

1 **H. B. 2227**

2
3 (By Delegate M. Poling)

4 [Introduced January 12, 2011; referred to the
5 Committee on Senior Citizen Issues then the Judiciary.]
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10 A BILL to amend and reenact §16-5C-3 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §16-5D-3 of said
12 code, all relating to nursing homes and assisted living
13 residences; requiring background checks on applicants for
14 residence in nursing homes and assisted living residences; and
15 providing for special arrangements for applicants who are sex
16 offenders or certain convicted felons.

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

18 That §16-5C-3 of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted; and that §16-5D-3 of said code be amended
20 and reenacted, all to read as follows:

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

22 **§16-5C-3. Powers, duties and rights of director.**

23 In the administration of this article, the director shall have
24 the following powers, duties and rights:

1 (a) To enforce rules and standards promulgated hereunder for
2 nursing homes;

3 (b) To exercise as sole authority all powers relating to the
4 issuance, suspension and revocation of licenses of nursing homes;

5 (c) To enforce rules promulgated hereunder governing the
6 qualification of applicants for nursing home licenses, including,
7 but not limited to, educational requirements, financial
8 requirements, personal and ethical requirements;

9 (d) To receive and disburse federal funds and to take whatever
10 action not contrary to law as may be proper and necessary to comply
11 with the requirements and conditions for the receipt of such
12 federal funds;

13 (e) To receive and disburse for authorized purposes any moneys
14 appropriated to the Division of Health by the Legislature;

15 (f) To receive and disburse for purposes authorized by this
16 article, any funds that may come to the Division of Health by gift,
17 grant, donation, bequest or devise, according to the terms thereof,
18 as well as funds derived from the Division of Health's operation,
19 or otherwise;

20 (g) To make contracts, and to execute all instruments
21 necessary or convenient in carrying out the director's functions
22 and duties; and all such contracts, agreements and instruments
23 shall be executed by the director;

24 (h) To appoint officers, agents, employees and other personnel

1 and fix their compensation;

2 (I) To offer and sponsor educational and training programs for
3 nursing homes for clinical, administrative, management and
4 operational personnel;

5 (j) To undertake survey, research and planning projects and
6 programs relating to administration and operation of nursing homes
7 and to the health, care, treatment and service in general of such
8 homes;

9 (k) To assess civil penalties for violations of facility
10 standards, in accordance with section ten of this article;

11 (l) To inspect any nursing home and any records maintained
12 therein that are necessary to determine compliance with licensure
13 laws or Medicare or Medicaid certification, subject to the
14 provisions of section ten of this article;

15 (m) To establish and implement procedures, including informal
16 conferences, investigations and hearings, subject to applicable
17 provisions of article three, chapter twenty-nine-a of this code,
18 and to enforce compliance with the provisions of this article and
19 with rules issued hereunder;

20 (n) To subpoena witnesses and documents, administer oaths and
21 affirmations, and to examine witnesses under oath for the conduct
22 of any investigation or hearing. Upon failure of a person without
23 lawful excuse to obey a subpoena to give testimony and upon
24 reasonable notice to all persons affected thereby, the director may

1 apply to the circuit court of the county in which the hearing is to
2 be held for an order compelling compliance;

3 (o) To make complaint or cause proceedings to be instituted
4 against any person or persons for the violation of the provisions
5 of this article or of rules issued hereunder. Such action may be
6 taken by the director without the sanction of the prosecuting
7 attorney of the county in which proceedings are instituted, if the
8 officer fails or refuses to discharge his or her duty. The circuit
9 court of the county in which the conduct has occurred or, if
10 emergency circumstances require, the circuit court of Kanawha
11 County shall have jurisdiction in all civil enforcement actions
12 brought under this article and may order equitable relief without
13 bond. In no such case may the director or any person acting under
14 the director's direction be required to give security for costs;

15 (p) To delegate authority to the director's employees and
16 agents to perform all functions of the director except the making
17 of final decisions in adjudications;

18 (q) To submit an annual report to the Governor, the
19 Legislature and the public sixty days before the Governor is
20 required to submit an annual budget report to the Legislature.
21 The report shall describe the licensing and investigatory
22 activities of the department during the year, and the nature and
23 status of other activities of the department, and may include
24 comment on the acts, policies, practices or procedures of any

1 public or private agency that effect the rights, health or welfare
2 of residents of nursing homes. The annual report shall include a
3 list of all nursing homes in the state, whether such homes are
4 proprietary or nonproprietary; the name of the owner or owners; the
5 total number of beds; the number of private and semiprivate rooms;
6 the costs per diem for private residents; the number of full-time
7 employees and their professions; recreational programs; services
8 and programs available as well as the costs thereof; and whether or
9 not those nursing homes listed accept Medicare and Medicaid
10 residents. The report shall also contain the department's
11 recommendations as to changes in law or policy which it deems
12 necessary or appropriate for the protection of the rights, health
13 or welfare of residents of nursing homes in the state;

14 (r) To establish a formal process for licensed facilities to
15 file complaints about the survey process or surveyors; ~~and~~

16 (s) To establish a committee to study and make a
17 recommendation to the Legislature on a central reporting system for
18 allegations of abuse; and

19 (t) To establish a formal process for licensed facilities to
20 make background checks for applicants as residents of nursing homes
21 in the state and to make special arrangements for the placement of
22 applicants who are subject to the Sex Offender Registration Act
23 governed by the provisions of article twelve, chapter fifteen of
24 this code or who have been previously convicted of a felony

1 involving violence or the use of a deadly weapon.

2 **ARTICLE 5D. ASSISTED LIVING RESIDENCES.**

3 **§16-5D-3. Powers, duties and rights of secretary.**

4 In the administration of this article, the secretary has the
5 following powers, duties and rights:

6 (a) To enforce rules and standards for assisted living
7 residences which are adopted, promulgated, amended or modified by
8 the secretary;

9 (b) To exercise as sole authority all powers relating to the
10 issuance, suspension and revocation of licenses of assisted living
11 residences;

12 (c) To enforce rules adopted, promulgated, amended or modified
13 by the secretary governing the qualification of applicants for
14 assisted living residences, including, but not limited to,
15 educational requirements, financial requirements, personal and
16 ethical requirements;

17 (d) To receive and disburse federal funds and to take whatever
18 action not contrary to law as may be proper and necessary to comply
19 with the requirements and conditions for the receipt of federal
20 funds;

21 (e) To receive and disburse for authorized purposes any moneys
22 appropriated for the division by the Legislature;

23 (f) To receive and disburse for purposes authorized by this
24 article, any funds that may come to the division by gift, grant,

1 donation, bequest or devise, according to the terms thereof, as
2 well as funds derived from the division's operation or otherwise;

3 (g) To make contracts and to execute all instruments necessary
4 or convenient in carrying out the secretary's functions and duties;
5 and all such contracts, agreements and instruments shall be
6 executed by the secretary;

7 (h) To appoint officers, agents, employees and other personnel
8 and fix their compensation;

9 (i) To offer and sponsor educational and training programs for
10 assisted living residences' administrative, management and
11 operational personnel;

12 (j) To undertake survey, research and planning projects and
13 programs relating to administration and operation of assisted
14 living residences and to the health, care, treatment and service in
15 general of residents of assisted living residences;

16 (k) To assess civil penalties for violations of assisted
17 living residence standards in accordance with section ten of this
18 article;

19 (l) To inspect any assisted living residence and any records
20 maintained therein subject to the provisions of section ten of this
21 article;

22 (m) To establish and implement procedures, including informal
23 conferences, investigations and hearings, subject to applicable
24 provisions of article three, chapter twenty-nine-a of this code,

1 and to enforce compliance with the provisions of this article and
2 with rules issued hereunder by the secretary;

3 (n) To subpoena witnesses and documents, administer oaths and
4 affirmations and to examine witnesses under oath for the conduct of
5 any investigation or hearing. Upon failure of a person without
6 lawful excuse to obey a subpoena to give testimony and upon
7 reasonable notice to all persons affected thereby, the secretary
8 may apply to the circuit court of the county in which the hearing
9 is to be held or to the circuit court of Kanawha County for an
10 order compelling compliance;

11 (o) To make complaint or cause proceedings to be instituted
12 against any person for the violation of the provisions of this
13 article or of rules issued hereunder by the secretary. Such action
14 may be taken by the secretary without the sanction of the
15 prosecuting attorney of the county in which proceedings are
16 instituted if the prosecuting attorney fails or refuses to
17 discharge his or her duty. The circuit court of Kanawha County or
18 the circuit court of the county in which the conduct has occurred
19 shall have jurisdiction in all civil enforcement actions brought
20 under this article and may order equitable relief without bond. In
21 no such case may the secretary or any person acting under the
22 secretary's direction be required to give security for costs;

23 (p) To delegate authority to the secretary's employees and
24 agents to perform all functions of the secretary except the making

1 of final decisions in adjudications; and

2 (q) To submit an annual report to the Governor, the
3 Legislature and the public. The report shall describe the assisted
4 living residence licensing and investigatory activities of the
5 division during the year and the nature and status of other
6 activities of the division and may include comment on the acts,
7 policies, practices or procedures of any public or private agency
8 that affect the rights, health or welfare of residents of assisted
9 living residences. The annual report shall include a list of all
10 assisted living residences in the state and such of the following
11 information as the secretary determines to apply: Whether the
12 assisted living residences are proprietary or nonproprietary; the
13 classification of each assisted living residence; the name of the
14 owner or owners; the total number of beds; the number of private
15 and semiprivate rooms; the costs per diem for private residents;
16 the number of full-time employees and their professions;
17 recreational programs; services and programs available as well as
18 the costs thereof; and whether or not those assisted living
19 residences listed accept Medicare and Medicaid residents. The
20 report shall also contain the division's recommendations as to
21 changes in law or policy which it deems necessary or appropriate
22 for the protection of the rights, health or welfare of residents of
23 assisted living residences in the state.

24 (r) To establish a formal process for licensed facilities to

1 make background checks for applicants as residents of assisted
2 living residences in the state and to make special arrangements for
3 the placement of applicants who are subject to the Sex Offender
4 Registration Act governed by the provisions of article twelve,
5 chapter fifteen of this code or who have been previously convicted
6 of a felony involving violence or the use of a deadly weapon.

NOTE: The purpose of this bill is to require background checks on applicants for residence in nursing homes and assisted living residences; and to provide for special arrangements for applicants who are sex offenders or certain convicted felons.

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