

1 H.355

2 Introduced by Representatives Donovan of Burlington, Christie of Hartford,
3 Cole of Burlington, Davis of Washington, Evans of Essex,
4 Lenes of Shelburne, Lewis of Berlin, Moran of Wardsboro,
5 Peltz of Woodbury, and Townsend of South Burlington

6 Referred to Committee on

7 Date:

8 Subject: Health care; facilities; patient handling

9 Statement of purpose of bill as introduced: This bill proposes to require
10 hospitals and nursing home facilities to establish safe patient handling
11 programs and would prohibit mandatory overtime for certain health care
12 employees.

13 An act relating to safe patient handling

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 Sec. 1. FINDINGS

16 The General Assembly finds:

17 (1) Patients are at greater risk of injury, including skin tears, falls, and
18 musculoskeletal injuries, when being lifted, transferred, or repositioned
19 manually.

1 (2) Safe patient handling can reduce skin tears suffered by patients by
2 threefold and can significantly reduce other injuries to patients as well.

3 (3) Without adequate resources such as special equipment and specially
4 trained staff, lifting patients, whether the patients are overweight or not,
5 increases the risk of injury to the patients and health care providers when the
6 patient is being moved, being repositioned, or receiving other care.

7 (4) Nearly 60 percent of Vermont adults are overweight or obese.
8 Obesity substantially increases risks for many chronic diseases, which may in
9 turn increase frequency of hospitalization.

10 (5) Health care workers lead the nation in work-related musculoskeletal
11 disorders. Chronic back pain and other job-related musculoskeletal disorders
12 contribute significantly to the decision by nurses and other health care workers
13 to leave their professions, which exacerbates the shortage of health care
14 workers.

15 (6) Research indicates that nurses lift an estimated 1.8 tons per shift.
16 Eighty-three percent of nurses work in spite of back pain, and 60 percent of
17 nurses fear a disabling back injury. Twelve to 39 percent of nurses not yet
18 disabled are considering leaving nursing due to back pain and injuries.

19 (7) Safe patient handling reduces injuries and costs. In nine case studies
20 evaluating the impact of lifting equipment, injuries decreased 60 to 95 percent;
21 lifting and handling were reduced by 98 percent.

1 (8) Studies show that manual patient handling and movement negatively
2 affect patient safety, quality of care, and patient comfort, dignity, and
3 satisfaction.

4 (9) The American Hospital Association has stated that work-related
5 musculoskeletal disorders account for the largest proportion of workers'
6 compensation costs in hospitals and long-term care facilities.

7 (10) Studies demonstrate that assistive patient handling technology
8 reduces workers' compensation and medical treatment costs for
9 musculoskeletal disorders among health care workers, and that employers can
10 recoup their initial investment in equipment and training within three years.

11 (11) According to the American Nurses Association, regardless of the
12 number of hours worked, each registered nurse has an ethical responsibility to
13 carefully consider his or her level of fatigue when deciding whether to accept
14 an assignment extending beyond the regularly scheduled workday or
15 workweek, including mandatory or voluntary overtime assignments.

16 (12) Excessive work hours brought on by mandatory overtime reduce
17 staff morale, which contributes to job burnout. Job burnout reduces staff
18 retention and creates more nursing vacancies, forcing the remaining nurses to
19 work more overtime. Thus, mandatory overtime increases nurse dissatisfaction
20 and burnout, ultimately worsening any staffing shortage.

1 (13) The cycle of reduced staff morale, job burnout, and increased
2 vacancies brought on by mandatory overtime can become perpetual and
3 imperil the quality and safety of patient care. Forcing a nurse who may already
4 be fatigued to work beyond a scheduled shift increases the likelihood of patient
5 harm. A fatigued nurse is more apt to make errors; the risk of errors triples
6 when a nurse works more than 12-1/2 consecutive hours. Prolonged work
7 hours resulting in fatigue are strongly linked to poor performance, including
8 reduced focus and attention and potentially harmful errors.

9 Sec. 2. 18 V.S.A. chapter 52 is added to read:

10 CHAPTER 52. SAFE PATIENT HANDLING AND

11 EMPLOYEE OVERTIME

12 Subchapter 1. Safe Patient Handling

13 § 2301. DEFINITIONS

14 As used in this chapter:

15 (1) “Clinical care services” means the diagnostic, treatment, or
16 rehabilitative services provided in a health care facility, including: radiation
17 therapy; phlebotomy; electrocardiogram and electroencephalography;
18 radiology and diagnostic imaging, such as magnetic resonance imaging and
19 positron emission tomography; and laboratory medical services.

20 (2) “Employee” means an individual employed by a health care facility
21 who is involved in direct patient care activities or clinical care services.

1 “Employee” does not include a physician, physician assistant, or dentist, or a
2 worker involved in environmental services, clerical assistance, maintenance,
3 food service, or any other job classification not involved in direct patient care
4 or clinical care services.

5 (3) “Health care facility” shall have the same meaning as in
6 section 9432 of this title.

7 (4) “Patient handling equipment” means any mechanical equipment or
8 other patient handling aid, including engineering controls, transfer aids, and
9 assistive devices, designed to assist in the lift, transfer, or repositioning of a
10 patient.

11 (5) “Reasonable efforts” means attempts by a health care facility to:

12 (A) seek persons who volunteer to work extra time from all available
13 qualified staff who are working at the time of an unforeseeable emergency
14 circumstance;

15 (B) contact all qualified employees who have made themselves
16 available to work extra time; and

17 (C) seek the use of per diem or float pool staff.

18 (6) “Unforeseeable emergency circumstance” means any declared
19 national, state, or municipal disaster or other catastrophic event, or any
20 implementation of a hospital’s disaster plan, that will substantially affect or
21 increase the need for health care services; or any circumstance in which a

1 patient's care needs require specialized nursing skills through the completion
2 of a procedure. "Unforeseeable emergency circumstance" does not include
3 situations in which the health care facility fails to have enough nursing staff to
4 meet the usual or reasonably predictable nursing needs of its patients.

5 § 2302. SAFE PATIENT HANDLING PROGRAM

6 (a) All health care facilities shall establish a safe patient handling program
7 in accordance with the requirements of this chapter.

8 (b) A safe patient handling program shall include the adoption of a safe
9 patient handling policy for all units and all shifts within the health care facility.

10 Such a policy shall be based on best practices in safe patient handling and use
11 of appropriate technology to reduce the risk of injury to staff and patients, and
12 shall contain:

13 (1) protocols consistent with patient safety and well-being to restrict
14 unassisted handling of all or most of a patient's weight to situations in which a
15 patient is in need of immediate attention or in which the use of patient handling
16 equipment would jeopardize the safety of the patient;

17 (2) an assessment of the patient handling equipment needed to carry out
18 the facility's safe patient handling policy, based on the size and layout of
19 patient care areas and the number of beds in the facility;

1 (3) procedures for assessing and updating the appropriate patient
2 handling requirements for each patient in the facility, reviewed at least
3 quarterly by the safe patient handling committee; and

4 (4) a plan for ensuring prompt access to patient handling equipment for
5 all units and all shifts.

6 (c) All health care facilities shall provide educational materials to patients
7 and their families to help orient them to the facility's safe patient handling
8 policy. The safe patient handling policy shall be posted in a location easily
9 visible to staff, patients, and visitors.

10 (d) A safe patient handling program shall include implementation of a
11 training program for health care workers at no cost that:

12 (1) covers the identification, assessment, and control of patient handling
13 risks; the safe, appropriate, and effective use of patient handling equipment;
14 proven safe patient handling techniques, including the performance of lifts,
15 transfers, and repositioning; and how to report any employee or patient injury
16 related to patient handling;

17 (2) requires trainees to demonstrate proficiency in the techniques and
18 practices presented;

19 (3) is provided during paid work time; and

20 (4) is conducted upon commencement of the health care facility's safe
21 patient handling program and at least annually thereafter, with appropriate

1 interim training for individuals beginning work between annual training
2 sessions.

3 (e) Nothing in this section precludes health care facility employees trained
4 in safe patient handling from performing other duties as assigned during their
5 shifts.

6 (f) A safe patient handling program shall include a mechanism for the
7 purchase of patient handling equipment necessary to carry out the safe patient
8 handling policy. A health care facility shall collaborate with its safe patient
9 handling committee and an expert in safe patient handling when selecting new
10 equipment to purchase. All patient handling equipment shall be stored and
11 maintained in compliance with its manufacturer's recommendations.

12 (g) A health care facility shall adopt a safe patient handling policy as
13 required under subsection (b) of this section within 12 months following the
14 effective date of this act. A health care facility shall purchase the patient
15 handling equipment determined necessary to carry out its safe patient handling
16 policy and conduct the initial training as required in this section within 24
17 months following the effective date of this act.

18 § 2303. RETALIATION

19 A health care facility shall not retaliate against any health care worker
20 because that worker refuses to perform a patient handling task due to a

1 reasonable concern about worker or patient safety or the lack of appropriate
2 and available patient handling equipment.

3 § 2304. SAFE PATIENT HANDLING COMMITTEE

4 (a) Each licensed health care facility shall establish a safe patient handling
5 committee which shall be responsible for all aspects of the development and
6 implementation of the safe patient handling program. The committee shall be
7 chaired by a registered nurse or other appropriately licensed employee. At
8 least 50 percent of the members of the committee shall be health care workers
9 who provide direct patient care to patients at the facility, are otherwise
10 involved in patient handling at the facility, are physical therapists, or have
11 expertise in the best practices of safe patient handling. In a facility in which
12 health care workers are represented by a labor organization, as defined under
13 2 V.S.A. chapter 19, the labor organization shall select the health care worker
14 committee members. The remaining members of the committee shall have
15 experience, expertise, or responsibility relevant to the operation of a safe
16 patient handling program.

17 (b) In accordance with established facility protocols, an employee shall
18 report to the committee, as soon as possible:

19 (1) any requirement to perform a patient handling activity that he or she
20 believes in good faith exposed the patient or employee, or both, to an

1 unacceptable risk of injury, regardless of whether the employee performed the
2 activity; or

3 (2) any injury sustained by an employee or patient if the injury resulted
4 from patient handling.

5 (c) An employee shall not be subject to discipline or other adverse
6 consequences by his or her employer as a result of making a report under
7 subsection (b) of this section. All employee reports shall be maintained by the
8 committee and a summary of the reports shall be included in the facility's
9 annual performance evaluation, as required in subsection (d) of this section.

10 All reports of employee injury shall be kept and filed in accordance with
11 21 V.S.A. § 228 (VOSHA reports).

12 (d) The committee shall conduct an annual performance evaluation of the
13 safe patient handling program, which shall include collecting data on the
14 number and type of injuries to patients and employees and any resulting
15 workers' compensation claims, but shall not include any data that would
16 identify an individual patient or employee. The committee shall also provide
17 an annual report to the health care facility and to the Department of Financial
18 Regulation or the Department of Disabilities, Aging, and Independent Living,
19 as applicable, which shall be based on data analysis and feedback from the
20 facility's health care workers, shall be made available to the public upon
21 request, and shall include:

1 (1) the identification, development, and evaluation of strategies to
2 control risk of injury to patients and health care workers associated with the
3 lifting, transferring, repositioning, or movement of a patient;

4 (2) an evaluation of patient handling equipment used by the health care
5 facility and any recommendations for the purchase of new equipment; and

6 (3) any additional committee recommendations and the signatures of all
7 committee members.

8 § 2305. ADDRESSING SAFE PATIENT HANDLING IN NEW HEALTH
9 CARE PROJECTS

10 A health care facility that develops or has developed on its behalf a new
11 health care project, as defined in section 9434 of this title (certificate of need)
12 but notwithstanding the minimum cost or value requirements therein, shall, in
13 collaboration with its safe patient handling committee, address safe patient
14 handling in the design and planning of new spaces or renovations and shall
15 address whether the new health care project will increase the facility's need for
16 safe patient handling equipment.

17 Subchapter 2. Employee Overtime

18 § 2311. PROHIBITION ON MANDATORY OVERTIME

19 (a) No health care facility shall require an employee to work in excess of
20 eight hours per day, in excess of 40 hours per week, or in excess of
21 agreed-upon scheduled hours.

1 (b) Subsection (a) of this section shall not apply when there is an
2 unforeseeable emergency circumstance requiring overtime and the employer
3 has exhausted other reasonable efforts to obtain staff, documented in writing
4 the reasonable efforts taken, and provided the documentation to the
5 Department of Financial Regulation or the Department of Disabilities, Aging,
6 and Independent Living, as applicable. In the event of an unforeseeable
7 emergency circumstance, the health care facility shall provide the employee
8 sufficient time, up to one hour, to arrange for the care of the employee's minor
9 children or elderly or disabled family members. If the emergency is a declared
10 national, state, or municipal emergency or other disaster or catastrophic event
11 that substantially affects or increases the need for health care services, the
12 employer shall not be required to exhaust all reasonable efforts to obtain staff.

13 (c) An employee may be required to fulfill prescheduled on-call time, but
14 nothing in this chapter shall be construed to permit a health care facility to use
15 on-call time as a substitute for mandatory overtime.

16 (d) Any mandatory overtime provision in a contract, agreement, or
17 understanding is unenforceable and void as against public policy.

18 (e) Nothing in this section shall be construed to limit voluntary overtime in
19 excess of an agreed-to, predetermined, scheduled work shift.

1 (f) A health care facility shall not penalize, discharge, dismiss, discriminate
2 against, or take any other adverse employment action against an employee who
3 refuses to accept overtime work.

4 (g) A health care facility shall post the requirements of this section in a
5 location accessible and visible to all employees and to the public.

6 § 2312. ENFORCEMENT

7 An employee may file a complaint with the Department of Financial
8 Regulation or the Department of Disabilities, Aging, and Independent Living,
9 as applicable, for any alleged violation of this section. The complaint shall be
10 filed within 60 days of the incident giving rise to the violation. The applicable
11 department shall notify the health care facility of the alleged violation within
12 three business days after the complaint is filed. The applicable department
13 shall determine whether a violation of this section has occurred and shall
14 assess a penalty for each violation. The penalty for an initial violation shall be
15 no more than \$1,000.00. The penalty for a subsequent violation may be up to
16 \$1,000.00 more than the highest penalty assessed for any previous violation,
17 with no penalty exceeding \$10,000.00.

18 § 2313. PAYMENT FOR MISSED REST BREAKS

19 A health care facility shall pay employees overtime when their duties
20 prevent them from taking a rest break. A health care facility must staff
21 appropriately to allow for safe patient care and employee rest breaks.

1 Sec. 3. EFFECTIVE DATE

2 This act shall take effect on July 1, 2013.