WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

House Bill No. 4102
(Bv Delegates Compton, Hutchins, Caputo, Fleischauer, Manuel, Rowe and Leach)

Passed March 12, 1998
In Effect Ninety Days from Passage
ENROLLED

H. B. 4102

(BY DELEGATES COMPTON, HUTCHINS, CAPUTO, FLEISCHAUER, MANUEL, ROWE AND LEACH)

[Passed March 12, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact sections three and seven, article five-1, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to long-term care ombudsmen; regional long-term care ombudsmen; qualifications; duties; training; certification; definitions; defining a pecuniary interest in the provision of long-term care; modifying the prohibition against certain prior employment in the field of long-term care of regional long-term care ombudsmen; and expanding the qualifications for regional long-term care ombudsmen.

Be it enacted by the Legislature of West Virginia:

That sections three and seven, article five-1, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5L. LONG-TERM CARE OMBUDSMAN PROGRAM.

§16-5L-3. Definitions.

1. As used in this article, unless a different meaning appears from the context:

2. (a) "Government agency" means any department, division, office, bureau, board, commission, council, authority, or any other agency or instrumentality created
(b) "Long-term care facility" means any nursing home, personal care home, or residential board and care home as defined in section two, article five-c of this chapter; nursing homes operated by the federal government or the state government; extended care facilities operated in connection with hospitals; and any similar institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management for consideration, for the express and implied purpose of providing accommodations and care or personal assistance to one or more persons who are ill or otherwise incapacitated or are dependent upon the services of others by reasons of physical or mental impairment and who are not related within the degree of consanguinity of second cousin to the owner or manager of the institution, residence or place;

(c) "Long-term care ombudsman volunteer" or "ombudsman volunteer" means any uncompensated individual who performs the duties enumerated under section eight of this article: Provided, That the individual has received appropriate certification as set forth in section nine of this article;

(d) "Pecuniary interest" means holding a financial interest in or deriving financial benefit from the provision of long-term care, but does not include employment in the long-term care industry or in the home health care industry;

(e) "Personal assistance" means personal services, including, but not limited to, the following: Help in walking, bathing, dressing, feeding or getting in or out of bed, or supervision required because of the age or mental impairment of the resident;
(f) "Regional long-term care ombudsman" means any paid staff of a designated regional long-term care ombudsman program who has obtained appropriate certification from the state commission on aging and meets the qualifications set forth in section seven of this article;

(g) "Resident" means an individual living in a nursing home, personal care home, residential board and care home, or any long-term care facility as defined in subsection (b) of this section, or who has lived in such a setting, or who has made application to live in such a setting: Provided, That nothing in this article may be construed to give a long-term care ombudsman the right to obtain the waiting list of a long-term care facility;

(h) "State long-term care ombudsman" means an individual who meets the qualifications of section five of this article and who is employed by the state commission on aging to implement the state long-term care ombudsman program as set forth in this article; and

(i) "Guardian" means a person lawfully invested with the power and charged with the duty of taking care of another person and managing the property and rights of another person who for some peculiarity of status or defect of age, understanding or self control is considered incapable of administering his or her own affairs, to include committees or other references under the code.

§16-SL-7. Regional long-term care ombudsmen; qualifications; duties; training; certification.

(a) Each regional long-term care ombudsman program shall employ one or more regional long-term care ombudsmen to effect the purposes of this article. The regional long-term care ombudsman shall have either:

(1) At least a four-year degree in gerontology, social work, health, or a related field and demonstrated experience in one of the following areas: (A) The field of aging; (B) health care or social service programs; (C) community programs; or (D) long-term care issues; or (2) at least a four-year degree in any field and at least three years of experience in gerontology, social work, health or
a related field. Persons employed in a designated regional long-term care ombudsman program on the date of enactment of this article may be given a waiver from these requirements provided that within one year from the date of enactment of this article they enter into a program leading to a degree in gerontology, social work, health or a related field or complete fifty hours of continuing education units in gerontology, social work, health or a related field every two calendar year periods. The regional long-term care ombudsman shall participate in ongoing training programs related to his or her duties or responsibilities. The regional long-term care ombudsman may not have been employed within the past two years prior to the date of his or her employment under this section by any association of long-term care facilities. If a regional long-term care ombudsman has been employed within the past two years prior to the date of his or her employment under this section by a long-term care facility, or by any organization or corporation that directly or indirectly regulates, owns or operates a long-term care facility, that ombudsman may not act with the authority of a regional long-term care ombudsman in the facility of prior employment or in any other facility regulated, owned or operated by the same ownership as the facility of prior employment.

(b) Neither the regional long-term care ombudsman nor any member of his or her immediate family may have, or have had within the two years preceding his or her employment under this section, any pecuniary interest in the provision of long-term care. For the purposes of this section, the term "immediate family" shall mean the spouse, children, natural mother, natural father, natural brothers or natural sisters of the regional long-term care ombudsman.

(c) The duties of the regional long-term care ombudsman shall include, but are not limited to, the following:

(1) Regularly monitoring long-term care facilities and investigating complaints filed on behalf of a resident, or filed on the regional long-term care ombudsman's own
initiative, relating to the health, safety, welfare and rights
of such residents, in accordance with complaint
investigation procedures developed by the state long-term
ombudsman care program: Provided, That nothing in this
section shall be construed as to grant a regional long-term
care ombudsman the right of entry to a long-term care
facility's drug rooms or to treatment rooms occupied by a
resident unless prior consent has been obtained from the
resident;

(2) Monitoring the development and implementation
of federal, state and local laws, regulations and policies
with respect to long-term care facilities;

(3) Training certified volunteers in accordance with
the training and certification program developed by the
state long-term care ombudsman program;

(4) Encouraging, cooperating with, and assisting the
development and operation of referral services which can
provide current, valid and reliable information on
long-term care facilities and alternatives to
institutionalization to persons in need of these services and
the general public;

(5) Submitting reports as required by the state
long-term care ombudsman program; and

(6) Other duties as mandated by the Older Americans
Act of 1965, as amended.

(d) The state long-term care ombudsman shall develop
and implement procedures for training and certification of
regional long-term care ombudsmen. Regional long-term
care ombudsmen who satisfactorily complete the training
requirements shall be certified by the state commission on
aging and shall be given identification cards which shall
be presented to employees of a long-term care facility
upon request. No regional long-term care ombudsman
may investigate any complaint filed with the West Virginia
long-term care ombudsman program unless such person
has been certified by the state commission on aging.
Consistent with the provisions of this article and any rules
and regulations promulgated pursuant to section
twenty-one, certified regional long-term ombudsmen shall be representatives of the state long-term care ombudsman program.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

Speaker of the House of Delegates

The within approval this the 24th
day of December, 1998.

[Signature]
Governor