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WEST VIRGINIA LEGISLATURE
Regular Session, 2004



ENROLLED

Committee Substitute for
SENATE BILL NO. 251

(By Senator Snyder, et al)



PASSED February 17, 2004

In Effect ninety days from Passage

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 251

(SENATORS SNYDER, FANNING, HUNTER,
JENKINS, OLIVERIO, ROWE, KESSLER, WEEKS
AND WHITE, *original sponsors*)

[Passed February 17, 2004; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-5F-1, §21-5F-2, §21-5F-3, §21-5F-4 and §21-5F-5, all relating to providing requirements and limitations for mandatory nurse overtime in certain hospitals; providing legislative findings and purposes; defining terms; providing for certain requirements and limitations for hospital overtime; limiting number of hours worked in a day; providing exceptions to overtime limitations; providing that the division of labor enforce article; authorizing division of labor to propose rules providing administrative procedures; providing requirements for filing complaints; establishing administrative penalties;

directing disposition of penalty proceeds; establishing additional purposes for expenditures from health care cost review fund; and providing that new article does not amend other law.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §21-5F-1, §21-5F-2, §21-5F-3, §21-5F-4 and §21-5F-5, all to read as follows:

ARTICLE 5F. NURSE OVERTIME AND PATIENT SAFETY ACT.

§21-5F-1. Legislative findings and purpose.

1 The Legislature finds and declares that:

2 (1) It is essential that qualified registered nurses and
3 other licensed health care workers providing direct patient
4 care be available to meet the needs of patients;

5 (2) Quality patient care is jeopardized by nurses that
6 work unnecessarily long hours in hospitals;

7 (3) Health care workers, especially nurses, are leaving
8 their profession because of workplace stresses, long work
9 hours and depreciation of their essential role in the
10 delivery of quality, direct patient care;

11 (4) It is necessary to safeguard the efficiency, health and
12 general well-being of health care workers in hospitals, as
13 well as the health and general well-being of the persons
14 who use their services;

15 (5) It is further necessary that health care workers be
16 aware of their rights, duties and remedies with regard to
17 hours worked and patient safety; and

18 (6) Hospitals should provide adequate safe nursing
19 staffing without the use of mandatory overtime.

§21-5F-2. Definitions.

1 For the purposes of this article:

2 (1) "Hospital" means a facility licensed under the
3 provisions of article five-b, chapter sixteen of this code,
4 but does not include hospitals operated by state or federal
5 agencies.

6 (2) "Nurse" means a certified or licensed practical nurse
7 or a registered nurse who is providing nursing services and
8 is involved in direct patient care activities or clinical
9 services, but does not include certified nurse anesthetists.
10 Nurse managers are included with respect to their delivery
11 of in-hospital patient care, but this is in no way intended
12 to impact on their 24-hour management responsibility for
13 a unit, area or service.

14 (3) "Overtime" means the hours worked in excess of an
15 agreed upon, predetermined, regularly scheduled shift.

16 (4) "Taking action against" means discharging; disciplin-
17 ing; threatening; reporting to the board of nursing; dis-
18 criminating against; or penalizing regarding compensa-
19 tion, terms, conditions, location or privileges of employ-
20 ment.

21 (5) "Unforeseen emergent situation" means an unusual,
22 unpredictable or unforeseen circumstance such as, but not
23 limited to, an act of terrorism, a disease outbreak, adverse
24 weather conditions or natural disasters. An unforeseen
25 emergent situation does not include situations in which the
26 hospital has reasonable knowledge of increased patient
27 volume or decreased staffing, including, but not limited to,
28 scheduled vacations and scheduled health care worker
29 medical leave.

**§21-5F-3. Hospital nursing overtime limitations and require-
ments.**

1 (a) Except as provided in subsections (b), (c), (d), (e) and
2 (f) of this section, a hospital is prohibited from mandating

3 a nurse, directly or through coercion, to accept an assign-
4 ment of overtime and is prohibited from taking action
5 against a nurse solely on the grounds that the nurse refuses
6 to accept an assignment of overtime at the facility if the
7 nurse declines to work additional hours because doing so
8 may, in the nurse's judgment, jeopardize patient or
9 employee safety.

10 (b) Notwithstanding subsections (a) and (g) of this
11 section, a nurse may be scheduled for duty or mandated to
12 continue on duty in overtime status in an unforeseen
13 emergent situation that jeopardizes patient safety.

14 (c) Subsections (a) and (g) of this section do not apply
15 when a nurse may be required to fulfill prescheduled on-
16 call time, but nothing in this article shall be construed to
17 permit an employer to use on-call time as a substitute for
18 mandatory overtime.

19 (d) Notwithstanding subsections (a) and (g) of this
20 section, a nurse may be required to work overtime to
21 complete a single patient care procedure already in
22 progress, but nothing in this article shall be construed to
23 permit an employer to use a staffing pattern as a means to
24 require a nurse to complete a procedure as a substitute for
25 mandatory overtime.

26 (e) Subsection (a) of this section does not apply when a
27 collective bargaining agreement is in place between nurses
28 and the hospital which is intended to substitute for the
29 provisions of this article by incorporating a procedure for
30 the hospital to require overtime.

31 (f) Subsection (a) of this section does not apply to
32 voluntary overtime.

33 (g) In the interest of patient safety, any nurse who works
34 twelve or more consecutive hours, as permitted by this
35 section, shall be allowed at least eight consecutive hours of
36 off-duty time immediately following the completion of the
37 shift. Except as provided in subsections (b), (c) and (d) of

38 this section, no nurse shall work more than sixteen hours
39 in a 24-hour period. The nurse is responsible for informing
40 the employer hospital of other employment experience
41 during the 24-hour period in question if this provision is to
42 be invoked. To the extent that an on-call nurse has
43 actually worked sixteen hours in a hospital, efforts shall
44 be made by the hospital to find a replacement nurse to
45 work.

46 Each hospital shall designate an anonymous process for
47 patients and nurses to make staffing complaints related to
48 patient safety.

§21-5F-4. Enforcement; offenses and penalties.

1 (a) Pursuant to the powers set forth in article one of this
2 chapter, the commissioner of labor is charged with the
3 enforcement of this article. The commissioner shall
4 propose legislative and procedural rules in accordance
5 with the provisions of article three, chapter twenty-nine-a
6 of this code to establish procedures for enforcement of this
7 article. These rules shall include, but are not limited to,
8 provisions to protect due process requirements, a hearings
9 procedure and an appeals procedure.

10 (b) Any complaint must be filed with the commissioner
11 of labor regarding an alleged violation of the provisions of
12 this article must be made within thirty days following the
13 occurrence of the incident giving rise to the alleged
14 violation. Notification of the alleged violation must be
15 forwarded to the hospital in question within three business
16 days of filing.

17 (c) The administrative penalty for the first violation of
18 this article shall be a reprimand.

19 (d) The administrative penalty for the second offense of
20 this article shall be a reprimand and a fine not to exceed
21 five hundred dollars.

22 (e) The administrative penalty for the third and subse-
23 quent offenses shall have a fine of not less than two
24 thousand five hundred dollars and not more than five
25 thousand dollars for each violation.

26 (f) To be eligible to be charged of a second offense or
27 third offense under this section, the subsequent offense
28 must occur within twelve months of the prior offense.

29 (g)(1) All moneys paid as administrative penalties
30 pursuant to this section shall be deposited into the health
31 care cost review fund provided by section eight, article
32 twenty-nine-b, chapter sixteen of this code.

33 (2) In addition to other purposes for which funds may be
34 expended from the health care cost review fund, the West
35 Virginia health care authority shall expend moneys from
36 the fund, in amounts up to but not exceeding amounts
37 received pursuant to subdivision (1) of this subsection, for
38 the following activities in the state of West Virginia:

39 (A) Establishment of scholarships in medical schools;

40 (B) Establishment of scholarships for nurses training;

41 (C) Establishment of scholarships in the public health
42 field;

43 (D) Grants to finance research in the field of drug
44 addiction and development of cures therefor;

45 (E) Grants to public institutions devoted to the care and
46 treatment of narcotic addicts; and

47 (F) Grants for public health research, education and
48 care.

§21-5F-5. Relation to other laws.

1 Any law of this state currently enacted shall not be
2 deemed to be amended, rescinded or otherwise affected by
3 any provision of this article, but shall continue in full force
4 and effect.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *25th*
Day of *February* , 2004.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 2/19/04

Time 2:15pm