

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

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5 FOR

6 **Senate Bill No. 101**

7 (SENATORS MCCABE, CANN, MILLER, JENKINS AND BARNES, *original sponsors*)

8 _____
9 [Passed April 13, 2013; to take effect July 1, 2013.]
10 _____

11
12 AN ACT to amend and reenact §16-5C-15 of the Code of West Virginia,
13 1931, as amended, relating to clarifying that the Medical
14 Professional Liability Act applies to nursing homes and their
15 health care providers.

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

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

19 **ARTICLE 5C. NURSING HOMES.**

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

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

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

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

23 Whenever the director has refused to grant or renew a license,
24 or has revoked a license required by law to operate or conduct a
25 nursing home, or has ordered a person to refrain from conduct
26 violating the rules of the director, and the person has appealed

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

14 (c) Any nursing home that deprives a resident of any right or
15 benefit created or established for the well-being of this resident
16 by the terms of any contract, by any state statute or rule, or by
17 any applicable federal statute or regulation, shall be liable to
18 the resident for injuries suffered as a result of such deprivation.
19 Upon a finding that a resident has been deprived of such a right or
20 benefit, and that the resident has been injured as a result of such
21 deprivation, and unless there is a finding that the nursing home
22 exercised all care reasonably necessary to prevent and limit the
23 deprivation and injury to the resident, compensatory damages shall
24 be assessed in an amount sufficient to compensate the resident for
25 such injury. In addition, where the deprivation of the right or
26 benefit is found to have been willful or in reckless disregard of

1 the lawful rights of the resident, punitive damages may be
2 assessed. A resident may also maintain an action pursuant to this
3 section for any other type of relief, including injunctive and
4 declaratory relief, permitted by law. Exhaustion of any available
5 administrative remedies is not required prior to commencement of
6 suit under this subsection.

7 (d) The amount of damages recovered by a resident, in an
8 action brought pursuant to this section, is exempt for purposes of
9 determining initial or continuing eligibility for medical
10 assistance under article four, chapter nine of this code, and may
11 neither be taken into consideration nor required to be applied
12 toward the payment or part payment of the cost of medical care or
13 services available under that article.

14 (e) Any waiver by a resident or his or her legal
15 representative of the right to commence an action under this
16 section, whether oral or in writing, is void as contrary to public
17 policy.

18 (f) The penalties and remedies provided in this section are
19 cumulative and are in addition to all other penalties and remedies
20 provided by law.

21 (g) Nothing in this section or any other section of the code
22 shall limit the protections afforded nursing homes or their health
23 care providers under article seven-b, chapter fifty-five of this
24 code. Nursing homes and their health care providers shall be
25 treated in the same manner as any other health care facility or
26 health care provider under article seven-b, chapter fifty-five of

1 this code. The terms "health care facility" and "health care
2 provider" as used in this subsection shall have the same meaning as
3 set forth in subsections (f) and (g), section two, article seven-b,
4 chapter fifty-five of this code.

5 (h) The amendments to this section enacted during the 2013
6 Regular Session of the Legislature shall be effective July 1, 2013:
7 *Provided*, That there shall be no inference, either positive or
8 negative, to any legal action pending pursuant to this section as
9 of July 1, 2013. The amendments to this section in 2013 are not in
10 any way intended to modify, change, expand or contract the Medical
11 Professional Liability Act. The proper construction of this
12 section and the limitations and provisions of article seven-b,
13 chapter fifty-five of this code shall be determined by principles
14 of statutory construction.