



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB5213

by Rep. David E. Miller

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Nursing Home Care Act and the State Mandates Act. Provides that no person may establish or operate a nursing home in Illinois unless and until he or she provides to the Department of Public Health proof of liability insurance coverage in an amount not less than \$1,000,000 per occurrence. Requires the Department to deny, suspend, revoke, or refuse to renew a license for failure to maintain liability insurance coverage. Provides that failure to maintain such liability insurance coverage during the term of a facility's license is a Type "A" violation under the Act. Provides that the Director of Public Health may not grant a waiver of a facility's compliance with the requirement to maintain liability insurance coverage. Provides that information concerning a facility's liability insurance coverage is subject to disclosure to the public. Makes other changes with respect to liability insurance coverage. Provides that a licensee shall pay 3 times the actual damages, or \$500, whichever is greater (instead of only the actual damages) and costs and attorney's fees to a resident whose rights are violated. Provides that any mandate created by these provisions is exempt from reimbursement by the State.

LRB095 17923 DRJ 44005 b

FISCAL NOTE ACT  
MAY APPLY

STATE MANDATES  
ACT MAY REQUIRE  
REIMBURSEMENT

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Nursing Home Care Act is amended by changing  
5 Sections 2-205, 3-103, 3-109, 3-117, 3-119, 3-303.1, 3-304.1,  
6 3-311, and 3-602 and by adding Sections 1-114.7 and 3-202.6 as  
7 follows:

8 (210 ILCS 45/1-114.7 new)

9 Sec. 1-114.7. Liability insurance. "Liability insurance"  
10 means insurance on risks based upon neglect of a resident for  
11 which a licensee is or may be responsible.

12 (210 ILCS 45/2-205) (from Ch. 111 1/2, par. 4152-205)

13 Sec. 2-205. The following information is subject to  
14 disclosure to the public from the Department or the Department  
15 of Healthcare and Family Services:

16 (1) Information submitted under Sections 3-103  
17 (including a facility's proof of liability insurance  
18 coverage) and 3-207 except information concerning the  
19 remuneration of personnel licensed, registered, or  
20 certified by the Department of Professional Regulation and  
21 monthly charges for an individual private resident;

22 (2) Records of license and certification inspections,

1 surveys, and evaluations of facilities, other reports of  
2 inspections, surveys, and evaluations of resident care,  
3 and reports concerning a facility prepared pursuant to  
4 Titles XVIII and XIX of the Social Security Act, subject to  
5 the provisions of the Social Security Act;

6 (3) Cost and reimbursement reports submitted by a  
7 facility under Section 3-208, reports of audits of  
8 facilities, and other public records concerning costs  
9 incurred by, revenues received by, and reimbursement of  
10 facilities; and

11 (4) Complaints filed against a facility and complaint  
12 investigation reports, except that a complaint or  
13 complaint investigation report shall not be disclosed to a  
14 person other than the complainant or complainant's  
15 representative before it is disclosed to a facility under  
16 Section 3-702, and, further, except that a complainant or  
17 resident's name shall not be disclosed except under Section  
18 3-702.

19 The Department shall disclose information under this  
20 Section in accordance with provisions for inspection and  
21 copying of public records required by the Freedom of  
22 Information Act.

23 However, the disclosure of information described in  
24 subsection (1) shall not be restricted by any provision of the  
25 Freedom of Information Act.

26 (Source: P.A. 95-331, eff. 8-21-07.)

1 (210 ILCS 45/3-103) (from Ch. 111 1/2, par. 4153-103)  
2 Sec. 3-103. The procedure for obtaining a valid license  
3 shall be as follows:

4 (1) Application to operate a facility shall be made to  
5 the Department on forms furnished by the Department.

6 (2) All license applications shall be accompanied with  
7 an application fee. The fee for an annual license shall be  
8 \$995. Facilities that pay a fee or assessment pursuant to  
9 Article V-C of the Illinois Public Aid Code shall be exempt  
10 from the license fee imposed under this item (2). The fee  
11 for a 2-year license shall be double the fee for the annual  
12 license set forth in the preceding sentence. The fees  
13 collected shall be deposited with the State Treasurer into  
14 the Long Term Care Monitor/Receiver Fund, which has been  
15 created as a special fund in the State treasury. This  
16 special fund is to be used by the Department for expenses  
17 related to the appointment of monitors and receivers as  
18 contained in Sections 3-501 through 3-517 of this Act and  
19 for implementation of the Abuse Prevention Review Team Act.  
20 At the end of each fiscal year, any funds in excess of  
21 \$1,000,000 held in the Long Term Care Monitor/Receiver Fund  
22 shall be deposited in the State's General Revenue Fund. The  
23 application shall be under oath and the submission of false  
24 or misleading information shall be a Class A misdemeanor.  
25 The application shall contain the following information:

1           (a) The name and address of the applicant if an  
2 individual, and if a firm, partnership, or  
3 association, of every member thereof, and in the case  
4 of a corporation, the name and address thereof and of  
5 its officers and its registered agent, and in the case  
6 of a unit of local government, the name and address of  
7 its chief executive officer;

8           (b) The name and location of the facility for which  
9 a license is sought;

10           (c) The name of the person or persons under whose  
11 management or supervision the facility will be  
12 conducted;

13           (d) The number and type of residents for which  
14 maintenance, personal care, or nursing is to be  
15 provided; and

16           (e) Such information relating to the number,  
17 experience, and training of the employees of the  
18 facility, any management agreements for the operation  
19 of the facility, and of the moral character of the  
20 applicant and employees as the Department may deem  
21 necessary.

22           (3) Each initial application shall be accompanied by a  
23 financial statement setting forth the financial condition  
24 of the applicant, including proof of liability insurance  
25 coverage as required by this Act, and by a statement from  
26 the unit of local government having zoning jurisdiction

1 over the facility's location stating that the location of  
2 the facility is not in violation of a zoning ordinance. An  
3 initial application for a new facility shall be accompanied  
4 by a permit as required by the "Illinois Health Facilities  
5 Planning Act". After the application is approved, the  
6 applicant shall advise the Department every 6 months of any  
7 changes in the information originally provided in the  
8 application.

9 (4) Other information necessary to determine the  
10 identity and qualifications of an applicant to operate a  
11 facility in accordance with this Act shall be included in  
12 the application as required by the Department in  
13 regulations.

14 (Source: P.A. 93-32, eff. 7-1-03; 93-841, eff. 7-30-04; 94-931,  
15 eff. 6-26-06.)

16 (210 ILCS 45/3-109) (from Ch. 111 1/2, par. 4153-109)

17 Sec. 3-109. Upon receipt and review of an application for a  
18 license made under this Article and inspection of the applicant  
19 facility under this Article, the Director shall issue a license  
20 if he finds:

21 (1) that the individual applicant, or the corporation,  
22 partnership or other entity if the applicant is not an  
23 individual, is a person responsible and suitable to operate  
24 or to direct or participate in the operation of a facility  
25 by virtue of financial capacity, appropriate business or

1 professional experience, a record of compliance with  
2 lawful orders of the Department and lack of revocation of a  
3 license during the previous 5 years;

4 (2) that the facility is under the supervision of an  
5 administrator who is licensed, if required, under the  
6 Nursing Home Administrators Licensing and Disciplinary  
7 Act, as now or hereafter amended; ~~and~~

8 (3) that the facility is covered by liability insurance  
9 as required by this Act; and

10 (4) ~~(3)~~ that the facility is in substantial compliance  
11 with this Act, and such other requirements for a license as  
12 the Department by rule may establish under this Act.

13 (Source: P.A. 95-331, eff. 8-21-07.)

14 (210 ILCS 45/3-117) (from Ch. 111 1/2, par. 4153-117)

15 Sec. 3-117. Grounds for denial of license.

16 (a) An application for a license may be denied for any of  
17 the following reasons:

18 (1) Failure to meet any of the minimum standards set  
19 forth by this Act or by rules and regulations promulgated  
20 by the Department under this Act.

21 (2) Conviction of the applicant, or if the applicant is  
22 a firm, partnership or association, of any of its members,  
23 or if a corporation, the conviction of the corporation or  
24 any of its officers or stockholders, or of the person  
25 designated to manage or supervise the facility, of a

1 felony, or of 2 or more misdemeanors involving moral  
2 turpitude, during the previous 5 years as shown by a  
3 certified copy of the record of the court of conviction.

4 (3) Personnel insufficient in number or unqualified by  
5 training or experience to properly care for the proposed  
6 number and type of residents.

7 (4) Insufficient financial or other resources to  
8 operate and conduct the facility in accordance with  
9 standards promulgated by the Department under this Act.

10 (5) Revocation of a facility license during the  
11 previous 5 years, if such prior license was issued to the  
12 individual applicant, a controlling owner or controlling  
13 combination of owners of the applicant; or any affiliate of  
14 the individual applicant or controlling owner of the  
15 applicant and such individual applicant, controlling owner  
16 of the applicant or affiliate of the applicant was a  
17 controlling owner of the prior license; provided, however,  
18 that the denial of an application for a license pursuant to  
19 this subsection must be supported by evidence that such  
20 prior revocation renders the applicant unqualified or  
21 incapable of meeting or maintaining a facility in  
22 accordance with the standards and rules promulgated by the  
23 Department under this Act.

24 (6) That the facility is not under the direct  
25 supervision of a full-time administrator, as defined by  
26 regulation, who is licensed, if required, under the Nursing

1 Home Administrators Licensing and Disciplinary Act.

2 (b) An application for a license shall be denied for  
3 failure to maintain liability insurance as required by this  
4 Act.

5 (Source: P.A. 95-331, eff. 8-21-07.)

6 (210 ILCS 45/3-119) (from Ch. 111 1/2, par. 4153-119)

7 Sec. 3-119. Suspension or revocation of license; refusal to  
8 renew license.

9 (a) The Department, after notice to the applicant or  
10 licensee, may suspend, revoke or refuse to renew a license in  
11 any case in which the Department finds any of the following:

12 (1) There has been a substantial failure to comply with  
13 this Act or the rules and regulations promulgated by the  
14 Department under this Act.

15 (2) Conviction of the licensee, or of the person  
16 designated to manage or supervise the facility, of a  
17 felony, or of 2 or more misdemeanors involving moral  
18 turpitude, during the previous 5 years as shown by a  
19 certified copy of the record of the court of conviction.

20 (3) Personnel is insufficient in number or unqualified  
21 by training or experience to properly care for the number  
22 and type of residents served by the facility.

23 (4) Financial or other resources are insufficient to  
24 conduct and operate the facility in accordance with  
25 standards promulgated by the Department under this Act.

1           (5) The facility is not under the direct supervision of  
2           a full-time administrator, as defined by regulation, who is  
3           licensed, if required, under the Nursing Home  
4           Administrators Licensing and Disciplinary Act.

5           (a-5) The Department, after notice to the applicant or  
6           licensee, shall suspend, revoke, or refuse to renew a license  
7           in any case in which the Department finds that a facility has  
8           failed to maintain liability insurance coverage as required by  
9           this Act at any time during the term of its license.

10           (b) Notice under this Section shall include a clear and  
11           concise statement of the violations on which the nonrenewal or  
12           revocation is based, the statute or rule violated and notice of  
13           the opportunity for a hearing under Section 3-703.

14           (c) If a facility desires to contest the nonrenewal or  
15           revocation of a license, the facility shall, within 10 days  
16           after receipt of notice under subsection (b) of this Section,  
17           notify the Department in writing of its request for a hearing  
18           under Section 3-703. Upon receipt of the request the Department  
19           shall send notice to the facility and hold a hearing as  
20           provided under Section 3-703.

21           (d) The effective date of nonrenewal or revocation of a  
22           license by the Department shall be any of the following:

23           (1) Until otherwise ordered by the circuit court,  
24           revocation is effective on the date set by the Department  
25           in the notice of revocation, or upon final action after  
26           hearing under Section 3-703, whichever is later.

1           (2) Until otherwise ordered by the circuit court,  
2 nonrenewal is effective on the date of expiration of any  
3 existing license, or upon final action after hearing under  
4 Section 3-703, whichever is later; however, a license shall  
5 not be deemed to have expired if the Department fails to  
6 timely respond to a timely request for renewal under this  
7 Act or for a hearing to contest nonrenewal under paragraph  
8 (c).

9           (3) The Department may extend the effective date of  
10 license revocation or expiration in any case in order to  
11 permit orderly removal and relocation of residents.

12           The Department may refuse to issue or may suspend the  
13 license of any person who fails to file a return, or to pay the  
14 tax, penalty or interest shown in a filed return, or to pay any  
15 final assessment of tax, penalty or interest, as required by  
16 any tax Act administered by the Illinois Department of Revenue,  
17 until such time as the requirements of any such tax Act are  
18 satisfied.

19 (Source: P.A. 95-331, eff. 8-21-07.)

20 (210 ILCS 45/3-202.6 new)

21 Sec. 3-202.6. Liability insurance coverage required. No  
22 person may establish, operate, maintain, offer, or advertise a  
23 facility within this State unless and until he or she provides  
24 to the Department of Public Health proof of liability insurance  
25 coverage in an amount not less than \$1,000,000 per occurrence.

1 Failure to maintain such liability insurance coverage during  
2 the term of a facility's license is a Type "A" violation under  
3 this Act.

4 (210 ILCS 45/3-303.1) (from Ch. 111 1/2, par. 4153-303.1)

5 Sec. 3-303.1. Upon application by a facility, except as  
6 otherwise provided in this Section, the Director may grant or  
7 renew the waiver of the facility's compliance with a rule or  
8 standard for a period not to exceed the duration of the current  
9 license or, in the case of an application for license renewal,  
10 the duration of the renewal period. The waiver may be  
11 conditioned upon the facility taking action prescribed by the  
12 Director as a measure equivalent to compliance. In determining  
13 whether to grant or renew a waiver, the Director shall consider  
14 the duration and basis for any current waiver with respect to  
15 the same rule or standard and the validity and effect upon  
16 patient health and safety of extending it on the same basis,  
17 the effect upon the health and safety of residents, the quality  
18 of resident care, the facility's history of compliance with the  
19 rules and standards of this Act and the facility's attempts to  
20 comply with the particular rule or standard in question. The  
21 Department may provide, by rule, for the automatic renewal of  
22 waivers concerning physical plant requirements upon the  
23 renewal of a license. The Department shall renew waivers  
24 relating to physical plant standards issued pursuant to this  
25 Section at the time of the indicated reviews, unless it can

1 show why such waivers should not be extended for the following  
2 reasons:

3 (a) the condition of the physical plant has deteriorated or  
4 its use substantially changed so that the basis upon which the  
5 waiver was issued is materially different; or

6 (b) the facility is renovated or substantially remodeled in  
7 such a way as to permit compliance with the applicable rules  
8 and standards without substantial increase in cost.

9 A copy of each waiver application and each waiver granted  
10 or renewed shall be on file with the Department and available  
11 for public inspection. The Director shall annually review such  
12 file and recommend to the Long Term Care Facility Advisory  
13 Board any modification in rules or standards suggested by the  
14 number and nature of waivers requested and granted and the  
15 difficulties faced in compliance by similarly situated  
16 facilities.

17 Under no circumstances may the Director grant a waiver of a  
18 facility's compliance with the requirement to maintain  
19 liability insurance coverage as provided by this Act.

20 (Source: P.A. 85-1216.)

21 (210 ILCS 45/3-304.1)

22 Sec. 3-304.1. Public computer access to information.

23 (a) The Department must make information regarding nursing  
24 homes in the State available to the public in electronic form  
25 on the World Wide Web, including all of the following

1 information:

2 (1) who regulates nursing homes;

3 (2) information in the possession of the Department  
4 that is listed in Sections 3-210 and 3-304;

5 (2.5) information concerning proof of liability  
6 insurance coverage, including the name of the insurance  
7 carrier and applicable limitations of liability;

8 (3) deficiencies and plans of correction;

9 (4) enforcement remedies;

10 (5) penalty letters;

11 (6) designation of penalty monies;

12 (7) the U.S. Department of Health and Human Services'  
13 Health Care Financing Administration special projects or  
14 federally required inspections;

15 (8) advisory standards;

16 (9) deficiency-free surveys; and

17 (10) enforcement actions and enforcement summaries.

18 (b) No fee or other charge may be imposed by the Department  
19 as a condition of accessing the information.

20 (c) The electronic public access provided through the World  
21 Wide Web shall be in addition to any other electronic or print  
22 distribution of the information.

23 (d) The information shall be made available as provided in  
24 this Section in the shortest practicable time after it is  
25 publicly available in any other form.

26 (Source: P.A. 91-290, eff. 1-1-00.)

1 (210 ILCS 45/3-311) (from Ch. 111 1/2, par. 4153-311)

2 Sec. 3-311. In addition to the right to assess penalties  
3 under this Act, the Director may issue a conditional license  
4 under Section 3-305 to any facility if the Director finds that  
5 either a Type "A" or Type "B" violation exists in such  
6 facility, except that the Director may not issue such a  
7 conditional license unless and until the facility is covered by  
8 liability insurance as required by this Act. The issuance of a  
9 conditional license shall revoke any license held by the  
10 facility.

11 (Source: P.A. 85-1378.)

12 (210 ILCS 45/3-602) (from Ch. 111 1/2, par. 4153-602)

13 Sec. 3-602. The licensee shall pay 3 times the actual  
14 damages, or \$500, whichever is greater, and costs and  
15 attorney's fees to a facility resident whose rights, as  
16 specified in Part 1 of Article II of this Act, are violated.

17 (Source: P.A. 89-197, eff. 7-21-95.)

18 Section 90. The State Mandates Act is amended by adding  
19 Section 8.32 as follows:

20 (30 ILCS 805/8.32 new)

21 Sec. 8.32. Exempt mandate. Notwithstanding Sections 6 and 8  
22 of this Act, no reimbursement by the State is required for the

1 implementation of any mandate created by this amendatory Act of  
2 the 95th General Assembly.

1

INDEX

2

Statutes amended in order of appearance

3

210 ILCS 45/1-114.7 new

4

210 ILCS 45/2-205

from Ch. 111 1/2, par. 4152-205

5

210 ILCS 45/3-103

from Ch. 111 1/2, par. 4153-103

6

210 ILCS 45/3-109

from Ch. 111 1/2, par. 4153-109

7

210 ILCS 45/3-117

from Ch. 111 1/2, par. 4153-117

8

210 ILCS 45/3-119

from Ch. 111 1/2, par. 4153-119

9

210 ILCS 45/3-202.6 new

10

210 ILCS 45/3-303.1

from Ch. 111 1/2, par. 4153-303.1

11

210 ILCS 45/3-304.1

12

210 ILCS 45/3-311

from Ch. 111 1/2, par. 4153-311

13

210 ILCS 45/3-602

from Ch. 111 1/2, par. 4153-602

14

30 ILCS 805/8.32 new