

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 379**

7 (SENATORS STOLLINGS, LAIRD, FOSTER, KESSLER (MR. PRESIDENT), PLYMALE AND  
8 JENKINS, *original sponsors*)

9 \_\_\_\_\_  
10 [Passed March 10, 2012; in effect ninety days from passage.]  
11 \_\_\_\_\_

12  
13 AN ACT to amend the Code of West Virginia, 1931, as amended, by  
14 adding thereto a new section, designated §30-7-11a; and to  
15 amend said code by adding thereto a new article, designated  
16 §30-7E-1, §30-7E-2 and §30-7E-3, all relating to authorizing  
17 the West Virginia Board of Examiners for Registered  
18 Professional Nurses to designate nurse health programs for  
19 licensees and applicants for treatment and recovery for  
20 alcohol abuse, chemical dependency or major mental illness;  
21 enrolling on a voluntary basis without being subject to  
22 disciplinary action if the person complies with the goals and  
23 restrictions of the program; confidentiality, disclosure and  
24 waiver requirements; definitions; requirements for nurse  
25 health programs; and immunity from civil liability and civil  
26 action.

1 *Be it enacted by the Legislature of West Virginia:*

2       That the Code of West Virginia, 1931, as amended, be amended  
3 by adding thereto a new section, designated §30-7-11a; and that  
4 said code be amended by adding thereto a new article, designated  
5 §30-7E-1, §30-7E-2 and §30-7E-3, all to read as follows:

6 **ARTICLE 7. REGISTERED PROFESSIONAL NURSES.**

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

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

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

25       (1) Such voluntary agreement is the result of the licensee or

1 applicant self enrolling or voluntarily participating in the board-  
2 designated nurse health program;

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

7 (3) The licensee or applicant is in compliance with the  
8 voluntary treatment program and the conditions and procedures to  
9 monitor compliance.

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

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

1 health care services.

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

7 **ARTICLE 7E. NURSE HEALTH PROGRAMS.**

8 **§30-7E-1. Definitions.**

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

12 (1) "Board" means the West Virginia Board of Examiners for  
13 Registered Professional Nurses.

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

18 (3) "Nurse" means those health care professionals licensed by  
19 the West Virginia Board of Examiners for Registered Professional  
20 Nurses.

21 (4) "Nurse health program" means a program meeting the  
22 requirements of this article.

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

26 **§30-7E-2. Nurse health program.**

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

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

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

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

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

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

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

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

23 (8) Include such other requirements as the board deems  
24 necessary.

25 (b) A designated nurse health program shall:

26 (1) Set and collect reasonable fees, grants and donations for

1 administration and services provided;

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

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

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

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

26 (d) The nurse health program and all persons engaged in nurse

1 health program activities are immune from civil liability and no  
2 civil action may be brought or maintained while the nurse health  
3 program and all persons engaged in nurse health program activities  
4 are acting in good faith and within the scope of their duties.

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

11 **§30-7E-3. Discretionary authority of boards to designate programs.**

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