

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 487

SENATORS MARONEY, TRUMP, AND TAKUBO, *original*

sponsors

[Originating in the Committee on the Judiciary;

Reported on February 23, 2019]

1 A BILL to amend and reenact §55-7B-7a of the Code of West Virginia, 1931, as amended, relating
2 to the admissibility of health care staffing requirements in litigation; providing that
3 compliance with minimum staffing requirements creates a conclusive presumption that
4 appropriate staffing was provided and a rebuttable presumption that adequate supervision
5 of patients to prevent accidents was provided; and requiring that if staffing is less than
6 requirements dictated by applicable regulations then there is a presumption that there was
7 inadequate supervision of patients and that inadequate staffing or inadequate supervision
8 was a contributing cause of the patient's fall and resulting injuries or death.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-7a. Admissibility and use of certain information.

1 (a) In an action brought, there is a rebuttable presumption that the following information
2 may not be introduced unless it applies specifically to the injured person or it involves substantially
3 similar conduct that occurred within one year of the particular incident involved:

4 (1) A state or federal survey, audit, review, or other report of a health care provider or
5 health care facility;

6 (2) Disciplinary actions against a health care provider's license, registration, or
7 certification;

8 (3) An accreditation report of a health care provider or health care facility; and

9 (4) An assessment of a civil or criminal penalty.

10 (b) In any action brought alleging inappropriate staffing or inadequate supervision, if the
11 health care facility or health care provider demonstrates compliance with the minimum staffing
12 requirements under state law, the health care facility or health care provider is entitled to a
13 rebuttable conclusive presumption that appropriate staffing was provided, and a rebuttable
14 presumption that adequate supervision of patients to prevent accidents was provided, and the
15 jury shall be instructed accordingly.

16 (c) If staffing is less than the requirements dictated by the applicable regulations, then
17 there is a rebuttable presumption that there was inadequate supervision of patients and that
18 inadequate staffing or inadequate supervision was a contributing cause of the patient's fall and
19 injuries or death arising therefrom.

20 (d) Information under this section may only be introduced in a proceeding if it is otherwise
21 admissible under the West Virginia Rules of Evidence.