

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2368**

BY DELEGATES D. JEFFRIES, SUMMERS, TULLY, J. PACK,

ROHRBACH, ELLINGTON, STEELE, ESPINOSA, LINVILLE,

HOWELL AND L. PACK

[Passed April 10, 2021; in effect from passage.]

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1 AN ACT to repeal §16-39-2 of the Code of West Virginia, 1931, as amended, and to amend and  
2 reenact §16-39-1 and §16-39-3, and to amend said code by adding thereto a new section  
3 designated §16-39-8 of the code, all relating to the short title; defining terms; and,  
4 providing for visitation of a patient in a health care facility during a declared state of  
5 emergency.

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

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 39. PATIENT SAFETY AND VISITATION ACT.**

#### **§16-39-1. Short title.**

1 This article may be cited as the “Patient Safety Act of 2001.” The amendments made to  
2 this article during the 2021 Regular Session of the Legislature shall be known as “Mylissa Smith’s  
3 Law.”

#### **§16-39-2. Legislative findings and purpose.**

1 [Repealed.]

#### **§16-39-3. Definitions.**

1 For purposes of this article, the following words and phrases have the following meanings:

2 “Appropriate authority” means a federal, state, county, or municipal government body,  
3 agency or organization having jurisdiction over criminal law enforcement, regulatory violations,  
4 professional conduct or ethics, or waste or any member, officer, agent, representative, or  
5 supervisory employee thereof;

6 “Commissioner” means the commissioner of the division of health;

7 “Direct patient care” means health care that provides for the physical, diagnostic,  
8 emotional, or rehabilitational needs of a patient or health care that involves examination,  
9 treatment, or preparation for diagnostic tests or procedures.

10 "Discrimination or retaliation" includes any threat, intimidation, discharge, or any adverse  
11 change in a health care worker's position, location, compensation, benefits, privileges, or terms  
12 or conditions of employment that occurs as a result of a health care worker engaging in any action  
13 protected by this article.

14 "Good faith report" means a report of conduct defined in this article as wrongdoing or  
15 waste that is made without malice or consideration of personal benefit and which the person  
16 making the report has reasonable cause to believe is true.

17 "Health care entity" includes a health care facility, such as a hospital, clinic, nursing facility,  
18 or other provider of health care services.

19 "Health care facility" means:

- 20 (1) A hospital licensed pursuant to §16-5B-1 *et seq.* of this code;  
21 (2) A nursing home licensed pursuant to §16-5C-1 *et seq.* of this code;  
22 (3) An assisted living residence licensed pursuant to §16-5D-1 *et seq.* of this code; and  
23 (4) Hospice licensed pursuant to §16-5I-1 *et seq.* of this code.

24 "Health care worker" means a person who provides direct patient care to patients of a  
25 health care entity and who is an employee of the health care entity, a subcontractor, or  
26 independent contractor for the health care entity, or an employee of the subcontractor or  
27 independent contractor. The term includes, but is not limited to, a nurse, nurse's aide, laboratory  
28 technician, physician, intern, resident, physician assistant, physical therapist, or any other person  
29 who provides direct patient care.

30 "Patient" means a person living or receiving services as an inpatient at a healthcare  
31 facility.

32 "Public Health State of Emergency" means a federal or state declaration of a state of  
33 emergency arising from or relating to a public health crisis.

34 "Visitor" means any visitor from the patient's family, hospice or clergy visiting a patient in  
35 a healthcare facility.

36           “Waste” means the conduct, act, or omission by a health care entity that results in  
37 substantial abuse, misuse, destruction, or loss of funds, resources, or property belonging to a  
38 patient, a health care entity, or any federal or state program.

39           “Wrongdoing” means a violation of any law, rule, regulation, or generally recognized  
40 professional or clinical standard that relates to care, services, or conditions and which potentially  
41 endangers one or more patients or workers or the public.

**§16-39-8. Visitation of a patient in a health care facility.**

1           (a) During a declared public health state of emergency for a contagious disease, a health  
2 care facility shall permit visitation of a patient. If the patient’s death is imminent, the health care  
3 facility shall allow visitation upon request at any time and frequency. In all other instances, the  
4 health care facility shall allow visitation not less than once every five days. *Provided*, That  
5 visitation permitted by any health care entity may not be inconsistent with any applicable federal  
6 law, rule, policy, or guidance in effect for the same emergency.

7           (b) A visitor shall comply with the applicable procedures established by the health care  
8 facility.

9           (c) The health care facility may deny a visitor entry to the health care facility, may subject  
10 a visitor to expulsion from the facility, or may permanently revoke visitation rights to a visitor who  
11 does not comply with the applicable procedures established by the health care facility.

12           (d) A healthcare facility is not liable to a person visiting another person, nor to any other  
13 patient or resident of the health care facility, for any civil damages for injury or death resulting  
14 from or related to actual or alleged exposure during, or through the performance of, the visitation  
15 in compliance with this section, unless the health care facility failed to substantially comply with  
16 the applicable health and safety procedures established by the health care facility.


The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

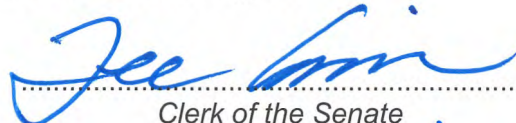
  
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Chairman, House Committee

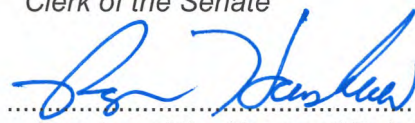
  
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Member ~~Chairman~~, Senate Committee

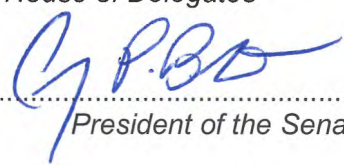
Originating in the House.

In effect from passage.

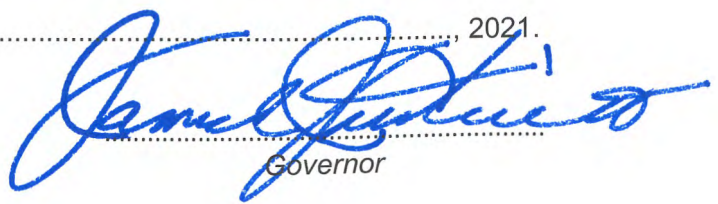
  
.....  
Clerk of the House of Delegates

  
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Clerk of the Senate

  
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Speaker of the House of Delegates

  
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President of the Senate

The within ..... *is approved* ..... this the ..... *28<sup>th</sup>* .....  
day of ..... *April* ....., 2021.

  
.....  
Governor

PRESENTED TO THE GOVERNOR

APR 21 2021

Time 9:49am