

**WHISTLEBLOWERS' PROTECTION:
HOSPITAL WORKERS**

**House Bill 5829 (Substitute H-2)
Sponsor: Rep. Barb Vander Veen
Committee: Health Policy**

Complete to 12-3-02

**A SUMMARY OF HOUSE BILL 5829 (SUBSTITUTE H-2) AS REPORTED BY THE
HOUSE HEALTH POLICY COMMITTEE 12-3-02**

House Bill 5829 would amend the Public Health Code to specify that immunity from civil and criminal liability and other protections would be granted to a person employed by or under contract to a hospital if the person reports to the Department of Consumer and Industry Services (CIS) unsafe practices or conditions that do not violate Article 17 of the health code, which deals with health facilities and agencies, or a rule promulgated under that article.

Currently, the health code extends immunity from civil and criminal liability and protection under the Whistleblowers' Protection Act (PA 469 of 1980) to a person employed by or under contract to a health facility or agency or any other person acting in good faith who does any of the following:

- makes a report or complaint including, but not limited to, a report or complaint of a violation of the article or a rule promulgated under Article 17 of the code, which deals with health facilities and agencies;
- assists in originating, investigating, or preparing a report or complaint; or
- assists CIS in carrying out its duties under Article 17.

The code specifies that a person who makes or assists in making such a report or complaint, or who assists CIS in such a matter, is presumed to have acted in good faith. The code limits the immunity from civil or criminal liability to "acts done pursuant to Article 17".

Further, the code currently states that unless a person described above otherwise agrees in writing, CIS must keep the person's identity confidential until disciplinary proceedings under Article 17 are initiated against the subject of the report or complaint and the person making or assisting in originating, investigating, or preparing the report or complaint is required to testify in the disciplinary proceedings. If disclosure of the person's identity is considered by CIS to be essential to the proceedings, and if the person is the complainant, CIS must give the person an opportunity to withdraw the complaint before disclosure.

House Bill 5829 would add to these provisions specific protections for hospital workers—i.e., persons employed by or under contract to a hospital licensed under Article 17 of the health code. A hospital worker would be immune from civil or criminal liability that might otherwise be incurred and could not be discharged, threatened, or otherwise discriminated against by the hospital regarding his or her compensation or the terms, conditions, location, or privileges of his

or her employment, if he or she reports to CIS, verbally or in writing, an issue related to the hospital that is an unsafe practice or condition that is neither a violation of Article 17 nor a violation of a rule promulgated under Article 17. The bill specifies that these protections would not limit, restrict, or diminish, in any way, the protections afforded under the Whistleblowers' Protection Act.

In general, a hospital worker would be eligible for the immunity and protection only if the he or she met both of the following conditions before reporting to CIS the unsafe practice or condition that is not a violation of the article or rule. First, the person must have given the hospital 60 days' written notice of the unsafe practice or condition. A person who provided a hospital such written notice could not be discharged, threatened, or otherwise discriminated against by the hospital regarding that person's compensation or the terms, conditions, location, or privileges of his or her employment. Within 60 days after receiving such written notice, the hospital would have to provide a written response to the person who had provided the written notice. Second, the person could not have had any "reasonable expectation" that the hospital had taken or would take timely action to address the unsafe practice or condition. However, the hospital worker would be granted the immunity and protection if he or she was required by law to report the issue related to the hospital that is an unsafe practice or condition that is not a violation of the article or rule before the expiration of the required 60 days' notice.

Hospitals would be required to post notices and use other appropriate means to keep hospital workers informed of their protections and obligations relative to reports and complaints about violations of the article or rule and other unsafe practices and conditions that do not violate the article or rule. The notices would have to be in a form approved by CIS. The notice would have to be made available on CIS' Internet web site and would have to be posted in one or more "conspicuous places" where notices to hospital workers are customarily posted.

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Analyst: J. Caver

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