

HB 2436
9376

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2436**

(By Delegates Hatfield, Hrutkay, Martin,
Brown, Perdue and Caputo)



Passed March 10, 2007

In Effect Ninety Days from Passage

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H. B. 2436

(BY DELEGATES HATFIELD, HRUTKAY, MARTIN,
BROWN, PERDUE AND CAPUTO)

[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §21-5F-3 and §21-5F-4 of the Code of West Virginia, 1931, as amended, all relating to modifying the Nurse Overtime and Patient Safety Act; requiring posting of notice of nurse's rights; requiring Commissioner of Labor to establish by rule a notification procedure, including signs that must be posted; and requiring commissioner to keep complaints anonymous until a finding of merit.

Be it enacted by the Legislature of West Virginia:

That §21-5F-3 and §21-5F-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5F. NURSE OVERTIME AND PATIENT SAFETY ACT.

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

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

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

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

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

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

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

32 (g) In the interest of patient safety, any nurse who works
33 twelve or more consecutive hours, as permitted by this
34 section, shall be allowed at least eight consecutive hours of
35 off-duty time immediately following the completion of the

36 shift. Except as provided in subsections (b), (c) and (d) of
37 this section, no nurse shall work more than sixteen hours in
38 a twenty-four hour period. The nurse is responsible for
39 informing the employer hospital of other employment
40 experience during the twenty-four hour period in question if
41 this provision is to be invoked. To the extent that an on-call
42 nurse has actually worked sixteen hours in a hospital, efforts
43 shall be made by the hospital to find a replacement nurse to
44 work.

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

48 (h) Each hospital shall post, in one or more conspicuous
49 place or places where notices to employee nurses are
50 customarily posted, a notice in a form approved by the
51 commissioner 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 article one of this
2 chapter, the Commissioner of Labor is charged with the
3 enforcement of this article. The commissioner shall propose
4 legislative and procedural rules in accordance with the
5 provisions of article three, chapter twenty-nine-a of this code
6 to establish procedures for enforcement of this article. These
7 rules shall include, but are not limited to, provisions to
8 protect due process requirements, a hearings procedure, an
9 appeals procedure, and a notification procedure, including
10 any signs that must be posted by the facility.

11 (b) Any complaint must be filed with the commissioner
12 regarding an alleged violation of the provisions of this article
13 must be made within thirty days following the occurrence of
14 the incident giving rise to the alleged violation. The
15 commissioner shall keep each complaint anonymous until the
16 commissioner finds that the complaint has merit. The
17 commissioner shall establish a process for notifying a
18 hospital of a complaint.

19 (c) The administrative penalty for the first violation of
20 this article is a reprimand.

21 (d) The administrative penalty for the second offense of
22 this article is a reprimand and a fine not to exceed five
23 hundred dollars.

24 (e) The administrative penalty for the third and
25 subsequent offenses is a fine of not less than two thousand
26 five hundred dollars and not more than five thousand dollars
27 for each violation.

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

31 (g)(1) All moneys paid as administrative penalties
32 pursuant to this section shall be deposited into the Health
33 Care Cost Review Fund provided by section eight, article
34 twenty-nine-b, chapter sixteen of this code.

35 (2) In addition to other purposes for which funds may be
36 expended from the Health Care Cost Review Fund, the West
37 Virginia Health Care Authority shall expend moneys from
38 the fund, in amounts up to but not exceeding amounts
39 received pursuant to subdivision (1) of this subsection, for the
40 following activities in this state:

41 (A) Establishment of scholarships in medical schools;

42 (B) Establishment of scholarships for nurses training;

43 (C) Establishment of scholarships in the public health
44 field;

45 (D) Grants to finance research in the field of drug
46 addiction and development of cures therefor;

47 (E) Grants to public institutions devoted to the care and
48 treatment of narcotic addicts; and

49 (F) Grants for public health research, education and care.

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.

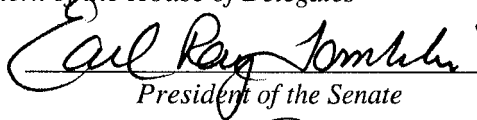
In effect ninety days from passage.



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 27th
day of March 2007.



Governor

PRESENTED TO THE
GOVERNOR

MAR 21 2007

Time 3:55 pm