

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 101**

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



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

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

1 a license granted under section six of this article, or who
2 prevents, interferes with or impedes in any way the lawful
3 enforcement of this article ~~shall be~~ is guilty of a misdemeanor
4 and, upon conviction thereof, shall be punished for the first
5 offense by a fine of not more than \$100, or by ~~imprisonment~~
6 confinement in ~~the county or regional~~ jail for a period of not more
7 than ninety days, or by both ~~such~~ fine and ~~imprisonment~~
8 confinement, at the discretion of the court. For each subsequent
9 offense, the fine may be increased to not more than \$250, with
10 ~~imprisonment~~ confinement in ~~the county or regional~~ jail for a
11 period of not more than ninety days, or by both ~~such~~ fine and
12 ~~imprisonment~~ confinement, at the discretion of the court. Each day
13 of a continuing violation after conviction ~~shall be~~ is considered
14 a separate offense.

15 (b) The director may in his or her discretion bring an action
16 to enforce compliance with this article or any rule or order
17 hereunder whenever it ~~shall appear~~ appears to the director that any
18 person has engaged in, or is engaging in, an act or practice in
19 violation of this article or any rule or order hereunder, or
20 whenever it ~~shall appear~~ appears to the director that any person
21 has aided, abetted or caused, or is aiding, abetting or causing
22 such an act or practice. Upon application by the director, the
23 circuit court of the county in which the conduct has occurred or is
24 occurring, or if emergency circumstances occur, the circuit court

1 of Kanawha County, ~~shall have~~ has jurisdiction to grant without
2 bond a permanent or temporary injunction, decree or restraining
3 order.

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

23 (c) Any nursing home that deprives a resident of any right or
24 benefit created or established for the well-being of this resident

1 by the terms of any contract, by any state statute or rule, or by
2 any applicable federal statute or regulation, ~~shall~~ may be liable
3 to the resident for injuries suffered as a result of such
4 deprivation. ~~Upon a finding that a resident has been deprived of~~
5 ~~such a right or benefit, and that the resident has been injured as~~
6 ~~a result of such deprivation, and unless there is a finding that~~
7 ~~the nursing home exercised all care reasonably necessary to prevent~~
8 ~~and limit the deprivation and injury to the resident, compensatory~~
9 ~~damages shall be assessed in an amount sufficient to compensate the~~
10 ~~resident for such injury. Any actions brought under this subsection~~
11 ~~are subject to the limitations and provisions of article seven-b,~~
12 ~~chapter fifty-five of this code.~~ In addition, where the
13 deprivation of ~~any such~~ the right or benefit is found to have been
14 willful or in reckless disregard of the lawful rights of the
15 resident, punitive damages may be assessed. A resident may also
16 maintain an action pursuant to this section for any other type of
17 relief, including injunctive and declaratory relief, permitted by
18 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,

1 and may neither be taken into consideration nor required to be
2 applied toward the payment or part payment of the cost of medical
3 care or services available under ~~said~~ that article.

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

8 ~~(d)~~ (f) The penalties and remedies provided in this section
9 are cumulative and ~~shall be~~ are in addition to all other penalties
10 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.