

FILED

2001 MAY -1 P 2: 18

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2506**

(By Delegates Hatfield, Marshall, Caputo,
Keener, Manuel, Fleischauer and Mahan)



Passed April 14, 2001

In Effect Ninety Days from Passage

FILED

2001 MAY -1 P 2: 18

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2506

(BY DELEGATES HATFIELD, MARSHALL, CAPUTO,
KEENER, MANUEL, FLEISCHAUER AND MAHAN)

[Passed April 14, 2001; in effect ninety days from passage.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-eight, relating to patient health care safety; establishing legislative intent and defining terms; prohibiting discrimination and retaliation against health care workers for reporting instances of waste or wrongdoing; requiring confidentiality of health care workers who file reports or complaints; providing for enforcement through civil actions; specifying the relief available and a two-year statute of limitation; and requiring the posting of certain notices by health care entities.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-eight, to read as follows:

FILED

ARTICLE 38. PATIENT SAFETY ACT.
§16-38-1. Short title.

1 This article may be cited as the “Patient Safety Act of
2 2001.”

§16-38-2. Legislative findings and purpose.

1 (a) The Legislature finds that:

2 (1) Patients receiving medical care in this state need stable
3 and consistent care from those providing health care services at
4 every level;

5 (2) Dedicated health care workers are instrumental in
6 providing quality patient care services and ensuring that the
7 patient’s best interests are at all times protected;

8 (3) During the course of caring for their patients, many
9 health care workers often observe instances of waste or
10 wrongdoing that detrimentally affect both the patients and the
11 health care facility;

12 (4) Health care workers who observe such matters are often
13 reluctant to report the waste or wrongdoing to the administrator
14 of the health care facility or other appropriate authority for fear
15 of retaliatory or discriminatory treatment through termination,
16 demotion, reduction of time, wages or benefits or other such
17 actions; and

18 (5) The quality of available health care will suffer in this
19 state if dedicated health care workers are discouraged from
20 reporting instances of waste or wrongdoing that affect the
21 quality of health care delivery in this state.

22 (b) Consequently, the Legislature intends by enacting this
23 article to protect patients by providing protections for those

24 health care workers with whom the patient has the most direct
25 contact.

§16-38-3. Definitions.

1 For purposes of this article:

2 (1) “Appropriate authority” means a federal, state, county
3 or municipal government body, agency or organization having
4 jurisdiction over criminal law enforcement, regulatory viola-
5 tions, professional conduct or ethics, or waste or any member,
6 officer, agent, representative or supervisory employee thereof.

7 (2) “Commissioner” means the commissioner of the
8 division of health;

9 (3) “Direct patient care” means health care that provides for
10 the physical, diagnostic, emotional or rehabilitational needs of
11 a patient or health care that involves examination, treatment or
12 preparation for diagnostic tests or procedures.

13 (4) “Discrimination or retaliation” includes any threat,
14 intimidation, discharge or any adverse change in a health care
15 worker’s position, location, compensation, benefits, privileges
16 or terms or conditions of employment that occurs as a result of
17 a health care worker engaging any action protected by this
18 article.

19 (5) “Good faith report” means a report of conduct defined
20 in this article as wrongdoing or waste that is made without
21 malice or consideration of personal benefit and which the
22 person making the report has reasonable cause to believe is
23 true.

24 (6) “Health care entity” includes a health care facility, such
25 as a hospital, clinic, nursing facility or other provider of health
26 care services.

27 (7) "Health care worker" means a person who provides
28 direct patient care to patients of a health care entity and who is
29 an employee of the health care entity, a subcontractor or
30 independent contractor for the health care entity, or an em-
31 ployee of such subcontractor or independent contractor. The
32 term includes, but is not limited to, a nurse, nurse's aide,
33 laboratory technician, physician, intern, resident, physician
34 assistant, physical therapist or other such person who provides
35 direct patient care.

36 (8) "Waste" means the conduct, act or omission by a health
37 care entity that results in substantial abuse, misuse, destruction
38 or loss of funds, resources or property belonging to a patient, a
39 health care entity or any federal or state program.

40 (9) "Wrongdoing" means a violation of any law, rule,
41 regulation or generally recognized professional or clinical
42 standard that relates to care, services or conditions and which
43 potentially endangers one or more patients or workers or the
44 public.

§16-38-4. Prohibition against discrimination or retaliation.

1 (a) No person may retaliate or discriminate in any manner
2 against any health care worker because the worker, or any
3 person acting on behalf of the worker:

4 (1) Makes a good faith report, or is about to report, verbally
5 or in writing, to the health care entity or appropriate authority
6 an instance of wrongdoing or waste.

7 (2) Advocated on behalf of a patient or patients with respect
8 to the care, services or conditions of a health care entity;

9 (3) Initiated, cooperated or otherwise participated in any
10 investigation or proceeding of any governmental entity relating
11 to the care, services or conditions of a health care entity.

12 (b) A health care worker with respect to the conduct
13 described is acting in good faith if the health care worker
14 reasonably believes:

15 (1) That the information is true and

16 (2) Constitutes waste or wrongdoing as defined in section
17 three of this article.

§16-38-5. Confidentiality of complaints to government agencies.

1 The identity of a health care worker who complains in good
2 faith to a government agency or department about the quality of
3 care, services or conditions of a health care entity or any waste
4 or wrongdoing by the health care entity shall remain confiden-
5 tial and may not be disclosed by any person except upon the
6 knowing written consent of the health care worker and except
7 in the case in which there is imminent danger to health or public
8 safety or an imminent violation of criminal law.

§16-38-6. Enforcement.

1 (a) Any health care worker who believes that he or she has
2 been retaliated or discriminated against in violation of section
3 four of this article may file a civil action in any court of
4 competent jurisdiction against the health care entity and the
5 person believed to have violated section four of this article.

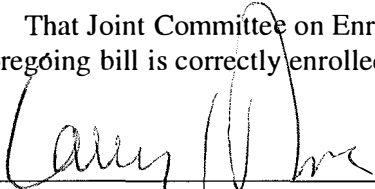
6 (b) A court, in rendering a judgment for a complainant in an
7 action brought under this article, shall order, as the court
8 considers appropriate, reinstatement of the health care worker,
9 the payment of back wages, full reinstatement of fringe benefits
10 and seniority rights, actual damages or any combination of
11 these remedies. A court may also award the complainant, all or
12 a portion of the costs of litigation, including reasonable
13 attorneys fees and witness fees, if the court determines that the
14 award is appropriate.

15 (c) An action may be brought under this subsection not later
16 than two years after the date of the last event constituting the
17 alleged violation for which the action is brought.

§16-38-7. Notice.

1 Each health care entity shall post and keep posted, in
2 conspicuous places on the premises of the health care entity
3 where notices to employees and applicants for employment are
4 customarily posted, a notice, to be prepared or approved by the
5 commissioner, setting forth excerpts from, or summaries of, the
6 pertinent provisions of this article and information pertaining to
7 the filing of a charge under section four of this article.

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



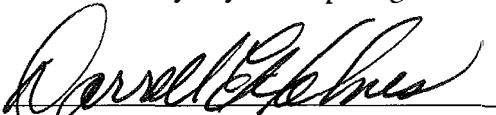
Chairman Senate Committee



Chairman House Committee

Originating in the House.

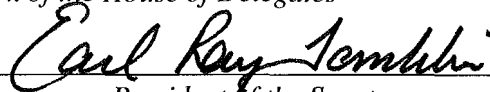
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates




President of the Senate



Speaker of the House of Delegates

The within is approved this the 30th
day of April, 2001.



Governor

PRESENTED TO THE

GOVERNOR

Date 4/23/01,

Time 6:41pm