

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **Senate Bill 257**

BY SENATOR AZINGER

[Introduced January 12, 2018; Referred  
to the Committee on Health and Human Resources; and  
then to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §30-31A-1, §30-31A-2, §30-31A-3, and §30-31A-4, all relating to creating the  
 3 West Virginia Counseling Protection Act; prohibiting state agencies and political  
 4 subdivisions from denying or restricting mental health providers from providing counseling,  
 5 or any patient from receiving counseling, intended to aid patients in self-determined  
 6 objectives; providing for judicial relief; providing for attorney fees and costs; providing a  
 7 purpose; making findings; and defining terms.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 31A. THE WEST VIRGINIA COUNSELING PROTECTION ACT.**

**§30-31A-1. Purpose.**

1 The purpose of this article is to protect the exchange of communication in the context of a  
 2 counseling relationship between licensed mental health providers and their patients and clients.

**§30-31A-2. Findings.**

1 The Legislature finds that:

2 (1) Confidentiality is critically important to the counseling relationship between mental  
 3 health providers and their patients or clients;

4 (2) The bedrock principle of counseling is the self-determination right of patients or clients  
 5 to set and pursue their counseling objectives; and

6 (3) Central to the counseling relationship between mental health providers and their  
 7 patients or clients is the right to provide and receive information that furthers and addresses the  
 8 counseling objective.

**§30-31A-3. Definitions.**

1 For the purposes of this article:

2 “Counseling” means all communication, between a mental health provider and a patient  
 3 or client intended to aid the patient or client in his or her self-determined objectives.

4 “Mental health provider” means a physician or surgeon specializing in the practice of

5 psychiatry, a psychologist, a psychological assistant, intern, or trainee, a licensed marriage and  
6 family therapist, a registered marriage and family therapist, intern, or trainee, a licensed  
7 educational psychologist, a credentialed school psychologist, a licensed clinical social worker, an  
8 associate clinical social worker, a licensed professional clinical counselor, a registered clinical  
9 counselor, intern, or trainee, or any other person designated as a mental health professional as  
10 defined elsewhere in this code or by state rule.

11 “Patient” or “client” means any person, including persons under the age of eighteen, under  
12 the care of a mental health provider.

**§30-31A-4. Prohibition; judicial relief; attorney fees and costs.**

1 (a) No office of state government, state agency, or any political subdivision of the state  
2 may prohibit or restrict a mental health provider from providing counseling or any patient or client  
3 from receiving counseling intended to aid patients or clients in their self-determined objectives of  
4 reducing, eliminating, resolving, or addressing unwanted sexual attractions, behaviors, identity,  
5 mannerisms, or expressions.

6 (b) A mental health provider, patient, or client whose freedom of speech or communication  
7 in the context of counseling has been violated under subsection (a) of this section may assert that  
8 violation as a claim or as a defense in a judicial proceeding and obtain appropriate relief against  
9 an office of state government, state agency or any political subdivision of the state. Standing to  
10 assert a claim or defense under this section shall be governed by the general rules of standing.  
11 Prevailing mental health providers, patients or clients under this section are entitled to appropriate  
12 attorney's fees and costs.

NOTE: The purpose of this bill is to create the West Virginia Counseling Protection Act. The bill prohibits state agencies and political subdivisions from denying or restricting mental health providers from providing counseling, or any patient from receiving counseling, intended to aid patients in certain self-determined objectives. The bill provides for judicial relief. The bill provides for attorney fees and costs. The bill provides a purpose. The bill makes findings. The bill defines terms.

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