

**H. B. 3223**

(By Delegate Householder)  
[Introduced February 21, 2011; referred to the  
Committee on the Judiciary.]

A BILL to amend and reenact §9-6-1, §9-6-2, §9-6-9 and §9-6-11 of  
the Code of West Virginia, 1931, as amended, all relating to  
complaints made against employees of the Department of Health  
and Human Resources; permitting an employee to have a  
representative; prohibiting a supervisor from acting as that  
representative; requiring the employee to be provided with a  
written copy of the complaint; providing that an employee may  
respond in writing to an allegation; and defining terms.

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

That §9-6-1, §9-6-2, §9-6-9 and §9-6-11 of the Code of West  
Virginia, 1931, as amended, be amended and reenacted ,all to read  
as follows:

**ARTICLE 6. SOCIAL SERVICES FOR ADULTS.**

**§9-6-1. Definitions.**

The following words and terms, when used in this article,  
shall have the same meaning hereinafter ascribed to them unless the  
context clearly indicates a different meaning:

1 (1) "Adult protective services agency" means any public or  
2 nonprofit private agency, corporation, board or organization  
3 furnishing protective services to adults;

4 (2) "Abuse" means the infliction or threat to inflict physical  
5 pain or injury on or the imprisonment of any incapacitated adult or  
6 facility resident;

7 (3) "Department" means the Department of Health and Human  
8 Resources;

9 ~~(3)~~ (4) "Neglect" means: (A) The failure to provide the  
10 necessities of life to an incapacitated adult or facility resident  
11 with intent to coerce or physically harm the incapacitated adult or  
12 resident; and (B) the unlawful expenditure or willful dissipation  
13 of the funds or other assets owned or paid to or for the benefit of  
14 an incapacitated adult or resident;

15 ~~(4)~~ (5) "Incapacitated adult" means any person who by reason  
16 of physical, mental or other infirmity is unable to independently  
17 carry on the daily activities of life necessary to sustaining life  
18 and reasonable health;

19 ~~(5)~~ (6) "Emergency" or "emergency situation" means a situation  
20 or set of circumstances which presents a substantial and immediate  
21 risk of death or serious injury to an incapacitated adult;

22 ~~(6)~~ (7) "Legal representative" means a person lawfully  
23 invested with the power and charged with the duty of taking care of  
24 another person or with managing the property and rights of another  
25 person, including, but not limited to, a guardian, conservator,  
26 medical power of attorney representative, trustee or other duly

1 appointed person;

2       ~~(7)~~ (8) "Nursing home" or "facility" means any institution,  
3 residence, intermediate care facility for the mentally retarded,  
4 care home or any other adult residential facility, or any part or  
5 unit thereof, that is subject to the provisions of articles five-c,  
6 five-d, five-e or five-h, chapter sixteen of this code;

7       ~~(8)~~ (9) "Regional long-term care ombudsman" means any paid  
8 staff of a designated regional long-term care ombudsman program who  
9 has obtained appropriate certification from the bureau for senior  
10 services and meets the qualifications set forth in section seven,  
11 article five-1, chapter sixteen of this code;

12       ~~(9)~~ (10) "Facility resident" means an individual living in a  
13 nursing home or other facility, as that term is defined in  
14 subdivision ~~(7)~~ (8) of this section;

15       (11) "Representative" or "employee representative" means a  
16 designated advocate for the employee who may be from an employee  
17 organization, a fellow employee, an attorney or other person  
18 designated by the employee who is not a supervisor who evaluates  
19 the employee being subjected to any investigation or disciplinary  
20 process.

21       ~~(10)~~ (12) "Responsible family member" means a member of a  
22 resident's family who has undertaken primary responsibility for the  
23 care of the resident and who has established a working relationship  
24 with the nursing home or other facility in which the resident  
25 resides. For purposes of this article, a responsible family member  
26 may include someone other than the resident's legal representative;

1       ~~(11)~~ (13) "State long-term care ombudsman" means an individual  
 2 who meets the qualifications of section five, article five-1,  
 3 chapter sixteen of this code and who is employed by the state  
 4 bureau for senior services to implement the state long-term care  
 5 ombudsman program;

6       ~~(12)~~ (14) "Secretary" means the Secretary of the Department of  
 7 Health and Human Resources.

8 **§9-6-2. Adult protective services; immunity from civil liability;**  
 9                   **rules; organization and duties.**

10       (a) There is hereby established and continued within the  
 11 Department of Health and Human Resources the system of adult  
 12 protective services heretofore existing.

13       (b) The secretary shall propose rules for legislative approval  
 14 in accordance with the provisions of article three, chapter twenty-  
 15 nine-a of this code regarding the organization and duties of the  
 16 adult protective services system and the procedures to be used by  
 17 the department to effectuate the purposes of this article. The  
 18 rules may be amended and supplemented from time to time.

19       (c) The secretary shall design and arrange such rules to  
 20 attain, or move toward the attainment, of the following goals to  
 21 the extent that the secretary believes feasible under the  
 22 provisions of this article within the state appropriations and  
 23 other funds available:

24       (1) Assisting adults who are abused, neglected or  
 25 incapacitated in achieving or maintaining self-sufficiency and  
 26 self-support and preventing, reducing and eliminating their

1 dependency on the state;

2       (2) Preventing, reducing and eliminating neglect and abuse of  
3 adults who are unable to protect their own interests;

4       (3) Preventing and reducing institutional care of adults by  
5 providing less intensive forms of care, preferably in the home;

6       (4) Referring and admitting abused, neglected or incapacitated  
7 adults to institutional care only where other available services  
8 are inappropriate;

9       (5) Providing services and monitoring to adults in  
10 institutions designed to assist adults in returning to community  
11 settings;

12       (6) Preventing, reducing and eliminating the exploitation of  
13 incapacitated adults and facility residents through the joint  
14 efforts of the various agencies of the Department of Health and  
15 Human Resources, the adult protective services system, the state  
16 and regional long-term care ombudsmen, administrators of nursing  
17 homes or other residential facilities and county prosecutors;

18       (7) Preventing, reducing and eliminating abuse and neglect of  
19 residents in nursing homes or facilities; ~~and~~

20       (8) Coordinating investigation activities for complaints of  
21 abuse and neglect of incapacitated adults and facility residents  
22 among the various agencies of the Department of Health and Human  
23 Resources, the adult protective services system, the state and  
24 regional long-term care ombudsmen, administrators of nursing homes  
25 or other residential facilities, county prosecutors, if necessary,  
26 and other state or federal agencies or officials, as appropriate;

1 and

2 (9) Providing an employee a written copy of the complaint and  
3 allowing employee representation in all administrative hearings,  
4 departmental investigations and other departmental proceedings  
5 related to any complaint or allegations made against an employee of  
6 the department.

7 (d) No adult protective services caseworker may be held  
8 personally liable for any professional decision or action thereupon  
9 arrived at in the performance of his or her official duties as set  
10 forth in this section or agency rules promulgated thereupon:  
11 *Provided*, That nothing in this subsection protects any adult  
12 protective services worker from any liability arising from the  
13 operation of a motor vehicle or for any loss caused by gross  
14 negligence, willful and wanton misconduct or intentional  
15 misconduct.

16 (e) The rules proposed by the secretary shall provide for the  
17 means by which the department shall cooperate with federal, state  
18 and other agencies to fulfill the objectives of the system of adult  
19 protective services.

20 **§9-6-9. Mandatory reporting of incidences of abuse, neglect or**  
21 **emergency situation.**

22 (a) If any medical, dental or mental health professional,  
23 Christian Science practitioner, religious healer, social service  
24 worker, law-enforcement officer, humane officer, state or regional  
25 ombudsman or any employee of any nursing home or other residential  
26 facility has reasonable cause to believe that an incapacitated

1 adult or facility resident is or has been neglected, abused or  
2 placed in an emergency situation, or if such person observes an  
3 incapacitated adult or facility resident being subjected to  
4 conditions that are likely to result in abuse, neglect or an  
5 emergency situation, the person shall immediately report the  
6 circumstances pursuant to the provisions of section eleven of this  
7 article: *Provided*, That nothing in this article is intended to  
8 prevent individuals from reporting on their own behalf.

9 (b) In addition to those persons and officials specifically  
10 required to report situations involving suspected abuse or neglect  
11 of an incapacitated adult or facility resident or the existence of  
12 an emergency situation, any other person may make such a report.

13 (c) The secretary shall develop a form for the filing of  
14 written complaints, as provided by section eleven of this article,  
15 and provide these forms to all nursing homes or other residential  
16 facilities, hospitals, ombudsmen and adult protective service  
17 agencies in this state. The forms shall be designed to protect the  
18 identity of the complainant, if desired, and to facilitate the  
19 prompt filing of complaints.

20 (d) Any employee of the department shall be presented with a  
21 copy of the complaint or allegations against him or her and has the  
22 right to respond in writing to the complaint.

23 (e) Any employee of the department has the right to  
24 representation in any administrative process where a complaint is  
25 filed or an allegation made.

26 **§9-6-11. Reporting procedures.**

1           (a) A report of neglect or abuse of an incapacitated adult or  
2 facility resident or of an emergency situation involving such an  
3 adult shall be made immediately by telephone to the department's  
4 local adult protective services agency and shall be followed by a  
5 written report by the complainant or the receiving agency within  
6 forty-eight hours. The department shall, upon receiving any such  
7 report, take such action as may be appropriate and shall maintain  
8 a record thereof. The department shall receive such telephonic  
9 reports on its twenty-four hour, seven-day-a-week, toll-free number  
10 established to receive calls reporting cases of suspected or known  
11 adult abuse or neglect.

12           (b) A copy of any report of abuse, neglect or emergency  
13 situation shall be immediately filed with the following agencies:

14           (1) The Department of Health and Human Resources;

15           (2) The appropriate law-enforcement agency and the prosecuting  
16 attorney, if necessary; or

17           (3) In case of a death, to the appropriate medical examiner or  
18 coroner's office.

19           (c) If the person who is alleged to be abused or neglected is  
20 a resident of a nursing home or other residential facility, a copy  
21 of the report shall also be filed with the state or regional  
22 ombudsman and the administrator of the nursing home or facility.

23           (d) The department shall omit from such report in the first  
24 instance, the name of the person making a report, when requested by  
25 such person.

26           (e) Reports of known or suspected institutional abuse or



1 neglect of an incapacitated adult or facility resident or the  
2 existence of an emergency situation in an institution, nursing home  
3 or other residential facility shall be made, received and  
4 investigated in the same manner as other reports provided for in  
5 this article. In the case of a report regarding an institution,  
6 nursing home or residential facility, the department shall  
7 immediately cause an investigation to be conducted.

8 (f) Upon receipt of a written complaint, the department shall  
9 coordinate an investigation pursuant to section three of this  
10 article and applicable state or federal laws, rules or regulations.

11 (g) Where a complaint is made against an employee of the  
12 department, a written copy of the complaint shall be provided to  
13 the employee and to the employee's representative.

NOTE: The purpose of this bill concerns complaints made against employees of the Department of Health and Human Resources. The bill permits an employee to have a representative. The bill prohibits a supervisor from acting as that representative. The bill requires the employee to be provided with a written copy of the complaint. The bill provides that an employee may respond in writing to an allegation. The bill also defines terms.

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