

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **Senate Bill 156**

BY SENATOR OJEDA

[Introduced January 10, 2019; Referred  
to the Committee on Health and Human Resources; and  
then to the Committee on the Judiciary]

1 A BILL to amend and reenact §21-5F-1, §21-5F-2, §21-5F-3, and §21-5F-4 of the Code of West  
 2 Virginia, 1931, as amended, all relating to amending the West Virginia Nurse Overtime  
 3 and Patient Safety Act to include nurses employed in nursing homes as well as those  
 4 employed in hospitals; establishing limits on hours such nurses may be mandated to work  
 5 by their employers; and establishing enforcement offenses, penalties, and a private cause  
 6 of action for violations.

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

**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 other licensed health care workers  
 3 providing direct patient care be available to meet the needs of patients;

4 (2) Quality patient care is jeopardized by nurses that work unnecessarily long hours in  
 5 hospitals and nursing homes;

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

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

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

14 (6) Hospitals and nursing homes should provide adequate safe nursing staffing without  
 15 the use of mandatory overtime.

**§21-5F-2. Definitions.**

1 For the purposes of this article:

2           “Employer” means any hospital licensed under the provisions of §16-5B-1 et seq. of this  
3 code, any nursing home licensed under the provisions of §16-5B-1 et seq. of this code and any  
4 for-profit corporation, nonprofit corporation, limited liability company, holding company or any  
5 other type of business organization holding ownership or control of any aforementioned facility.

6           ~~(1)~~ “Hospital” means a facility licensed under the provisions of §16-5B-1 et seq. of this  
7 code but does not include hospitals operated by state or federal agencies.

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

13           “Nursing home” means a facility licensed under the provisions of §16-5C-1 et seq. of this  
14 code, but does not include nursing homes operated by state or federal agencies.

15           ~~(3)~~ “Overtime” means the hours worked in excess of an agreed upon, predetermined,  
16 regularly scheduled shift or the hours worked in excess of 40 per week.

17           ~~(4)~~ “Taking action against” means discharging; disciplining; threatening; reporting to the  
18 board of nursing; discriminating against; or penalizing regarding compensation, terms, conditions,  
19 location or privileges of employment.

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

**§21-5F-3. Hospital and nursing home overtime limitations and requirements.**

1           (a) Except as provided in §21-5F-3(b), §21-5F-3(c), §21-5F-3(d), §21-5F-3(e), and §21-

2 5F-3(f) of this code, a hospital or nursing home is prohibited from mandating a nurse, directly or  
3 through coercion, to accept an assignment of overtime and is prohibited from taking action against  
4 a nurse solely on the grounds that the nurse refuses to accept an assignment of overtime at the  
5 facility if the nurse declines to work additional hours because doing so may, in the nurse's  
6 judgment, jeopardize patient or employee safety.

7 (b) Notwithstanding §21-5F-3(a) and §21-5F-3(g) of this code, a nurse may be scheduled  
8 for duty or mandated to continue on duty in overtime status in an unforeseen emergent situation  
9 that jeopardizes patient safety.

10 (c) §21-5F-3(a) and §21-5F-3(g) of this code do not apply when a nurse may be required  
11 to fulfill prescheduled on-call time, but nothing in this article shall be construed to permit an  
12 employer to use on-call time as a substitute for mandatory overtime.

13 (d) Notwithstanding §21-5F-3(a) and §21-5F-3(g) of this code, a nurse may be required to  
14 work overtime to complete a single patient care procedure already in progress, but nothing in this  
15 article shall be construed to permit an employer to use a staffing pattern as a means to require a  
16 nurse to complete a procedure as a substitute for mandatory overtime.

17 (e) §21-5F-3(a) of this code does not apply when a collective bargaining agreement is in  
18 place between nurses and the hospital which is intended to substitute for the provisions of this  
19 article by incorporating a procedure for the hospital or nursing home to require overtime.

20 (f) §21-5F-3(a) of this code does not apply to voluntary overtime.

21 (g) In the interest of patient safety, any nurse who works 12 or more consecutive hours,  
22 as permitted by this section, shall be allowed at least eight consecutive hours of off-duty time  
23 immediately following the completion of the shift. Except as provided in §21-5F-3(b), §21-5F-3(c),  
24 and §21-5F-3(d) of this code, no nurse shall work more than 16 hours in a 24 hour period. The  
25 nurse is responsible for informing the employer hospital of other employment experience during  
26 the 24 hour period in question if this provision is to be invoked. No nurse shall be mandated to  
27 work more than one overtime shift during any one 40-hour work week. To the extent that an on-

28 call nurse has actually worked 16 hours in a hospital or nursing home, efforts shall be de by the  
29 hospital or nursing home to find a replacement nurse to work.

30 Each hospital or nursing home shall designate an anonymous process for patients and  
31 nurses to make staffing complaints related to patient safety.

32 (h) Each hospital or nursing home shall post, in one or more conspicuous place or places  
33 where notices to employee nurses are customarily posted, a notice in a form approved by the  
34 commissioner of the Department of Labor setting forth a nurse's rights under this article.

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

1 (a) Pursuant to the powers set forth in §21-1-1 *et seq.* of this code, the Commissioner of  
2 Labor is charged with the enforcement of this article. The commissioner shall propose legislative  
3 and procedural rules in accordance with the provisions of §29A-3-1 *et seq.* of this code to establish  
4 procedures for enforcement of this article. These rules shall include, but are not limited to,  
5 provisions to protect due process requirements, a hearings procedure, an appeals procedure,  
6 and a notification procedure, including any signs that must be posted by the facility.

7 (b) Any complaint must be filed with the commissioner regarding an alleged violation of  
8 the provisions of this article must be made within 30 days following the occurrence of the incident  
9 giving rise to the alleged violation. ~~The commissioner shall keep each complaint anonymous until~~  
10 ~~the commissioner finds that the complaint has merit~~ The commissioner shall establish a process  
11 for notifying a hospital or nursing home of a complaint.

12 (c) The administrative penalty for the first violation of this article is a ~~reprimand~~ fine of  
13 \$500.

14 (d) The administrative penalty for the second offense of this article is a ~~reprimand and a~~  
15 ~~fine not to exceed \$500~~ of \$2,500.

16 (e) The administrative penalty for the third and subsequent offenses is a fine of ~~not less~~  
17 ~~than \$2,500 and not more than \$5,000~~ for each violation.

18 ~~(f) To be eligible to be charged of a second offense or third offense under this section, the~~  
19 ~~subsequent offense must occur within twelve months of the prior offense~~

20 ~~(g)~~ (f) All moneys paid as administrative penalties pursuant to this section shall be  
21 deposited into the General Revenue Fund.

22 (g) Any nurse who has suffered retaliation from an employer as a result of the violation of  
23 this article has a private cause of action against the employer. A plaintiff who prevails in a private  
24 cause of action under this article may be awarded compensatory damages, punitive damages  
25 and an award of attorney's fees.

NOTE: The purpose of this bill is to amend the West Virginia Nurse Overtime and Patient Safety Act to include nurses employed in nursing homes as well as those employed in hospitals, establishing limits on hours such nurses may be mandated to work by their employers and establishing enforcement offenses, penalties and a private cause of action for violations.

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