

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 101**

4 (By Senators McCabe, Cann, Miller, Jenkins and Barnes)

5 _____
6 [Originating in the Committee on Health and Human Resources;
7 reported February 21, 2013.]

**Interim
Bill**

8 _____
9
10 A BILL to amend and reenact §16-5C-15 of the Code of West Virginia,
11 1931, as amended, relating to clarifying that actions brought
12 for damages for injuries suffered in a nursing home are
13 subject to the same liability limitations as other medical
14 professional liability actions.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §16-5C-15 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

18 **ARTICLE 5C. NURSING HOMES.**

19 **§16-5C-15. Unlawful acts; penalties; injunctions; private right**
20 **of action.**

21 (a) Whoever advertises, announces, establishes or maintains,
22 or is engaged in establishing or maintaining a nursing home without
23 a license granted under section six of this article, or who
24 prevents, interferes with or impedes in any way the lawful
25 enforcement of this article ~~shall be~~ is guilty of a misdemeanor

1 and, upon conviction thereof, shall be punished for the first
2 offense by a fine of not more than \$100, or by ~~imprisonment~~
3 confinement in ~~the county or regional~~ jail for a period of not more
4 than ninety days, or by both ~~such~~ fine and ~~imprisonment~~
5 confinement, at the discretion of the court. For each subsequent
6 offense, the fine may be increased to not more than \$250, with
7 ~~imprisonment~~ confinement in ~~the county or regional~~ jail for a
8 period of not more than ninety days, or by both ~~such~~ fine and
9 ~~imprisonment~~ confinement, at the discretion of the court. Each day
10 of a continuing violation after conviction ~~shall be~~ is considered
11 a separate offense.

12 (b) The director may in his or her discretion bring an action
13 to enforce compliance with this article or any rule or order
14 hereunder whenever it ~~shall appear~~ appears to the director that any
15 person has engaged in, or is engaging in, an act or practice in
16 violation of this article or any rule or order hereunder, or
17 whenever it ~~shall appear~~ appears to the director that any person
18 has aided, abetted or caused, or is aiding, abetting or causing
19 such an act or practice. Upon application by the director, the
20 circuit court of the county in which the conduct has occurred or is
21 occurring, or if emergency circumstances occur, the circuit court
22 of Kanawha County, ~~shall have~~ has jurisdiction to grant without
23 bond a permanent or temporary injunction, decree or restraining
24 order.

25 Whenever the director ~~shall have~~ has refused to grant or renew
26 a license, or ~~shall have~~ has revoked a license required by law to

1 operate or conduct a nursing home, or ~~shall have~~ has ordered a
2 person to refrain from conduct violating the rules of the director,
3 and the person ~~deeming himself or herself aggrieved by such refusal~~
4 ~~or revocation or order shall have~~ has appealed the action of the
5 director, the court may, during pendency of ~~such~~ the appeal, issue
6 a restraining order or injunction upon proof that the operation of
7 the nursing home or its failure to comply with the order of the
8 director adversely affects the well-being or safety of the
9 residents of the nursing home. Should a person who is refused a
10 license or the renewal of a license to operate or conduct a nursing
11 home or whose license to operate is revoked or who has been ordered
12 to refrain from conduct or activity which violates the rules of the
13 director, fail to appeal or should ~~such~~ the appeal be decided
14 favorably to the director, then the court shall issue a permanent
15 injunction upon proof that the person is operating or conducting a
16 nursing home without a license as required by law, or has continued
17 to violate the rules of the director.

18 (c) Any nursing home that deprives a resident of any right or
19 benefit created or established for the well-being of this resident
20 by the terms of any contract, by any state statute or rule, or by
21 any applicable federal statute or regulation, ~~shall~~ may be liable
22 to the resident for injuries suffered as a result of such
23 deprivation. ~~Upon a finding that a resident has been deprived of~~
24 ~~such a right or benefit, and that the resident has been injured as~~
25 ~~a result of such deprivation, and unless there is a finding that~~
26 ~~the nursing home exercised all care reasonably necessary to prevent~~

1 ~~and limit the deprivation and injury to the resident, compensatory~~
2 ~~damages shall be assessed in an amount sufficient to compensate the~~
3 ~~resident for such injury. The changes to this section made during~~
4 ~~the 2013 Regular Session of the Legislature shall be effective July~~
5 ~~1, 2013. Any actions brought under this subsection are subject to~~
6 ~~the limitations and provisions of article seven-b, chapter fifty-~~
7 ~~five of this code: *Provided*, That there shall be no inference,~~
8 ~~either positively or negatively, to any legal action pending~~
9 ~~pursuant to this section as of the first of July 2013. The proper~~
10 ~~construction of this section and the limitations and provisions of~~
11 ~~article seven-b, chapter fifty-five of this code shall be~~
12 ~~determined by principles of statutory construction.~~ In addition,
13 where the deprivation of ~~any such~~ the right or benefit is found to
14 have been willful or in reckless disregard of the lawful rights of
15 the resident, punitive damages may be assessed. A resident may
16 also maintain an action pursuant to this section for any other type
17 of relief, including injunctive and declaratory relief, permitted
18 by law. Exhaustion of any available administrative remedies ~~may is~~
19 ~~not be~~ required prior to commencement of suit ~~hereunder~~ under this
20 subsection.

21 (d) The amount of damages recovered by a resident, in an
22 action brought pursuant to this section, ~~shall be~~ is exempt for
23 purposes of determining initial or continuing eligibility for
24 medical assistance under article four, chapter nine of this code,
25 and may neither be taken into consideration nor required to be
26 applied toward the payment or part payment of the cost of medical

1 care or services available under ~~said~~ that article.

2 (e) Any waiver by a resident or his or her legal
3 representative of the right to commence an action under this
4 section, whether oral or in writing, ~~shall be null and~~ is void as
5 contrary to public policy.

6 ~~(d)~~ (f) The penalties and remedies provided in this section
7 are cumulative and ~~shall be~~ are in addition to all other penalties
8 and remedies provided by law.

NOTE: The purpose of this bill is to provide technical clean-up to clarify that the Legislature originally intended that all actions brought against a nursing home are subject to all the limitations and provisions set forth in the Medical Professional Liability Act.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

This bill has been recommended for passage during the 2013 Regular Session by the Select Committee on PEIA, Seniors and Long Term Care.