

**First Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 05-0838.01 Kristen Forrestal

SENATE BILL 05-216

SENATE SPONSORSHIP

Hagedorn,

HOUSE SPONSORSHIP

Carroll M.,

Senate Committees

Health and Human Services
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING PROTECTION FOR HEALTH CARE WORKERS ALLEGING**
102 **VIOLATION OF STANDARDS OF HEALTH CARE PRACTICE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Enacts the "Health Care Worker Protection Act" (act). Creates a procedure for a health care worker to report a violation of standards of health care practice to the office of the attorney general of the state of Colorado.

Gives immunity to a health care worker from criminal liability and from any suit in a civil action brought by any person as a result of information disclosed by a health care worker when the worker made a good faith report of a violation of standards of health care practice.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
3rd Reading Unamended
May 2, 2005

SENATE
Amended 2nd Reading
April 29, 2005

Prohibits a health care provider from taking disciplinary action against a health care worker if the worker submits a report or complaint, in good faith, to the attorney general's office. Provides that a health care worker may seek restitution through a civil action if disciplinary action is taken against such worker.

Defines the terms used in this act.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Title 8, Colorado Revised Statutes, is amended BY
3 THE ADDITION OF A NEW ARTICLE to read:

4 **ARTICLE 83**

5 **Health Care Worker Protection Act**

6 **8-83-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND MAY
7 BE CITED AS THE "HEALTH CARE WORKER PROTECTION ACT".

8 **8-83-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
9 CONTEXT OTHERWISE REQUIRES:

10 (1) "DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF
11 PUBLIC HEALTH AND ENVIRONMENT.

12 (2) "DISCIPLINARY ACTION" MEANS FREQUENT OR UNDESIRABLE
13 TRANSFERS OR REASSIGNMENTS, CHANGES IN THE LOCATION WHERE A
14 HEALTH CARE WORKER IS EMPLOYED, OR CHANGES IN WORKING HOURS,
15 OTHER THAN FOR DEMONSTRABLE EFFORTS TO MEET STAFFING NEEDS; THE
16 ISSUANCE OF LETTERS OF REPRIMAND, LETTERS OF ADMONITION, OR
17 EVALUATIONS OF POOR PERFORMANCE; A DEMOTION; A REDUCTION IN PAY;
18 THE DENIAL OF A PROMOTION; OR A SUSPENSION, DISMISSAL, OR TRANSFER.

19 (3) "GOOD FAITH REPORT" MEANS A REPORT OF VIOLATIONS OF
20 STANDARDS OF HEALTH CARE PRACTICE THAT IS MADE WITHOUT MALICE
21 OR CONSIDERATION OF PERSONAL BENEFIT AND THAT THE PERSON MAKING
22 THE REPORT HAS REASONABLE CAUSE TO BELIEVE IS TRUE.

1 (4) "HEALTH CARE PROVIDER" MEANS ANY HEALTH CARE FACILITY
2 LICENSED UNDER SECTION 25-3-101, C.R.S., OR ANY INDIVIDUAL WHO IS
3 AUTHORIZED TO PRACTICE SOME COMPONENT OF THE HEALING ARTS BY A
4 LICENSE, CERTIFICATE, OR REGISTRATION.

5 (5) "HEALTH CARE WORKER" MEANS ANY PERSON CERTIFIED,
6 REGISTERED, OR LICENSED PURSUANT TO ARTICLES 22, 29.5, 32, 33, 35, 36,
7 37, 38, 38.1, 39, 40, 41, 41.5, 42, AND 43 OF TITLE 12, C.R.S., OR
8 CERTIFIED PURSUANT TO SECTION 25-3.5-103, C.R.S.

9 (6) "OFFICE" MEANS THE OFFICE OF THE ATTORNEY GENERAL OF
10 THE STATE OF COLORADO.

11 (7) "SUPERVISOR" MEANS ANY INDIVIDUAL WITHIN AN EMPLOYER'S
12 ORGANIZATION WHO HAS THE AUTHORITY TO DIRECT AND CONTROL THE
13 WORK PERFORMANCE OF AN EMPLOYEE, OR WHO HAS MANAGERIAL
14 AUTHORITY TO TAKE CORRECTIVE ACTION REGARDING THE VIOLATION OF
15 STANDARDS OF HEALTH CARE PRACTICE.

16 **8-83-103. Procedure for reporting a violation of standards of**
17 **health care practice - confidentiality.** (1) A HEALTH CARE WORKER
18 MAY REPORT A VIOLATION OF STANDARDS OF HEALTH CARE PRACTICE, IN
19 WRITING, TO A SUPERVISOR OR OTHER PERSON IN A POSITION OF
20 AUTHORITY, AND THE EMPLOYER SHALL BE PROVIDED A REASONABLE
21 OPPORTUNITY TO INVESTIGATE THE ALLEGED VIOLATION AND TO MAKE
22 CORRECTIONS IF A VIOLATION IS CONFIRMED BEFORE FURTHER ACTION IS
23 TAKEN UNDER THE PROVISIONS OF THIS ARTICLE.

24 (2) (a) IF THE EMPLOYER DOES NOT CORRECT THE VIOLATION AND
25 THE HEALTH CARE EMPLOYEE, IN GOOD FAITH, BELIEVES THAT A
26 CONTINUING VIOLATION WILL ADVERSELY AFFECT THE QUALITY OF
27 PATIENT CARE OR THE SAFETY OF THE PATIENTS OF THE HEALTH CARE

1 PROVIDER, THE HEALTH CARE WORKER MAY FILE A COMPLAINT, IN
2 WRITING, WITH THE DEPARTMENT OR WITH THE APPROPRIATE LICENSING
3 BOARD.

4 (b) UPON RECEIPT OF THE COMPLAINT, THE DEPARTMENT OR
5 APPLICABLE BOARD SHALL GIVE NOTICE TO THE AFFECTED HEALTH CARE
6 PROVIDER THAT A COMPLAINT HAS BEEN FILED. THE HEALTH CARE
7 PROVIDER SHALL HAVE THIRTY DAYS IN WHICH TO INVESTIGATE THE
8 COMPLAINT AND AFTER THAT TIME SHALL FILE THE RESULTS OF ITS
9 INVESTIGATION WITH THE DEPARTMENT OR APPLICABLE BOARD. IF THE
10 DEPARTMENT OR BOARD IS DISSATISFIED WITH THE ADEQUACY OF THE
11 INVESTIGATION CONDUCTED BY THE HEALTH CARE PROVIDER, THE
12 DEPARTMENT OR BOARD SHALL PERFORM ITS OWN REVIEW AND, IF IT IS
13 DETERMINED THAT FURTHER ACTION IS NEEDED, TAKE DISCIPLINARY
14 ACTION. THE DEPARTMENT AND THE APPLICABLE BOARD SHALL PROVIDE
15 INFORMATION TO THE OFFICE IF SUCH DEPARTMENT OR BOARD
16 DETERMINES THERE IS EVIDENCE OF A CRIMINAL VIOLATION BY A HEALTH
17 CARE PROVIDER.

18 (c) THE DEPARTMENT OR THE APPLICABLE BOARD SHALL
19 MAINTAIN, EXCEPT TO THE EXTENT NECESSARY TO VERIFY CREDENTIALS,
20 THE CONFIDENTIALITY OF THE HEALTH CARE WORKER AND ALL
21 INFORMATION RESULTING FROM THE COMPLAINT UNTIL AN INVESTIGATION
22 HAS BEEN COMPLETED OR THE VIOLATION HAS BEEN REMEDIED; EXCEPT
23 THAT THE DEPARTMENT OR BOARD SHALL PROVIDE INFORMATION TO THE
24 OFFICE OF THE STATE AUDITOR REGARDING A FACILITY UNDER
25 INVESTIGATION.

26 **8-83-104. Health care workers - immunity from lawsuits -**
27 **disciplinary action against health care worker prohibited. (1) A**

1 HEALTH CARE WORKER, WHILE ACTING IN GOOD FAITH, SHALL BE IMMUNE
2 FROM ANY SUIT IN A CIVIL ACTION BROUGHT BY ANY PERSON AS A
3 RESULT OF:

4 (a) DISCLOSING INFORMATION THAT IS NOT OTHERWISE
5 PROHIBITED BY STATE OR FEDERAL LAW FROM DISCLOSURE RELATING TO
6 CARE OR SERVICES PROVIDED OR CONDITIONS TREATED BY A HEALTH CARE
7 ENTITY OR HEALTH CARE PROVIDER; OR

8 (b) DISCLOSING INFORMATION THROUGH INITIATING, COOPERATING
9 IN, OR PARTICIPATING IN AN INVESTIGATION OR PROCEEDING BY A PUBLIC
10 BODY, AN ACCREDITING ORGANIZATION, OR THE FEDERAL CENTERS FOR
11 MEDICARE AND MEDICAID SERVICES RELATING TO CARE OR SERVICES
12 PROVIDED OR CONDITIONS TREATED BY A HEALTH CARE PROVIDER.

13 (2) NOTHING IN SUBSECTION (1) OF THIS SECTION SHALL BE
14 CONSTRUED TO GRANT IMMUNITY TO A HEALTH CARE WORKER FOR HIS OR
15 HER OWN ACTS OF MEDICAL NEGLIGENCE, OR FOR A VIOLATION OF ANY
16 STATE OR FEDERAL LAW REQUIRING CONFIDENTIALITY OF PATIENT
17 INFORMATION. IF THE HEALTH CARE PROVIDER IS ASSESSED A FINE OR
18 PENALTY OR IS REQUIRED TO PAY A JUDGMENT OR SETTLEMENT AS A
19 RESULT OF DISCLOSURE OF CONFIDENTIAL INFORMATION BY THE HEALTH
20 CARE WORKER, THE HEALTH CARE WORKER SHALL REIMBURSE THE HEALTH
21 CARE PROVIDER FOR THE AMOUNT OF ANY FINE, PENALTY, JUDGMENT, OR
22 SETTLEMENT, AND ATTORNEY FEES AND COSTS ASSOCIATED WITH
23 DEFENDING ANY ASSOCIATED CLAIM.

24 (3) A HEALTH CARE PROVIDER SHALL NOT TAKE DISCIPLINARY
25 ACTION AGAINST A HEALTH CARE WORKER IN RETALIATION FOR FILING A
26 COMPLAINT OR MAKING A REPORT IN GOOD FAITH PURSUANT TO SECTION
27 8-83-103.

1 (4) A HEALTH CARE WORKER WHO CLAIMS TO BE AGGRIEVED BY A
2 VIOLATION OF SUBSECTION (3) OF THIS SECTION MAY, WITHIN ONE YEAR
3 AFTER THE DATE OF THE ALLEGED VIOLATION, SEEK RESTITUTION THROUGH
4 CIVIL ACTION, INCLUDING, BUT NOT LIMITED TO, PAIN AND SUFFERING,
5 COST OF THE LITIGATION, LOST WAGES, AND ATTORNEY FEES.

6 (5) A CIVIL ACTION TAKEN PURSUANT TO SUBSECTION (4) OF THIS
7 SECTION SHALL BE DEEMED A WAIVER OF THE RIGHTS AND REMEDIES
8 AVAILABLE UNDER ANY OTHER CONTRACT, COLLECTIVE BARGAINING
9 AGREEMENT, LAW, OR RULE WITH RESPECT TO PROTECTION AGAINST
10 EMPLOYER DISCRIMINATION OR DISCIPLINARY ACTION FOR EMPLOYEE
11 DISCLOSURE OF A VIOLATION OF STANDARDS OF HEALTH CARE PRACTICE.

12 **SECTION 2.** Article 80 of title 13, Colorado Revised Statutes,
13 is amended BY THE ADDITION OF A NEW SECTION to read:

14 **13-80-102.7. Limitation of actions - health care workers.**
15 NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, NO
16 ACTION BY A HEALTH CARE WORKER WHO CLAIMS TO BE AGGRIEVED BY A
17 VIOLATION OF ARTICLE 83 OF TITLE 8, C.R.S., SHALL BE MAINTAINED
18 UNLESS SUCH ACTION IS COMMENCED WITHIN ONE YEAR AFTER THE DATE
19 OF THE ALLEGED VIOLATION.

20 **SECTION 3. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, and safety.