

House Bill 206

By: Representatives Walker of the 107<sup>th</sup>, Brown of the 69<sup>th</sup>, Lane of the 158<sup>th</sup>, and Burns of the 157<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To define and provide for a new category of facilities to be designated as "assisted living  
2 facilities" and to include "assisted living facilities - Level I" and "assisted living facilities -  
3 Level II" within such category; to amend Code Section 10-1-393 of the Official Code of  
4 Georgia Annotated, relating to unfair or deceptive practices, so as to change certain  
5 provisions relating to providing personal care services; to amend Code Section 25-2-13 of  
6 the Official Code of Georgia Annotated, relating to buildings presenting special hazards, so  
7 as to change the listing of buildings and the applicability of certain provisions thereto; to  
8 amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to change  
9 certain terms and definitions; to provide for admissions, examinations, inspections,  
10 employees, licensing, and staffing; to provide for fees and penalties; to provide for licensing  
11 of different levels of assisted living facilities; to retain certain liability for personal care  
12 homes; to amend Code Section 37-4-21 of the Official Code of Georgia Annotated, relating  
13 to respite care for mentally retarded persons, so as to revise certain terms; to amend Article  
14 1 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, relating to general  
15 provisions governing business and occupation taxes, so as to change a reference; to change  
16 various statutory references to "personal care homes" so that they refer to "assisted living  
17 facilities"; to provide for related matters; to provide effective dates; to repeal conflicting  
18 laws; and for other purposes.

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 **SECTION 1.**

21 Code Section 10-1-393 of the Official Code of Georgia Annotated, relating to unfair or  
22 deceptive practices, is amended by striking paragraph (26) of subsection (b) thereof and  
23 inserting in its place the following:

24 "(26) With respect to any ~~individual~~ or facility providing ~~personal care~~ services that  
25 requires a license in order to be an assisted living facility:

1 (A) Any person or entity not duly licensed or registered as a ~~personal care home~~ an  
 2 assisted living facility formally or informally offering, advertising to, or soliciting the  
 3 public for residents or referrals; or

4 (B) Any ~~personal care home~~, as defined in subsection (a) of Code Section 31-7-12,  
 5 assisted living facility offering, advertising, or soliciting the public to provide services:

6 (i) Which are outside the scope of ~~personal care services~~ that facility's licensed level  
 7 as an assisted living facility; provided, however, that assisted living facilities licensed  
 8 at Level II may provide services for residents suitable for Level I; and

9 (ii) For which it has not been specifically authorized.

10 Nothing in this subparagraph prohibits advertising by a ~~personal care home~~ an assisted  
 11 living facility for services authorized by the Department of Human Resources under a  
 12 waiver or variance pursuant to subsection (b) of Code Section 31-2-4;

13 ~~(C) For purposes of this paragraph, 'personal care' means protective care and watchful~~  
 14 ~~oversight of a resident who needs a watchful environment but who does not have an~~  
 15 ~~illness, injury, or disability which requires chronic or convalescent care including~~  
 16 ~~medical and nursing services.~~

17 For purposes of this paragraph, the term 'assisted living facility' shall have the same  
 18 meaning as provided for that term in Code Section 31-7-12. The provisions of this  
 19 paragraph shall be enforced following consultation with the Department of Human  
 20 Resources which shall retain primary responsibility for issues relating to licensure of any  
 21 ~~individual or facility providing personal care services~~ that is an assisted living facility;".

## 22 SECTION 2.

23 Code Section 25-2-13 of the Official Code of Georgia Annotated, relating to buildings  
 24 presenting special hazards to persons or property, is amended by striking subparagraph  
 25 (b)(1)(J) thereof and inserting in its place the following:

26 "(J) ~~Personal care homes~~ Assisted living facilities required to be licensed as such by  
 27 the Department of Human Resources and having at least seven beds for nonfamily  
 28 adults, and the Commissioner shall, pursuant to Code Section 25-2-4, by rule adopt  
 29 state minimum fire safety standards for ~~those homes~~ assisted living facilities, and any  
 30 structure constructed as or converted to a personal care home on or after April 15, 1986,  
 31 but before January 1, 2006, and any structure constructed as or converted to an assisted  
 32 living facility as defined in Code Section 31-7-12 on or after January 1, 2006, shall be  
 33 deemed to be a proposed building pursuant to subsection (d) of Code Section 25-2-14  
 34 and that structure may be required to be furnished with a sprinkler system meeting the  
 35 standards established by the Commissioner if ~~he~~ the Commissioner deems this  
 36 necessary for proper fire safety."





1 marriage to the owner or administrator of the home. An assisted living facility - Level I  
 2 may not provide services for bedridden or bed-bound persons. It is the intent of the  
 3 General Assembly that the category 'assisted living facility - Level I' replace the former  
 4 'personal care home' category and that the department consider this intent when  
 5 promulgating appropriate rules and regulations.

6 (5) 'Assisted living facility - Level II' means any dwelling, whether operated for profit  
 7 or not, that undertakes through its ownership or management to provide or arrange for the  
 8 provision of housing, health care oversight, including monitoring of vital signs and bodily  
 9 functions, limited nursing services of less than 24 hours duration, 24 hour watchful  
 10 oversight, 24 hour awake staff, and assistance with activities of daily living and  
 11 instrumental activities of daily living for two or more adults who are not related by blood  
 12 or marriage to the owner or administrator of the home.

13 (6) 'Instrumental activities of daily living' includes, but is not limited to, preparing meals,  
 14 shopping, managing money, using the telephone, light housework, and transportation.

15 (7) 'Limited nursing services' means acts that may be performed by licensed practical  
 16 nurses under Article 2 of Chapter 26 of Title 43, relating to practical nurses, and may be  
 17 administered on a less than 24 hour continuous basis in an assisted living facility - Level  
 18 II for those residents who have been screened, assessed, and educated about their  
 19 long-term care options as appropriate for Level II care in accordance with the  
 20 department's rules and regulations.

21 (8) 'Personal services' includes, but is not limited to, individual assistance with or  
 22 supervision of self-administered medication and essential activities of daily living such  
 23 as eating, bathing, grooming, dressing, and toileting.

24 (9) 'Watchful oversight' means, but is not limited to, a daily awareness by the  
 25 management of an assisted living facility resident's functioning, his or her whereabouts,  
 26 the making and reminding that resident of medical appointments, the ability and readiness  
 27 to intervene if a crisis arises for that resident, supervision in areas of nutrition and  
 28 medications, and actual provision of supportive medical services.

29 ~~(b) All personal care homes~~ assisted living facilities shall be licensed as provided for in  
 30 Code Section 31-7-3, ~~except that, in lieu of licensure, the department may require persons~~  
 31 ~~who operate personal care homes with two or three beds for nonfamily adults to comply~~  
 32 ~~with registration requirements delineated by the department. Such registration requirements~~  
 33 ~~within this category shall authorize the department to promulgate pursuant to Chapter 13~~  
 34 ~~of Title 50, the 'Georgia Administrative Procedure Act,' reasonable standards to protect the~~  
 35 ~~health, safety, and welfare of the occupants of such personal care homes.~~

36 (b.1) Each prospective resident of an assisted living facility shall be examined by a  
 37 physician not employed by the facility prior to admission to that facility. The physician

1 shall complete a medical examination report on a form approved by the department and  
 2 submit such form to the facility. The report shall contain a certificate that such resident is  
 3 appropriate to the level of care provided by the facility before such facility may admit such  
 4 prospective resident. In addition, and in accordance with department rules and regulations,  
 5 each resident shall be screened, assessed, and educated about his or her long-term care  
 6 options and appropriateness for Level II care. No facility may admit any person who is not  
 7 properly certified pursuant to this subsection. Within ten business days of admission to a  
 8 facility, each resident shall provide the facility with the name, address, and phone number  
 9 of his or her physician of record, if any. Each resident shall undergo an annual  
 10 examination by a physician not employed by the facility for the purpose of being recertified  
 11 as appropriate to the level of care provided by the facility. Nothing in this subsection shall  
 12 preclude a resident’s physician from recommending that a resident be moved to another  
 13 level of care based on such physician’s ongoing assessment of the resident’s needs.

14 (c) The department shall periodically inspect assisted living facilities in accordance with  
 15 established rules and regulations. Upon the designation by the department and with the  
 16 consent of county boards of health, such boards may act as agents to the department in  
 17 performing inspections and other authorized functions regarding ~~personal care homes~~ such  
 18 facilities licensed under this chapter Code section. ~~With approval of the department,~~  
 19 ~~county boards of health may establish inspection fees to defray part of the costs of~~  
 20 ~~inspections performed for the department.~~

21 (d) The state ombudsman or community ombudsman, on that ombudsman’s initiative or  
 22 in response to complaints made by or on behalf of residents of a registered or licensed  
 23 ~~personal care home~~ assisted living facility, may conduct investigations in matters within  
 24 the ombudsman’s powers and duties.

25 (e) The department shall promulgate procedures to govern the waiver, variance, and  
 26 exemption process related to ~~personal care homes~~ assisted living facilities pursuant to  
 27 Chapter 2 of this title. Such procedures shall include published, measurable criteria for the  
 28 decision process, shall take into account the need for protection of public and individual  
 29 health, care, and safety, and shall afford an opportunity for public input into the process.

30 (f) The fees for licenses of assisted living facilities shall be paid when a license is initially  
 31 granted and annually thereafter to be determined according to the number of beds available  
 32 for persons who will be provided assistance with some or all activities of daily living or  
 33 instrumental activities of daily living in such facilities as follows:

34	<u>6 beds or less</u> .....	<u>\$ 250.00</u>
35	<u>7-15 beds</u> .....	<u>500.00</u>
36	<u>16 beds or more</u> .....	<u>750.00</u>

1 Such fees shall apply only to licenses granted at any time on or after July 1, 2006, and to  
 2 annual renewals of licenses. Any facility operating on or after July 1, 2006, without  
 3 obtaining the license required shall be required to pay the license fee applicable to that  
 4 facility as well as a penalty equal to the amount of such fee.

5 (g) An assisted living facility may be licensed at more than one level if it offers services  
 6 at more than one level.

7 (h) Each employee of an assisted living facility shall receive a minimum amount of  
 8 training and continuing education hours annually as determined by the department.

9 (i) An assisted living facility - Level II shall be staffed with either a registered professional  
 10 nurse or a licensed practical nurse. Such registered professional nurse or licensed practical  
 11 nurse shall be on site for a minimum of 12 hours per day. The facility shall also employ  
 12 additional nurses in numbers sufficient to meet the limited nursing needs of all residents.  
 13 If one or more licensed practical nurses are so employed, such licensed practical nurse or  
 14 nurses shall be under the supervision of a registered professional nurse who shall be  
 15 employed by the facility either directly or as a consultant. Such registered professional  
 16 nurse must be available on call to the facility at all times so that in the event nursing  
 17 services are needed in the facility and a licensed practical nurse is not on duty, the facility  
 18 may contact such registered professional nurse for assistance."

## 19 SECTION 8.

20 Said title is further amended by striking Code Section 31-7-12.1, relating to unlicensed  
 21 personal care homes, and inserting in its place the following:

22 "31-7-12.1.

23 (a) A facility shall be deemed to be an '~~unlicensed personal care home~~ assisted living  
 24 facility' if it is unlicensed and not exempt from licensure and:

25 (1) The facility is providing personal services and is operating as a ~~personal care home~~  
 26 an assisted living facility as those terms are defined in Code Section 31-7-12;

27 (2) The facility is held out as or represented as providing personal services and operating  
 28 as a ~~personal care home~~ an assisted living facility as those terms are defined in Code  
 29 Section 31-7-12; or

30 (3) The facility represents itself as a licensed ~~personal care home~~ assisted living facility.

31 (b) ~~Personal care homes in existence on July 1, 1994, which obtain licenses from the~~  
 32 ~~department no later than October 1, 1994, shall not be subject to the penalties set out in this~~  
 33 ~~Code section.~~

34 (c) ~~Except as provided in subsection (b) of this Code section, any~~ Any unlicensed personal  
 35 ~~care home~~ assisted living facility shall be assessed by the department, after opportunity for  
 36 hearing in accordance with the provisions of Chapter 13 of Title 50, the 'Georgia

1 Administrative Procedure Act,' a civil penalty in the amount of \$100.00 per bed per day for  
 2 each day of violation of subsection (b) of Code Section 31-7-12. The department shall  
 3 send a notice by certified mail or statutory overnight delivery stating that licensure is  
 4 required and including a period for obtaining licensure with an expiration date. Such notice  
 5 shall be deemed to be constructively received on the date of the first attempt to deliver such  
 6 notice by the United States Postal Service. ~~For unlicensed personal care homes which were~~  
 7 ~~not in existence on July 1, 1994, the civil penalty provided by this subsection shall be~~  
 8 ~~calculated as beginning on the expiration date of the notice. For unlicensed personal care~~  
 9 ~~homes which were in existence on July 1, 1994, the civil penalty provided by this~~  
 10 ~~subsection shall be calculated as beginning on the expiration date of the notice or on~~  
 11 ~~October 1, 1994, whichever is later.~~ The department shall take no action to collect such  
 12 civil penalty until after opportunity for a hearing.

13 ~~(d)~~(c) The civil penalty authorized by subsection ~~(e)~~ (b) of this Code section shall be  
 14 doubled if:

15 (1) The operator of an unlicensed ~~personal care home~~ assisted living facility refuses to  
 16 seek licensure; or

17 (2) The operator seeks licensure, the licensure application is denied, and the operator  
 18 continues to operate the unlicensed ~~personal care home~~ assisted living facility.

19 ~~(e)~~(d) The operator of a ~~personal care home~~ an assisted living facility who is assessed a  
 20 civil penalty in accordance with this Code section may have review of such civil penalty  
 21 by appeal to the superior court in the county in which the action arose or to the Superior  
 22 Court of Fulton County in accordance with the provisions of Code Section 31-5-3."

## 23 SECTION 9.

24 Said title is further amended by striking paragraph (1) of subsection (a) of Code Section  
 25 31-7-111, relating to findings regarding certain authorities for certain facilities for the  
 26 elderly, and inserting in its place the following:

27 "(1) There exists in this state a seriously inadequate supply of and a critical need for  
 28 facilities which can furnish the comprehensive services required by elderly persons in a  
 29 single location, including, without limitation, residential care and the types of services  
 30 provided in skilled nursing homes, intermediate care homes, and ~~personal care homes~~  
 31 ~~(hereinafter~~ assisted living facilities referred to as 'residential care facilities for the  
 32 elderly');".



1 section shall relieve from any civil or criminal liability or penalty any personal care home  
 2 for operating without the required license before this Code section becomes effective on  
 3 January 1, 2006."

#### 4 SECTION 12.

5 Said title is further amended by striking paragraph (2) of Code Section 31-8-51, relating to  
 6 long-term care ombudsman definitions, and inserting in its place the following:

7 "(2) 'Long-term care facility' means any skilled nursing home, intermediate care home,  
 8 or ~~personal care home~~ assisted living facility now or hereafter subject to regulation and  
 9 licensure by the department, or any regulated facility receiving funds pursuant to a  
 10 contract or subcontract with the department to provide services for consumers with  
 11 mental illness, mental retardation, or substance abuse problems."

#### 12 SECTION 13.

13 Said title is further amended by striking paragraph (3) of Code Section 31-8-81, relating to  
 14 definitions regarding abuse of residents of long-term care facilities, and inserting in its place  
 15 the following:

16 "(3) 'Long-term care facility' or 'facility' means any skilled nursing home, intermediate  
 17 care home, ~~personal care home~~ assisted living facility, or community living arrangement  
 18 now or hereafter subject to regulation and licensure by the department, or any regulated  
 19 facility receiving funds pursuant to a contract or subcontract with the department to  
 20 provide services for consumers with mental illness, mental retardation, or substance  
 21 abuse problems."

#### 22 SECTION 14.

23 Said title is further amended by striking Code Section 31-8-132, relating to definitions  
 24 regarding remedies for personal care home residents, and inserting in its place the following:

25 "31-8-132.

26 As used in this article, the term:

27 (1) 'Administrator' means the manager designated by the governing body of a ~~personal~~  
 28 ~~care home~~ an assisted living facility as responsible for the day-to-day management,  
 29 administration, and supervision of the ~~personal care home~~ assisted living facility, who  
 30 may also serve as on-site manager and responsible staff person except during periods of  
 31 his or her own absence.

32 (1.1) 'Assisted living facility' means a facility required to be licensed under Code Section  
 33 31-7-12.

1 (2) 'Community ombudsman' means a person certified as a community ombudsman  
2 pursuant to Code Section 31-8-52.

3 (3) 'Governing body' means the board of trustees, the partnership, the corporation, the  
4 association, or the person or group of persons who maintain and control a ~~personal care~~  
5 ~~home~~ an assisted living facility and who are legally responsible for the operation of the  
6 ~~home~~ facility.

7 (4) 'Legal surrogate' means a duly appointed person who is authorized to act, within the  
8 scope of the authority granted under the legal surrogate's appointment, on behalf of a  
9 resident who is adjudicated or certified incapacitated. No member of the governing body,  
10 administration, or staff of a ~~personal care home~~ an assisted living facility or any affiliated  
11 ~~personal care home~~ assisted living facility or their family members may serve as the legal  
12 surrogate for a resident unless that resident is a family member.

13 (5) '~~Personal care home~~ or '~~home~~' means a facility as defined in Code Section 31-7-12  
14 Reserved.

15 (6) 'Representative' means a person who voluntarily, with the resident's written  
16 authorization, may act upon the resident's direction with regard to matters concerning the  
17 health and welfare of the resident, including being able to access personal records  
18 contained in the resident's file and receive information and notices pertaining to the  
19 resident's overall care and condition. No member of the governing body, administration,  
20 or staff of a ~~personal care home~~ an assisted living facility or any affiliated ~~personal care~~  
21 ~~home~~ assisted living facility or their family members may serve as the representative for  
22 a resident.

23 (7) 'Resident' means a person who resides in a ~~personal care home~~ an assisted living  
24 facility.

25 (8) 'State ombudsman' means the state ombudsman established under Code Section  
26 31-8-52."

## 27 SECTION 15.

28 Code Section 37-4-21 of the Official Code of Georgia Annotated, relating to respite care for  
29 mentally retarded persons, is amended by striking subsection (c) thereof and inserting in its  
30 place the following:

31 "(c) An admission for respite care shall be for no longer than two weeks, provided that a  
32 person may be admitted for additional periods of respite care; provided, further, that there  
33 shall be no more than two admissions for respite care within any six-month period, counted  
34 from the first day of such an admission. Any such admission which exceeds limits provided  
35 in this Code section must be in accordance with the procedure in Code Section 37-4-20 or  
36 37-4-40. This Code section shall not apply when the person sought to be admitted is living

1 in a nursing home or ~~personal care home~~ assisted living facility, as defined in ~~paragraph~~  
 2 ~~(2) of Code Section~~ Sections 43-27-1 and 31-7-12, respectively."

3 **SECTION 16.**

4 Article 1 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, relating to  
 5 general provisions governing business and occupation taxes, is amended by striking  
 6 paragraph (14) of subsection (b) of Code Section 48-13-9, relating to businesses which are  
 7 and which are not subject to regulatory fees, and inserting in its place the following:

8 "(14) Nursing homes and ~~personal care homes~~ assisted living facilities;"

9 **SECTION 17.**

10 The following Code sections of the Official Code of Georgia Annotated are amended by  
 11 striking the terms "a personal care home," "Personal care home," "personal care home,"  
 12 "Personal care homes," and "personal care homes," wherever they occur and inserting in their  
 13 respective places the terms "an assisted living facility," "Assisted living facility," "assisted  
 14 living facility," "Assisted living facilities," and "assisted living facilities,":

- 15 (1) Code Section 16-5-23, relating to simple battery;
- 16 (2) Code Section 16-5-23.1, relating to battery;
- 17 (3) Code Section 16-6-5.1, relating to sexual assault of persons in custody;
- 18 (4) Code Section 26-4-5, relating to pharmacy definitions;
- 19 (5) Code Section 31-7-3, relating to the requirement for permits to operate institutions;
- 20 (6) Code Section 31-7-112, relating to definitions regarding authorities for facilities for  
 21 the elderly;
- 22 (7) Code Section 31-7-258, relating to changes in personal care home directors;
- 23 (8) Code Section 31-7-259, relating to employment at personal care homes with  
 24 temporary licenses;
- 25 (9) Code Section 31-7-300, relating to definitions governing private home care provider  
 26 laws;
- 27 (10) Code Section 31-7-305, relating to exempt services;
- 28 (11) Code Section 31-7-307, relating to certificates of need;
- 29 (12) Code Section 31-8-52, relating to the establishment of the long-term care  
 30 ombudsman;
- 31 (13) Code Section 31-8-130, relating to the creation of the "Remedies for Residents of  
 32 Personal Care Homes Act";
- 33 (14) Code Section 31-8-131, relating to legislative findings and intent;
- 34 (15) Code Section 31-8-134, relating to grievance procedures;
- 35 (16) Code Section 31-8-135, relating to hearings and transfer of residents;

- 1 (17) Code Section 31-8-136, relating to actions for damages;  
2 (18) Code Section 31-8-137, relating to temporary restraining orders;  
3 (19) Code Section 31-8-138, relating to failure to validly license as a defense;  
4 (20) Code Section 31-8-139, relating to mandamus;  
5 (21) Code Section 31-8-181, relating to exempt individuals and hospitals;  
6 (22) Code Section 31-36A-5, relating to certification by a physician;  
7 (23) Code Section 31-36A-7, relating to petition for order by a health care facility;  
8 (24) Code Section 38-4-2, relating to powers of veterans' home administrators; and  
9 (25) Code Section 49-2-14, relating to record searches for conviction data on prospective  
10 employees.

11 **SECTION 18.**

12 This Act shall become effective only for the purposes of promulgating rules and regulations  
13 thereunder upon its approval by the Governor or upon its becoming law without such  
14 approval. This Act shall become effective for all other purposes on January 1, 2006.

15 **SECTION 19.**

16 All laws and parts of laws in conflict with this Act are repealed.