

1 ENROLLED

2 COMMITTEE SUBSTITUTE

3 FOR

4 H. B. 3108

5
6 (By Delegates Campbell, Ellington and Perdue)

7
8 [Passed March 8, 2014; in effect ninety days from passage.]

9
10 AN ACT to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §16-5C-21, relating
12 to prohibiting employment by a nursing home of a person
13 convicted of certain crimes unless a variance has been granted
14 by the secretary; and authorizing the Secretary of the
15 Department of Health and Human Resources to propose
16 legislative rules.

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

18 That the Code of West Virginia, 1931, as amended, be amended
19 by adding thereto a new section, designated §16-5C-21, to read as
20 follows:

21 **ARTICLE 5C. NURSING HOMES.**

22 **§16-5C-21 Employment restrictions.**

23 (a) Notwithstanding a legislative rule or provider manual
24 issued by the department, a person cannot be employed by a nursing

1 home unless granted a variance by the secretary, or his or her
2 designee, if convicted of:

3 (1) Abduction or kidnapping;

4 (2) Any violent felony crime including, but not limited to,
5 rape, sexual assault, homicide, felonious physical assault or
6 felonious battery;

7 (3) Child or adult abuse or neglect;

8 (4) Crimes which involve the exploitation of a child or an
9 incapacitated adult;

10 (5) Felony domestic battery or domestic assault;

11 (6) Felony arson;

12 (7) Felony or misdemeanor crime against a child or
13 incapacitated adult which causes harm;

14 (8) Felony drug-related offenses;

15 (9) Felony driving under the influence of drugs or alcohol;

16 (10) Hate crimes;

17 (11) Murder or manslaughter;

18 (12) Neglect or abuse by a caregiver;

19 (13) Pornography crimes involving children or incapacitated
20 adults including, but not limited to, use of minors or
21 incapacitated adults in filming sexual explicit conduct,
22 distribution and exhibition of material depicting minors or
23 incapacitated adults in sexually explicit conduct or sending,
24 distributing, exhibiting, possessing, displaying or transporting

1 material by a parent, guardian or custodian, depicting a minor or
2 incapacitated adult engaged in sexually explicit conduct;

3 (14) Purchase or sale of a child;

4 (15) Sexual offenses including, but not limited to, incest,
5 sexual abuse or indecent exposure;

6 (16) Felony or misdemeanor involving financial exploitation of
7 a minor or elderly person; or

8 (17) Felony offense related to fraud, theft, embezzlement,
9 breach of fiduciary responsibility or other financial misconduct in
10 connection with the delivery of a health care item or service, or
11 with respect to any act or omission in a health care program
12 operated or financed, in whole or in part, by any federal, state or
13 local government agency; or

14 (18) Any criminal offense related to the delivery of an item
15 or service under Medicare or a state health care program.

16 (b) The secretary shall propose rules for legislative approval
17 in accordance with article three, chapter twenty-nine-a of this
18 code, to allow persons to appeal decisions, demonstrate
19 rehabilitation, request a review of their initial negative
20 determinations and to implement any variance procedure as may be
21 required by state or federal law.