required in the notice. The bill provides for a timeframe of the notice. The bill provides that an affected party may attend an executive session of the hospital's governing body. The bill eliminates a requirement that a person who brings a frivolous action against the governing body may have to pay the governing body's costs and attorney fees.

Strike-throughs indicate language that would be stricken from a heading or the present law
and underscoring indicates new language that would be added.