

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2809

By Delegates Summers and Tully

[Introduced January 19, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,
 2 designated §26-12-1, relating to whistleblower protections for workers at state health care
 3 facilities who report unsafe patient care or unsafe patient conditions.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 12. WHISTLEBLOWER PROTECTIONS TO EMPLOYEES OF STATE
 HEALTH CARE FACILITIES.**

§26-12-1. Protections for reporting unsafe patient conditions.

1 (a) A state health care facility may not discriminate or retaliate, in any manner, against a
 2 patient, employee, member of the medical staff, contract worker, or other health care worker of the
 3 state health facility because that person has done or seeks to do either of the following:

4 (1) Present a grievance, complaint, or report to the state health care facility, to an entity or
 5 agency responsible for accrediting or evaluating the facility, or the medical staff of the facility, or to
 6 any other governmental entity, or to the state protection and advocacy system.

7 (2) Initiate, participate, or cooperate in an investigation, administrative proceeding, or
 8 request for information or documents related to the quality of care, services, or conditions at the
 9 state health care facility that is carried out by an entity or agency responsible for accrediting or
 10 evaluating the facility or its medical staff, a governmental entity, or the state protection and
 11 advocacy system.

12 (b) Any type of suspected unsafe treatment or care of a patient by whom, or upon whose
 13 behalf, a grievance, complaint, or report has been submitted, directly or indirectly, to a
 14 governmental entity, or a regulatory body responsible for accrediting or evaluating the facility, or
 15 received by the administrator of a state health care facility, or the state protection and advocacy
 16 system within 180 days of the filing of the grievance, complaint, or report shall raise a rebuttable
 17 presumption that the action was taken by the state health care facility in retaliation for the filing of
 18 the grievance, complaint, or report: *Provided*, That proof by a preponderance of the evidence that

19 the action complained of occurred for separate and legitimate reasons, which are not merely
20 pretexts, shall defeat the rebuttable presumption.

21 (c) (1) There is a rebuttable presumption that discriminatory action was taken by the state
22 care health facility in retaliation against an employee, member of the medical staff, contract
23 worker, or any other health care worker of the state health care facility, if responsible staff at the
24 state health care facility had knowledge of the actions, participation, or cooperation of the person
25 responsible for any acts described in paragraph (1) of this subsection, and the discriminatory
26 action occurs within 120 days of the filing of the grievance, complaint, or report by the employee,
27 member of the medical staff, contract worker, or any other health care worker of the state health
28 care facility: *Provided*, That proof by a preponderance of the evidence that the action complained
29 of occurred for separate and legitimate reasons, which are not merely pretexts, shall defeat the
30 rebuttable presumption.

31 (2) For purposes of this section, discriminatory treatment of an employee, member of the
32 medical staff, contract worker, or any other health care worker includes, but is not limited to,
33 discharge, demotion, suspension, or any unfavorable changes in, or breach of, the terms or
34 conditions of a contract, employment, or privileges of the employee, member of the medical staff,
35 contract worker, or any other health care worker of the health care facility, or the threat of any of
36 these actions.

37 (d) Any person who violates this section is guilty of a misdemeanor, and, upon conviction
38 thereof, shall be fined not more than \$100 or confined in jail not more than 90 days, or both fined
39 and confined.

40 (e) Any employee, member of the medical staff, contract worker, or any other health care
41 worker who has been discriminated against pursuant to this section may bring a civil action in a
42 court of competent jurisdiction for appropriate injunctive relief or damages, or both, within two
43 years after the occurrence of the alleged violation. A court, in rendering a judgment for the
44 complainant in an action brought under this article, shall order, as the court considers appropriate,

45 reinstatement, reimbursement for lost income and the legal costs associated with pursuing the
46 case, payment of back wages, full reinstatement of fringe benefits, actual damages or any
47 combination of these remedies.

48 (f) For purposes of this section, "state health care facility" means a facility defined under
49 this chapter, including, but not limited to, the secretary, the administrator, the facility's
50 administrative personnel, employees, governing bodies, and committees of the governing body,
51 and medical staff.

52 (g) For purposes of this section, "protection and advocacy system" means the agency
53 designated to serve as the protection and advocacy system for the State of West Virginia as
54 provided in 29 U.S.C. § 794e, 42 U.S.C. § 15041 *et seq.*, and 42 U.S.C. § 10801 *et seq.*

55 (h) This section does not limit the ability of the medical staff of a state health care facility to
56 carry out its legitimate peer review activities in accordance with §30-3C-1 *et seq.*, of this code:
57 *Provided*, nothing herein limits or restricts the right of the state protection and advocacy system to
58 obtain peer review materials consistent with the protection and advocacy system's federal
59 authority.

60 (i) This section does not abrogate or limit any other theory of liability or remedy otherwise
61 available at law.

62 (j) The Legislature requests that the state protection and advocacy system provide
63 quarterly written reports to the Legislative Oversight Commission on Health and Human
64 Resources Accountability, created pursuant to §16-29E-1 *et seq.*, of this code regarding the
65 system's monitoring at and oversight of the state health care facilities. All such reports shall
66 contain aggregate level data only and should address potential unsafe patient conditions identified
67 by the system and any appropriate recommendations.

NOTE: The purpose of this bill is to provide whistleblower protections to employees of state hospitals who report unsafe practices to governmental or regulatory agencies or the federally mandated protection and advocacy system.

Strike-throughs indicate language that would be stricken from a heading or the present law

and underscoring indicates new language that would be added.