

1 S.123

2 Introduced by Senators Zuckerman and Pollina

3 Referred to Committee on

4 Date:

5 Subject: Health care; facilities; patient handling

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

10 An act relating to safe patient handling

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

12 Sec. 1. FINDINGS

13 The General Assembly finds:

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

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

19 (3) Without adequate resources such as special equipment and specially
20 trained staff, lifting patients, whether the patients are overweight or not,

1 increases the risk of injury to the patients and health care providers when the
2 patient is being moved, being repositioned, or receiving other care.

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

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

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

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

18 (8) Studies show that manual patient handling and movement negatively
19 affect patient safety, quality of care, and patient comfort, dignity, and
20 satisfaction.

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

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

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

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

18 (13) The cycle of reduced staff morale, job burnout, and increased
19 vacancies brought on by mandatory overtime can become perpetual and
20 imperil the quality and safety of patient care. Forcing a nurse who may already
21 be fatigued to work beyond a scheduled shift increases the likelihood of patient

1 harm. A fatigued nurse is more apt to make errors; the risk of errors triples
2 when a nurse works more than 12-1/2 consecutive hours. Prolonged work
3 hours resulting in fatigue are strongly linked to poor performance, including
4 reduced focus and attention and potentially harmful errors.

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

6 CHAPTER 52. SAFE PATIENT HANDLING AND

7 EMPLOYEE OVERTIME

8 Subchapter 1. Safe Patient Handling

9 § 2301. DEFINITIONS

10 As used in this chapter:

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

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

18 “Employee” does not include a physician, physician assistant, or dentist, or a
19 worker involved in environmental services, clerical assistance, maintenance,
20 food service, or any other job classification not involved in direct patient care
21 or clinical care services.

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

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

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

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

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

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

14 (6) “Unforeseeable emergency circumstance” means any declared
15 national, state, or municipal disaster or other catastrophic event, or any
16 implementation of a hospital’s disaster plan, that will substantially affect or
17 increase the need for health care services; or any circumstance in which a
18 patient’s care needs require specialized nursing skills through the completion
19 of a procedure. “Unforeseeable emergency circumstance” does not include
20 situations in which the health care facility fails to have enough nursing staff to
21 meet the usual or reasonably predictable nursing needs of its patients.

1 § 2302. SAFE PATIENT HANDLING PROGRAM

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

4 (b) A safe patient handling program shall include the adoption of a safe
5 patient handling policy for all units and all shifts within the health care facility.
6 Such a policy shall be based on best practices in safe patient handling and use
7 of appropriate technology to reduce the risk of injury to staff and patients, and
8 shall contain:

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

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

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

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

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

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

7 (1) covers the identification, assessment, and control of patient handling
8 risks; the safe, appropriate, and effective use of patient handling equipment;
9 proven safe patient handling techniques, including the performance of lifts,
10 transfers, and repositioning; and how to report any employee or patient injury
11 related to patient handling;

12 (2) requires trainees to demonstrate proficiency in the techniques and
13 practices presented;

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

15 (4) is conducted upon commencement of the health care facility's safe
16 patient handling program and at least annually thereafter, with appropriate
17 interim training for individuals beginning work between annual training
18 sessions.

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

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

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

13 § 2303. RETALIATION

14 A health care facility shall not retaliate against any health care worker
15 because that worker refuses to perform a patient handling task due to a
16 reasonable concern about worker or patient safety or the lack of appropriate
17 and available patient handling equipment.

18 § 2304. SAFE PATIENT HANDLING COMMITTEE

19 (a) Each licensed health care facility shall establish a safe patient handling
20 committee which shall be responsible for all aspects of the development and
21 implementation of the safe patient handling program. The committee shall be

1 chaired by a registered nurse or other appropriately licensed employee. At
2 least 50 percent of the members of the committee shall be health care workers
3 who provide direct patient care to patients at the facility, are otherwise
4 involved in patient handling at the facility, are physical therapists, or have
5 expertise in the best practices of safe patient handling. In a facility in which
6 health care workers are represented by a labor organization, as defined under
7 2 V.S.A. chapter 19, the labor organization shall select the health care worker
8 committee members. The remaining members of the committee shall have
9 experience, expertise, or responsibility relevant to the operation of a safe
10 patient handling program.

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

13 (1) any requirement to perform a patient handling activity that he or she
14 believes in good faith exposed the patient or employee, or both, to an
15 unacceptable risk of injury, regardless of whether the employee performed the
16 activity; or

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

19 (c) An employee shall not be subject to discipline or other adverse
20 consequences by his or her employer as a result of making a report under
21 subsection (b) of this section. All employee reports shall be maintained by the

1 committee and a summary of the reports shall be included in the facility's
2 annual performance evaluation, as required in subsection (d) of this section.

3 All reports of employee injury shall be kept and filed in accordance with
4 21 V.S.A. § 228 (VOSHA reports).

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

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

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

20 (3) any additional committee recommendations and the signatures of all
21 committee members.

1 § 2305. ADDRESSING SAFE PATIENT HANDLING IN NEW HEALTH
2 CARE PROJECTS

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

10 Subchapter 2. Employee Overtime

11 § 2311. PROHIBITION ON MANDATORY OVERTIME

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

15 (b) Subsection (a) of this section shall not apply when there is an
16 unforeseeable emergency circumstance requiring overtime and the employer
17 has exhausted other reasonable efforts to obtain staff, documented in writing
18 the reasonable efforts taken, and provided the documentation to the
19 Department of Financial Regulation or the Department of Disabilities, Aging,
20 and Independent Living, as applicable. In the event of an unforeseeable
21 emergency circumstance, the health care facility shall provide the employee

1 sufficient time, up to one hour, to arrange for the care of the employee's minor
2 children or elderly or disabled family members. If the emergency is a declared
3 national, state, or municipal emergency or other disaster or catastrophic event
4 that substantially affects or increases the need for health care services, the
5 employer shall not be required to exhaust all reasonable efforts to obtain staff.

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

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

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

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

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

18 § 2312. ENFORCEMENT

19 An employee may file a complaint with the Department of Financial
20 Regulation or the Department of Disabilities, Aging, and Independent Living,
21 as applicable, for any alleged violation of this section. The complaint shall be

1 filed within 60 days of the incident giving rise to the violation. The applicable
2 department shall notify the health care facility of the alleged violation within
3 three business days after the complaint is filed. The applicable department
4 shall determine whether a violation of this section has occurred and shall
5 assess a penalty for each violation. The penalty for an initial violation shall be
6 no more than \$1,000.00. The penalty for a subsequent violation may be up to
7 \$1,000.00 more than the highest penalty assessed for any previous violation,
8 with no penalty exceeding \$10,000.00.

9 § 2313. PAYMENT FOR MISSED REST BREAKS

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

13 Sec. 3. EFFECTIVE DATE

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