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
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:
ARTICLE 38. PATIENT SAFETY ACT.

§16-38-1. Short title.

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

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

(a) The Legislature finds that:

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

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

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

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

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

(b) Consequently, the Legislature intends by enacting this article to protect patients by providing protections for those
health care workers with whom the patient has the most direct contact.


For purposes of this article:

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

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

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

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

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

(6) “Health care entity” includes a health care facility, such as a hospital, clinic, nursing facility or other provider of health care services.
“Health care worker” means a person who provides direct patient care to patients of a health care entity and who is an employee of the health care entity, a subcontractor or independent contractor for the health care entity, or an employee of such subcontractor or independent contractor. The term includes, but is not limited to, a nurse, nurse’s aide, laboratory technician, physician, intern, resident, physician assistant, physical therapist or other such person who provides direct patient care.

“Waste” means the conduct, act or omission by a health care entity that results in substantial abuse, misuse, destruction or loss of funds, resources or property belonging to a patient, a health care entity or any federal or state program.

“Wrongdoing” means a violation of any law, rule, regulation or generally recognized professional or clinical standard that relates to care, services or conditions and which potentially endangers one or more patients or workers or the public.

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

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

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

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

(3) Initiated, cooperated or otherwise participated in any investigation or proceeding of any governmental entity relating to the care, services or conditions of a health care entity.
(b) A health care worker with respect to the conduct described is acting in good faith if the health care worker reasonably believes:

(1) That the information is true and

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

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

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

§16-38-6. Enforcement.

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

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

Each health care entity shall post and keep posted, in conspicuous places on the premises of the health care entity where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the commissioner, setting forth excerpts from, or summaries of, the pertinent provisions of this article and information pertaining to 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 6:15 PM