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

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

Whenever the director has refused to grant or renew a license, or has revoked a license required by law to operate
or conduct a nursing home, or has ordered a person to refrain
from conduct violating the rules of the director, and the
person has appealed the action of the director, the court may,
during pendency of the appeal, issue a restraining order or
injunction upon proof that the operation of the nursing home
or its failure to comply with the order of the director
adversely affects the well being or safety of the residents of
the nursing home. Should a person who is refused a license
or the renewal of a license to operate or conduct a nursing
home or whose license to operate is revoked or who has been
ordered to refrain from conduct or activity which violates the
rules of the director fails to appeal or should the appeal be
decided favorably to the director, then the court shall issue a
permanent injunction upon proof that the person is operating
or conducting a nursing home without a license as required
by law, or has continued to violate the rules of the director.

(c) Any nursing home that deprives a resident of any right
or benefit created or established for the well-being of this
resident by the terms of any contract, by any state statute or
rule, or by any applicable federal statute or regulation, shall
be liable to the resident for injuries suffered as a result of
such deprivation. Upon a finding that a resident has been
deprieved of such a right or benefit, and that the resident has
been injured as a result of such deprivation, and unless there
is a finding that the nursing home exercised all care
reasonably necessary to prevent and limit the deprivation and
injury to the resident, compensatory damages shall be
assessed in an amount sufficient to compensate the resident
for such injury. In addition, where the deprivation of the
right or benefit is found to have been willful or in reckless
disregard of the lawful rights of the resident, punitive
damages may be assessed. A resident may also maintain an action pursuant to this section for any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of any available administrative remedies is not required prior to commencement of suit under this subsection.

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

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

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

(g) Nothing in this section or any other section of the code shall limit the protections afforded nursing homes or their health care providers under article seven-b, chapter fifty-five of this code. Nursing homes and their health care providers shall be treated in the same manner as any other health care facility or health care provider under article seven-b, chapter fifty-five of this code. The terms “health
care facility” and “health care provider” as used in this subsection shall have the same meaning as set forth in subsections (f) and (g), section two, article seven-b, chapter fifty-five of this code.

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