WEST VIRGINIA CODE: §16B-5-15

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

(a) Whoever advertises, announces, establishes, or maintains or is engaged in establishing or maintaining an assisted living residence without a license granted under §16B-5-6 of this code, or who prevents, interferes with, or impedes in any way the lawful enforcement of this article shall be 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 imprisonment in jail for a period of not more than 90 days, or by both such fine and imprisonment, at the discretion of the court. For each subsequent offense, the fine may be increased to not more than $250, with imprisonment in jail for a period of not more than 90 days, or both such fine and imprisonment at the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) The Inspector General 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 Inspector General 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 Inspector General that any person has aided, abetted, or caused or is aiding, abetting, or causing such an act or practice. Upon application by the Inspector General, the circuit court of the county in which the conduct has occurred or is occurring, or the Circuit Court of Kanawha County shall have jurisdiction to grant without bond a permanent or temporary injunction, decree, or restraining order.

(c) Whenever the director, in consultation with the Inspector General, refuses to grant or renew a license or revokes a license required by law to operate or conduct an assisted living residence or orders a person to refrain from conduct violating the rules of the Inspector General, and the person deeming himself or herself aggrieved by the refusal, revocation, or order appeals 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 assisted living residence or its failure to comply with the order of the director adversely affects the well-being or safety of the residents of the assisted living residence. Should a person who is refused a license or the renewal of a license to operate or conduct an assisted living residence or whose license to operate is revoked or who has been ordered to refrain from conduct or activity which violates the rules of the Inspector General, fails to appeal or should such appeal be decided favorably to the director, then the court shall issue a permanent injunction upon proof that the person is operating or conducting an assisted living residence without a license as required by law or has continued to violate the rules of the Inspector General.

(d) Any assisted living residence that deprives a resident of any right or benefit created or established for the well-being of the 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

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resident for injuries suffered as a result of the deprivation. Upon a finding that a resident has been deprived of such a right or benefit and that the resident has been injured as a result of the deprivation and unless there is a finding that the assisted living residence 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 the injury. In addition, where the deprivation of any 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 may not be required prior to commencement of suit hereunder.

(e) The amount of damages recovered by a resident, in an action brought pursuant to this section, are exempt for purposes of determining initial or continuing eligibility for medical assistance pursuant to §9-5-1 *et seq*. 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 pursuant to §9-5-1 *et seq*. of this code.

(f) 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, shall be null and void as contrary to public policy.

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

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