

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013



ENROLLED

COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 101

(SENATORS McCABE, CANN, MILLER, JENKINS AND BARNES,
ORIGINAL SPONSORS)

[PASSED APRIL 13, 2013; TO TAKE EFFECT JULY 1, 2013.]

E N R O L L E D
COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 101

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

[Passed April 13, 2013; to take effect July 1, 2013.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. NURSING HOMES.

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

1 (a) Whoever advertises, announces, establishes or
2 maintains, or is engaged in establishing or maintaining a
3 nursing home without a license granted under section six of
4 this article, or who prevents, interferes with or impedes in any
5 way the lawful enforcement of this article is guilty of a
6 misdemeanor and, upon conviction thereof, shall be punished
7 for the first offense by a fine of not more than \$100, or by
8 confinement in jail for a period of not more than ninety days,
9 or by both fine and confinement, at the discretion of the
10 court. For each subsequent offense, the fine may be
11 increased to not more than \$250, with confinement in jail for
12 a period of not more than ninety days, or by both fine and
13 confinement, at the discretion of the court. Each day of a
14 continuing violation after conviction is considered a separate
15 offense.

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

29 Whenever the director has refused to grant or renew a
30 license, or has revoked a license required by law to operate

31 or conduct a nursing home, or has ordered a person to refrain
32 from conduct violating the rules of the director, and the
33 person has appealed the action of the director, the court may,
34 during pendency of the appeal, issue a restraining order or
35 injunction upon proof that the operation of the nursing home
36 or its failure to comply with the order of the director
37 adversely affects the well being or safety of the residents of
38 the nursing home. Should a person who is refused a license
39 or the renewal of a license to operate or conduct a nursing
40 home or whose license to operate is revoked or who has been
41 ordered to refrain from conduct or activity which violates the
42 rules of the director fails to appeal or should the appeal be
43 decided favorably to the director, then the court shall issue a
44 permanent injunction upon proof that the person is operating
45 or conducting a nursing home without a license as required
46 by law, or has continued to violate the rules of the director.

47 (c) Any nursing home that deprives a resident of any right
48 or benefit created or established for the well-being of this
49 resident by the terms of any contract, by any state statute or
50 rule, or by any applicable federal statute or regulation, shall
51 be liable to the resident for injuries suffered as a result of
52 such deprivation. Upon a finding that a resident has been
53 deprived of such a right or benefit, and that the resident has
54 been injured as a result of such deprivation, and unless there
55 is a finding that the nursing home exercised all care
56 reasonably necessary to prevent and limit the deprivation and
57 injury to the resident, compensatory damages shall be
58 assessed in an amount sufficient to compensate the resident
59 for such injury. In addition, where the deprivation of the
60 right or benefit is found to have been willful or in reckless
61 disregard of the lawful rights of the resident, punitive

62 damages may be assessed. A resident may also maintain an
63 action pursuant to this section for any other type of relief,
64 including injunctive and declaratory relief, permitted by law.
65 Exhaustion of any available administrative remedies is not
66 required prior to commencement of suit under this
67 subsection.

68 (d) The amount of damages recovered by a resident, in an
69 action brought pursuant to this section, is exempt for
70 purposes of determining initial or continuing eligibility for
71 medical assistance under article four, chapter nine of this
72 code, and may neither be taken into consideration nor
73 required to be applied toward the payment or part payment of
74 the cost of medical care or services available under that
75 article.

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

80 (f) The penalties and remedies provided in this section are
81 cumulative and are in addition to all other penalties and
82 remedies provided by law.

83 (g) Nothing in this section or any other section of the
84 code shall limit the protections afforded nursing homes or
85 their health care providers under article seven-b, chapter
86 fifty-five of this code. Nursing homes and their health care
87 providers shall be treated in the same manner as any other
88 health care facility or health care provider under article
89 seven-b, chapter fifty-five of this code. The terms “health

90 care facility” and “health care provider” as used in this
91 subsection shall have the same meaning as set forth in
92 subsections (f) and (g), section two, article seven-b, chapter
93 fifty-five of this code.

94 (h) The amendments to this section enacted during the
95 2013 Regular Session of the Legislature shall be effective
96 July 1, 2013: *Provided*, That there shall be no inference,
97 either positive or negative, to any legal action pending
98 pursuant to this section as of July 1, 2013. The amendments
99 to this section in 2013 are not in any way intended to modify,
100 change, expand or contract the Medical Professional Liability
101 Act. The proper construction of this section and the
102 limitations and provisions of article seven-b, chapter fifty-
103 five of this code shall be determined by principles of statutory
104 construction.

The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

.....
Chairman Senate Committee

.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2013.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

.....
Speaker of the House of Delegates

The within this the

Day of, 2013.

.....
Governor