

1 SB528
2 117568-2
3 By Senator Mitchell
4 RFD: Governmental Affairs
5 First Read: 11-MAR-10

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8 SYNOPSIS: Existing law provides for the licensing and
9 regulation of assisted living administrators.

10 This bill would allow each consumer member
11 of the board to vote in all matters before the
12 board.

13 This bill would require that each person who
14 applies for licensure as an assisted living
15 administrator shall pay an annual administrative
16 fee as determined by the board.

17 This bill would require each person holding
18 an expired license to follow all procedures for new
19 licensure and pay a reapplication fee established
20 by the board.

21 This bill would allow the board to
22 discipline a person practicing or offering to
23 practice assisted living administration if the
24 person has entered a plea of nolo contendere, nolo
25 contender, or no contender, no contest, or guilty
26 in any case involving a lewd or lascivious act
27 against a child or an adult, inappropriate sexual

1 conduct with a child or an adult, or any other
2 crime in which the punishment could include a
3 sentence of imprisonment exceeding one year.

4
5 A BILL
6 TO BE ENTITLED
7 AN ACT

8
9 To amend Sections 34-2A-2, 34-2A-3, 34-2A-11,
10 34-2A-12, and 34-2A-13, Code of Alabama 1975, relating to
11 assisted living administrators; to allow each consumer member
12 of the board to vote in all matters before the board; to
13 require each person who applies for licensure as an assisted
14 living administrator to pay an annual administrative fee as
15 determined by the board; to require each applicant for
16 licensure as an assisted living administrator to pay an annual
17 administrative fee; to require each person holding an expired
18 license, in addition to other requirements, to pay a
19 reapplication fee established by the board; and to allow the
20 board to discipline a person practicing or offering to
21 practice assisted living administration if the person has
22 entered a plea of nolo contendere, nolo contender, no
23 contender, no contest, or guilty in any case involving a lewd
24 or lascivious act against a child or an adult, inappropriate
25 sexual conduct with a child or an adult, or any other crime in
26 which the punishment could have included a sentence of
27 imprisonment exceeding one year.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 34-2A-2, 34-2A-3, 34-2A-11,
3 34-2A-12, and 34-2A-13, Code of Alabama 1975, are amended to
4 read as follows:

5 "§34-2A-2.

6 "(a) All administrators of assisted living
7 facilities or specialty care assisted living facilities as
8 recorded in the records of the State Department of Public
9 Health shall be issued a provisional license, as defined
10 herein, upon the effective date of this act. On and after
11 September 1, 2003, in the State of Alabama no assisted living
12 facility in the state may operate unless it is under the
13 supervision of an administrator who holds a currently valid
14 assisted living administrator's license, or new initial
15 provisional license, issued by the board. No person shall
16 practice or offer to practice assisted living administration
17 in this state or use any title, sign, card, or device to
18 indicate that he or she is an assisted living administrator
19 unless the person shall have been duly licensed as an assisted
20 living administrator or as a provisional assisted living
21 administrator. In the event an assisted living administrator
22 dies, unexpectedly resigns, becomes incapacitated, or has his
23 or her license revoked, the person or persons then responsible
24 for the management of the assisted living facility shall
25 immediately notify the board and the State Board of Health.
26 The board may issue an emergency permit to a person performing
27 the functions of administrator in the assisted living facility

1 for a reasonable period of time from the date of death,
2 unexpected resignation, incapacitation, or revocation of the
3 license of the assisted living administrator, but not to
4 exceed 120 days. Although the State Board of Health, in its
5 discretion, may permit the assisted living facility to
6 continue to operate under the supervision of a person issued
7 an emergency permit, nothing in this section shall be
8 construed as prohibiting the State Board of Health from
9 denying or revoking the license of the assisted living
10 facility where the State Board of Health has determined that
11 the person with the emergency permit does not demonstrate an
12 ability or willingness to comply with State Board of Health
13 rules governing assisted living facilities or where the State
14 Board of Health has determined that the facility is not
15 otherwise in compliance with those rules.

16 "(b) Nothing in this section shall be construed to
17 prohibit a licensed assisted living administrator from
18 supervising more than one assisted living facility if specific
19 permission is granted by the State Department of Public
20 Health.

21 "§34-2A-3.

22 "(a) There is created a Board of Examiners of
23 Assisted Living Administrators composed of nine members, seven
24 members as set out in this subsection, and two additional
25 consumer members as set out in subsection (b). The membership
26 of the board shall be inclusive and reflect the racial,
27 gender, geographic, urban/rural, and economic diversity of the

1 state. The seven original members shall be composed as
2 follows: Five members shall be assisted living administrators
3 duly licensed and registered under this chapter; one member
4 shall be a physician licensed under the laws of the state who
5 is actively concerned in a practice with the care of
6 chronically ill and infirm, aged patients; and one shall be a
7 licensed nursing home administrator who in the same or
8 contiguous facility manages assisted living beds. Appointments
9 to the board for those positions to be held by assisted living
10 administrators shall be made by the Governor from a list of
11 three nominees for each position to be submitted to the
12 Governor by the Assisted Living Association of Alabama, Inc.
13 The appointment of the nursing home administrator shall be
14 made from a list of three nominees submitted to the Governor
15 by the Alabama Nursing Home Association, Inc. The appointment
16 to the board of the member for the position to be held by a
17 physician shall be made from a list of three nominees
18 submitted to the Governor by the Medical Association of the
19 State of Alabama.

20 "(b) Within 30 days of March 1, 2002, the Governor
21 shall appoint two consumer members of the board. The consumer
22 members shall vote in all matters ~~except licensure or~~
23 ~~discipline of licensees or applicants~~. At least one consumer
24 member shall be 65 years of age or older and no consumer
25 member, or a spouse or immediate family member of a consumer
26 member, shall be a licensee of the board or be employed in the
27 assisted living profession.

1 "(c) When the terms of all members of the board
2 expire in April 2005, the Governor shall appoint five members
3 to two-year terms and four members to three-year terms as
4 follows: Three assisted living administrators, the licensed
5 nursing home administrator, and one consumer member shall be
6 appointed to two-year terms; two assisted living
7 administrators, the licensed physician, and one consumer
8 member shall be appointed to three-year terms. Thereafter, all
9 members shall serve three-year terms of office.

10 "(d) All members of the board shall be citizens of
11 the United States and shall be residents of the state.

12 "(e) Except as otherwise provided in this section,
13 each member shall serve three-year staggered terms and no
14 board member shall serve more than two consecutive full
15 three-year terms. All members shall continue to serve until
16 the Governor appoints a successor.

17 "(f) The Governor may remove any board member for
18 misconduct, incapacity, incompetence, or neglect of duty after
19 the board member so charged has been served with a written
20 statement of charges and has been given an opportunity to be
21 heard. Absence from any three consecutive meetings of the
22 board within a calendar year, without cause acceptable to the
23 Governor and the board, shall be deemed cause for removal.

24 "(g) Any vacancy created by the death, resignation,
25 or removal of any board member shall be filled by the Governor
26 for the unexpired term in the same manner as required by this
27 chapter to make appointments.

1 "(h) Each member of the board shall receive a per
2 diem fee of not less than fifty dollars (\$50) nor more than
3 one hundred dollars (\$100) to be determined by the board for
4 the time spent in the performance of official duties. Each
5 member shall be reimbursed for all necessary and proper travel
6 and incidental expenses incurred in implementing this chapter
7 as is provided to state employees by the laws of the state and
8 regulations of the State Personnel Director. In setting the
9 per diem fee, the board shall give due consideration to funds
10 which are available for that purpose.

11 "(i) The board shall hold four or more meetings a
12 year. A majority of the members of the board shall constitute
13 a quorum at any meeting except as provided in Section
14 34-2A-13. A majority vote of the members present shall be
15 sufficient to transact the business of the board except as
16 provided in Section 34-2A-13. Meetings may be called by the
17 chair or by a majority of the members of the board. Members
18 shall be given seven days' written notice of all meetings.

19 "(j) The board shall annually elect from its members
20 a chair and a vice-chair, at the first meeting of the board
21 held after October 1 of each year, and each shall serve until
22 the first meeting held after October 1 of the following year.
23 In the event of the death, resignation, or removal of the
24 chair from the board, the vice-chair shall succeed as chair
25 for the remainder of the unexpired term. In the event of the
26 death, resignation, removal, or succession to the office of
27 chair or a vice-chair, a successor shall be elected by the

1 board to fill the remainder of the unexpired term as
2 vice-chair. The chair, or in the absence of the chair, the
3 vice-chair, shall preside at all meetings of the board. The
4 chair of the board may appoint an executive director to the
5 board, with the consent of the members of the board, who shall
6 serve at the pleasure of the board. The board shall fix the
7 salary of the executive director. The executive director shall
8 be the executive officer to the board but may not be a member
9 of the board. The executive director shall have those powers
10 and shall perform those duties as are prescribed by law and
11 the rules and regulations of the board. A clerk and sufficient
12 deputy clerks to adequately assist the board and executive
13 director in the keeping of the records and in the performance
14 of their duties may be appointed by the board subject to the
15 Merit System.

16 "(k) The board is subject to the Alabama Sunset Law
17 of 1981, and is classified as an enumerated agency pursuant to
18 Section 41-20-3. The board shall automatically terminate on
19 October 1, 2004, and every four years thereafter, unless a
20 bill is passed that the board be continued, modified, or
21 reestablished.

22 "§34-2A-11.

23 "(a) The board may, subject to this chapter and the
24 rules and regulations of the board prescribing the
25 qualifications for an assisted living administrator license,
26 issue a license to an assisted living administrator who has
27 been issued a license by the proper authorities of any other

1 state or issued a certificate of qualification by any national
2 organization, upon complying with the provisions of licensure,
3 payment of a fee established by the board pursuant to its
4 rule-making authority, and upon submission of evidence
5 satisfactory to the board of all of the following:

6 "(1) That the other state or national organization
7 maintained a system and standards of qualification and
8 examinations for an assisted living administrator license or
9 certificate which were substantially equivalent to those
10 required in this state at the time the other license or
11 certificate was issued by the other state or national
12 organization.

13 "(2) That the other state gives similar recognition
14 and endorsement to assisted living administrator licenses of
15 this state. The board may charge a fee for completion of a
16 reciprocity questionnaire, pursuant to its rule-making
17 authority.

18 "(b) Any person who has a license in good standing
19 in Alabama, and continuously maintains such license as a
20 licensed nursing home administrator, shall be exempt from the
21 licensure requirement herein if the person at the time of
22 application has responsibility for administration of an
23 assisted living facility subject to the following conditions:

24 "(1) If the person wishes to also be issued a
25 license as an assisted living administrator, the person shall
26 pay an annual administrative fee as determined by the board

1 and document initially and annually thereafter the good
2 standing of the nursing home administrator license.

3 "(2) If any person requests an exemption from the
4 licensure requirements provided herein during the initial
5 18-month licensing period described in subsection (a) of
6 Section 34-2A-2, the initial license issued shall be a
7 provisional license until the end of the 18-month period at
8 which time, and thereafter, an active license shall be issued.

9 "(3) Any assisted living administrator license
10 issued according to subdivision (1) or subdivision (2) of this
11 subsection shall become void if the requisite nursing home
12 administrator license becomes void. Further, the license shall
13 become inactive, as described in subsection (e) of Section
14 34-2A-12, if the licensee no longer has responsibility for an
15 assisted living facility. After 12 months in inactive status,
16 the license shall expire and become void.

17 "(c) Any person who is an administrator/chief
18 executive officer of an acute care hospital shall be exempt
19 from the licensure requirement herein if the person at the
20 time of application has responsibility for administration of
21 an assisted living facility subject to the following
22 conditions:

23 "(1) If the person wishes to also be issued a
24 license in Alabama as an assisted living administrator, the
25 person shall pay an administrative fee as determined by the
26 board and document initially and annually thereafter their

1 continued employment as an administrator/chief executive
2 officer of an acute care hospital.

3 "(2) If any person requests an exemption from the
4 licensure requirements provided herein during the initial
5 18-month licensing period described in subsection (a) of
6 Section 34-2A-2, the initial license issued shall be a
7 provisional license until the end of the 18-month period at
8 which time, and thereafter, an active license shall be issued.

9 "(3) Any assisted living administrator license
10 issued according to subdivision (1) or subdivision (2) of this
11 subsection shall become void if the person no longer is the
12 administrator/chief executive officer of a hospital. Further,
13 the license shall become inactive, as described in subsection
14 (e) of Section 34-2A-12 if the licensee no longer has
15 responsibility for an assisted living facility. After 12
16 months in inactive status, the license shall expire and become
17 void.

18 "(4) For the purpose of this subsection, the term
19 "acute care hospital" shall be defined as a health institution
20 planned, organized, and maintained for offering to the public
21 generally facilities and beds for use in the diagnosis and/or
22 treatment of illness, disease, injury, deformity, abnormality,
23 or pregnancy, when the institution offers such care of service
24 for not less than 24 consecutive hours in any week to two or
25 more individuals not related by blood or marriage to the owner
26 and/or chief executive officer/administrator and, in addition,
27 the hospital may provide for the education of patients,

1 medical and health personnel, as well as conduct research
2 programs to promote progress and efficiency in clinical and
3 administrative medicine.

4 "§34-2A-12.

5 "(a) Every individual who holds a valid current
6 license as an assisted living administrator issued by the
7 board under this chapter shall immediately upon issuance have
8 the right and privilege of acting and serving as an assisted
9 living administrator and of using the abbreviation "A.L.A."
10 after his or her name. Thereafter, the individual shall
11 annually be required to make application to the board for a
12 renewal of license and to report any facts requested by the
13 board on forms provided for that purpose.

14 "(b) Upon making application for a renewal of a
15 license, the individual shall pay an annual license fee
16 established as determined by the board pursuant to the
17 rule-making authority and, at the same time, shall submit
18 evidence satisfactory to the board that during the year
19 immediately preceding application for renewal he or she has
20 complied with the requirements of the board concerning the
21 continuation of education of assisted living administrators.

22 "(c) Upon receipt of the application for renewal of
23 a license, the renewal fee, and the evidence with respect to
24 continuing education, the board shall issue a license renewal
25 to the assisted living administrator.

26 "(d) (1) Failure to secure an annual renewal of a
27 license based on a failure to meet the continuing education

1 requirements, shall result in the expiration of the license.
2 An expired license may not be reactivated. All persons holding
3 an expired license shall be required to submit a new
4 application and follow all procedures for new licensure of a
5 new applicant and pay a reapplication fee established by the
6 board.

7 "(2) A licensee who complies with the continuing
8 education requirements, but who does not renew within 90 days
9 following its due date, shall be deemed delinquent and may
10 renew within the 90-day period by paying a late renewal fee
11 established by the board pursuant to its rule-making
12 authority. A license that is not renewed within the 90-day
13 period shall be deemed expired and is subject to reapplication
14 as provided in subdivision (1).

15 "(e) A licensee who holds a current license and who
16 is not practicing as an assisted living administrator may
17 place that license into an inactive status upon written
18 application to the board. Any licensee whose license has been
19 placed on inactive status may not engage in the practice of
20 assisted living administration.

21 "(f) A licensee whose license is on inactive status
22 who wishes to reactivate that license may do so by making
23 application to the board. The applicant shall attach proof of
24 having completed twice the annual hours' requirement of
25 approved continuing education credits within one year of
26 making application for license reactivation and shall pay a
27 reactivation fee established by the board pursuant to its

1 rule-making authority. A licensee may not have his or her
2 license in inactive status for more than five years. After
3 five years in inactive status, the license automatically
4 expires.

5 "(g) The board shall maintain a file of all
6 applications for licensure that includes the following
7 information on each applicant: Residence, name, age, the name
8 and address of his or her employer or business connection, the
9 date of application, educational experience qualifications,
10 action taken by the board, serial numbers of licenses issued
11 to the applicant, and the date on which the board acted on or
12 reviewed the application.

13 "(h) The board shall maintain a list of current
14 licensees of the board and shall furnish the list on demand to
15 any person who pays a fee established by the board pursuant to
16 its rule-making authority. The State Department of Public
17 Health and other state agencies with a direct need shall be
18 provided copies at no cost.

19 "(i) The board shall adopt a program for continuing
20 education for its licensees by September 1, 2002. After that
21 date, successful completion of the continuing education
22 program by board licensees shall be required in order to
23 obtain a renewal license.

24 "(j) Continuing education shall not result in a
25 passing or failing grade.

26 "§34-2A-13.

1 "(a) The board may discipline its licensees by the
2 adoption and collection of administrative fines, not to exceed
3 one thousand dollars (\$1,000) per violation, and may institute
4 any legal proceedings necessary to effect compliance with this
5 chapter.

6 "(b) The license of any person practicing or
7 offering to practice assisted living administration may be
8 revoked or suspended by the board, or the person may be
9 reprimanded, censured, or otherwise disciplined in accordance
10 with the provisions of this section upon decision and after
11 due hearing in any of, but not limited to, the following
12 cases:

13 "(1) Upon proof that the person has willfully or
14 repeatedly violated any of the provisions of this chapter or
15 the rules enacted in accordance with this chapter.

16 "(2) Conduct or practices deemed to be detrimental
17 to the lives, health, safety, or welfare of the residents or
18 patients of any assisted living facility or health care
19 facility in this state or any other jurisdiction.

20 "(3) Conviction in this state or any other
21 jurisdiction of a felony or any crime involving the physical,
22 sexual, mental, or verbal abuse of an individual.

23 "(4) Conviction in this state or any other
24 jurisdiction of any crime involving fraud.

25 "(5) Pleas of nolo contendere, nolo contender, no
26 contender, no contest, or guilty in any case involving a lewd
27 or lascivious act against a child or an adult, inappropriate

1 sexual conduct with a child or an adult, or any other crime in
2 which the punishment could include a sentence of imprisonment
3 exceeding one year.

4 "(c) The board shall have the jurisdiction to hear
5 all charges brought under this section against any person
6 having been issued a license as an assisted living
7 administrator or having been issued a license as a provisional
8 assisted living administrator and, upon a hearing, shall
9 determine the charges upon their merits. If the board
10 determines that disciplinary measures should be taken, the
11 board may revoke his or her license, suspend him or her from
12 practice, or reprimand, censure, or otherwise discipline the
13 person.

14 "(d) All proceedings under this section shall be
15 conducted by the board, according to its administrative rules,
16 and the Alabama Administrative Procedure Act.

17 "(e) Any party aggrieved by a final decision or
18 order of the board suspending, revoking, or refusing to issue
19 a license is entitled to a review of the decision or order by
20 taking an appeal to the circuit court of the county in which
21 the assisted living administrator or applicant resides. In
22 such cases, the appeal shall be taken by filing notice thereof
23 with the circuit court within 30 days of the date of notice by
24 the board of its decision. Appeals from any order or judgment
25 rendered thereon by the circuit court to the Supreme Court of
26 Alabama shall be available as in other cases.

1 "(f) The board shall report to the Department of
2 Public Health all final disciplinary actions taken under this
3 section."

4 Section 2. This act shall become effective on the
5 first day of the third month following its passage and
6 approval by the Governor, or its otherwise becoming law.