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

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

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

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

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

7 (6) Hospitals should provide adequate safe nursing staffing without the use of mandatory overtime.
§21-5F-2. Definitions.

For the purposes of this article:

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

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

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

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

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

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

(a) Except as provided in subsections (b), (c), (d), (e) and (f) of this section, a hospital is prohibited from mandating
a nurse, directly or though coercion, to accept an assignment of overtime and is prohibited from taking action against a nurse solely on the grounds that the nurse refuses to accept an assignment of overtime at the facility if the nurse declines to work additional hours because doing so may, in the nurse's judgment, jeopardize patient or employee safety.

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

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

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

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

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

(g) In the interest of patient safety, any nurse who works twelve or more consecutive hours, as permitted by this section, shall be allowed at least eight consecutive hours of off-duty time immediately following the completion of the shift. Except as provided in subsections (b), (c) and (d) of
this section, no nurse shall work more than sixteen hours in a 24-hour period. The nurse is responsible for informing the employer hospital of other employment experience during the 24-hour period in question if this provision is to be invoked. To the extent that an on-call nurse has actually worked sixteen hours in a hospital, efforts shall be made by the hospital to find a replacement nurse to work.

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

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

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

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

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

(d) The administrative penalty for the second offense of this article shall be a reprimand and a fine not to exceed five hundred dollars.
(e) The administrative penalty for the third and subsequent offenses shall have a fine of not less than two thousand five hundred dollars and not more than five thousand dollars for each violation.

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

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

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

(A) Establishment of scholarships in medical schools;
(B) Establishment of scholarships for nurses training;
(C) Establishment of scholarships in the public health field;
(D) Grants to finance research in the field of drug addiction and development of cures therefor;
(E) Grants to public institutions devoted to the care and treatment of narcotic addicts; and
(F) Grants for public health research, education and care.

§21-5F-5. Relation to other laws.

Any law of this state currently enacted shall not be deemed to be amended, rescinded or otherwise affected by any provision of this article, but shall continue in full force and effect.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor