WEST VIRGINIA LEGISLATURE
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ENROLLED
COMMITTEE SUBSTITUTE
FOR
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FOR
Senate Bill No. 379

(Senators Stollings, Laird, Foster, Kessler (Mr. President), Plymale and Jenkins, original sponsors)

[Passed February 24, 2012; in effect ninety days from passage.]
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(SENATORS STOLLINGS, LAIRD, FOSTER, KESSLER (MR. PRESIDENT), PLYMALE AND JENKINS, original sponsors)

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-7-11a; and to amend said code by adding thereto a new article, designated §30-7E-1, §30-7E-2 and §30-7E-3, all relating to authorizing the West Virginia Board of Examiners for Registered Professional Nurses to designate nurse health programs for licensees and applicants for treatment and recovery for alcohol abuse, chemical dependency or major mental illness; and enrolling on a voluntary basis without being subject to disciplinary action if the person complies with the goals and restrictions of the program.

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 section, designated §30-7-11a; and that said code be amended by adding thereto a new article, designated §30-7E-1, §30-7E-2 and §30-7E-3, all to read as follows:
ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-11a. Voluntary agreements relating to alcohol or chemical dependency; confidentiality.

(a) In order to encourage voluntary participation in monitored alcohol, chemical dependency or major mental illness programs and in recognition of the fact that major mental illness, alcoholism and chemical dependency are illnesses, any person who holds a license to practice registered nursing in this state or who is applying for a license to practice registered nursing in this state may enter into a voluntary agreement with a nurse health program as defined in section one, article seven-e of this chapter. The agreement between the licensee or applicant and the nurse health program shall include a jointly agreed upon treatment program and mandatory conditions and procedures to monitor compliance with the program of recovery.

(b) Any voluntary agreement entered into pursuant to this section shall not be considered a disciplinary action or order by the board, shall not be disclosed to the board and shall not be public information if:

1. Such voluntary agreement is the result of the licensee or applicant self enrolling or voluntarily participating in the board-designated nurse health program;

2. The board has not received nor filed any written complaints regarding said licensee or applicant relating to an alcohol, chemical dependency or major mental illness affecting the care and treatment of patients; and

3. The licensee or applicant is in compliance with the voluntary treatment program and the conditions and procedures to monitor compliance.

(c) Pursuant to this section, if any licensee or applicant enters into a voluntary agreement with a nurse health program as defined in section one, article seven-e of this chapter, and then fails to comply with or fulfill the terms of said agreement, the nurse health program shall report the
noncompliance to the board within twenty-four hours. The board may initiate disciplinary proceedings pursuant to section eleven of this article or may permit continued participation in the nurse health program or both.

(d) If the board has not instituted any disciplinary proceeding as provided for in this article, any information received, maintained or developed by the board relating to the alcohol or chemical dependency impairment of any licensee or applicant and any voluntary agreement made pursuant to this section shall be confidential and not available for public information, discovery or court subpoena, nor for introduction into evidence in any medical professional liability action or other action for damages arising out of the provision of or failure to provide health care services.

(e) Notwithstanding any of the foregoing provisions, the board may cooperate with and provide documentation of any voluntary agreement entered into pursuant to this section to licensing boards in other jurisdictions of which the board has become aware and may be appropriate.

ARTICLE 7E. NURSE HEALTH PROGRAMS.

§30-7E-1. Definitions.

For the purposes of this article, the following words and terms have the meanings ascribed to them, unless the context clearly indicates otherwise.

(1) “Board” means the West Virginia Board of Examiners for Registered Professional Nurses.

(2) “Major mental illness” means a diagnosis of a mental disorder within the axis of psychotic or affective or mood, alcohol or chemical abuse or alcohol or chemical dependency as stipulated in the International Code of Diagnosis.

(3) “Nurse” means those health care professionals licensed by the West Virginia Board of Examiners for Registered Professional Nurses.
(4) "Nurse health program" means a program meeting the requirements of this article.

(5) "Qualifying illness" means the diagnosis of alcohol or substance abuse, alcohol or substance dependency or major mental illness.

§30-7E-2. Nurse health program.

(a) The board is authorized to designate one or more nurse health programs. To be eligible for designation by the board, a nurse health program shall:

(1) Enter into an agreement with the board outlining specific requirements of the program;

(2) Agree to make its services available to all licensed West Virginia registered professional nurses with a qualifying illness;

(3) Provide for the education of nurses with respect to the recognition and treatment of alcohol, chemical dependency and mental illness and the availability of the nurse health program for qualifying illnesses;

(4) Offer assistance to any person in referring a nurse for purposes of assessment or treatment or both for a qualifying illness;

(5) Monitor the status of a nurse who enters treatment for a qualifying illness pursuant to a written, voluntary agreement during treatment;

(6) Monitor the compliance of a nurse who enters into a written, voluntary agreement for a qualifying illness with the nurse health program setting forth a course for recovery;

(7) Agree to accept referrals from the board to provide monitoring services pursuant to a board order; and

(8) Include such other requirements as the board deems necessary.
(b) A designated nurse health program shall:

(1) Set and collect reasonable fees, grants and donations for administration and services provided;

(2) Work collaboratively with the board to develop model compliance agreements;

(3) Work collaboratively with the board to identify qualified providers of services as may be needed by the individuals participating in the nurse health program;

(4) Report to the board, no less than annually, statistics including the number of individuals served; the number of compliant individuals; the number of individuals who have successfully completed their agreement period; and the number of individuals reported to the board for suspected noncompliance: Provided, That in making such report the nurse health program shall not disclose any personally identifiable information relating to any nurse participating in a voluntary agreement as provided herein: Provided, however, That in the case of a nurse not in compliance with the requirements, full disclosure of information will be provided to the board.

(c) The fact that a nurse is participating in a designated nurse health program is confidential, as is all nurse patient information acquired, created or used by the nurse health program, and it shall remain confidential and may not be subject to discovery or subpoena in a civil case. The disclosure of participation and noncompliance to the board, as required by a compliance agreement, waives the confidentiality as to the board for disciplinary purposes.

(d) The nurse health program and all persons engaged in nurse health program activities are immune from civil liability and no civil action may be brought or maintained while the nurse health program and all persons engaged in nurse health program activities are acting in good faith and within the scope of their duties.
(e) The board is immune from civil liability and no civil action may be brought or maintained against the board or the state for an injury alleged to have been the result of the activities of the nurse health program or the board referral of an individual to the nurse health program when they are acting in good faith and within the scope of their duties.

§30-7E-3. Discretionary authority of boards to designate programs.

The West Virginia Board of Examiners of Registered Professional Nurses has the sole discretion to designate nurse health programs for licensees of the board and no provision of this article may be construed to entitle any nurse to the creation or designation of a nurse health program for any individual qualifying illness or group of qualifying illnesses.
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 of the House of Delegates

The within is approved this the _______ Day of __________, 2012.

Governor