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
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.
(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 through 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 twenty-four hour period. The nurse is responsible for informing the employer hospital of other employment experience during the twenty-four 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.

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

§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, an appeals procedure, and a notification procedure, including any signs that must be posted by the facility.

(b) Any complaint must be filed with the commissioner 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. The commissioner shall keep each complaint anonymous until the commissioner finds that the complaint has merit. The commissioner shall establish a process for notifying a hospital of a complaint.

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

(e) The administrative penalty for the third and subsequent offenses is 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 this state:

(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.
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