6390--A

2015-2016 Regular Sessions

IN ASSEMBLY

March 23, 2015

Introduced by M. of A. SIMON, BRENNAN, ARROYO, BLAKE, COLTON, COOK, CYMBROWITZ, GALEF, GOTTFRIED, JOYNER, MILLER, ROSENTHAL, LINARES, SEAWRIGHT, BARRON, BARRETT, MOSLEY, ORTIZ -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, DAVILA, JAFFEE, LUPINACCI, MARKEY, PERRY, SKOUFIS, SOLAGES, STIRPE -- read once and referred to the Committee on Aging -recommitted to the Committee on Aging in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the elder law, in relation to creating a temporary state commission to study and investigate the effects of closures of long term care facilities on the residents of such facilities and their families; and providing for the repeal of such provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The elder law is amended by adding a new article 3 to read 2 as follows: 3 ARTICLE III

ARTICLE III LONG TERM CARE FACILITIES

5 SECTION 300. DEFINITIONS.

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301. COMMISSION ON LONG TERM CARE FACILITIES.

7 S 300. DEFINITIONS. AS USED IN THIS ARTICLE:

8 1. "DIRECTOR" SHALL MEAN THE DIRECTOR OF THE OFFICE FOR THE AGING.

9 2. "LONG TERM CARE FACILITIES" SHALL MEAN RESIDENTIAL HEALTH CARE OF SECTION TWENTY-EIGHT 10 FACILITIES AS DEFINED IN SUBDIVISION THREE HUNDRED ONE OF THE PUBLIC HEALTH LAW, AND ASSISTED LIVING RESIDENCES, AS 11 DEFINED IN ARTICLE FORTY-SIX-B OF THE PUBLIC HEALTH LAW, OR ANY FACILI-12 THEMSELVES OUT OR ADVERTISE THEMSELVES AS PROVIDING 13 WHICH HOLD TIES 14 ASSISTED LIVING SERVICES AND WHICH ARE REQUIRED TO BE LICENSED OR CERTI-15 FIED UNDER THE SOCIAL SERVICES LAW OR THE PUBLIC HEALTH LAW AND ADULT

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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CARE FACILITIES AS DEFINED IN SUBDIVISION TWENTY-ONE OF SECTION TWO OF 1 2 THE SOCIAL SERVICES LAW. 3 "STATE OMBUDSMAN" SHALL MEAN THE STATE LONG TERM CARE OMBUDSMAN 3. 4 APPOINTED BY THE DIRECTOR PURSUANT TO SUBDIVISION THREE OF SECTION TWO 5 HUNDRED EIGHTEEN OF THIS CHAPTER. 6 301. COMMISSION ON LONG TERM CARE FACILITIES. 1. A TEMPORARY STATE S 7 COMMISSION, TO BE KNOWN AS THE COMMISSION ON LONG TERM CARE FACILITIES 8 (HEREINAFTER THE "COMMISSION"), IS HEREBY CREATED TO STUDY AND MAKE RECOMMENDATIONS CONCERNING THE FOLLOWING: 9 10 (A) THE EFFECTS OF CLOSURES OF LONG TERM CARE FACILITIES ON RESIDENTS INCLUDING, BUT NOT LIMITED TO, THE DISRUPTION OF ANY ESTABLISHED COMMU-11 NITIES WITHIN THE FACILITY AND THE PHYSICAL AND MENTAL HEALTH IMPLI-12 CATIONS RELATED TO MOVING A RESIDENT TO A NEW FACILITY; 13 14 (B) THE EFFECTS OF CLOSURES OF LONG TERM CARE FACILITIES ON FAMILY 15 MEMBERS OF RESIDENTS INCLUDING, BUT NOT LIMITED TO, ABILITY TO VISIT RESIDENTS BASED ON NEW DISTANCE OF FACILITY; AVAILABILITY OF APPROPRIATE 16 PLACEMENT FOR A RESIDENT; AND, ENSURING THE TRANSFER OF LEGAL DOCUMENTS 17 18 AND SPECIAL CARE INSTRUCTIONS; (C) THE AVAILABILITY OF LONG TERM CARE FACILITY PLACEMENTS FOR NEW 19 20 YORKERS WHO NEED SKILLED NURSING CARE OR WHO HAVE ALZHEIMER'S DISEASE OR 21 OTHER DEMENTIA; 22 THE FEASIBILITY OF ARRANGING COMPARABLE PLACEMENTS, AS OPPOSED TO (D) 23 APPROPRIATE PLACEMENTS, IN OTHER FACILITIES WITHIN THE SAME GEOGRAPHICAL 24 AREA WHEN A LONG TERM CARE FACILITY SERVES FIFTY OR MORE RESIDENTS; 25 (E) THE EFFECTIVENESS OF CURRENT LAWS, RULES, AND REGULATIONS GOVERN-26 ING THE PROCESS OF CLOSING A LONG TERM CARE FACILITY, INCLUDING NOTICE TO RESIDENTS AND ASSISTANCE TO RELOCATE RESIDENTS; AND 27 (F) SUCH OTHER MATTERS AS THE COMMISSION DEEMS APPROPRIATE. 28 29 2. THE COMMISSION SHALL MAKE RECOMMENDATIONS FOR ADDITIONAL LEGIS-LATION AND/OR REGULATIONS TO GOVERN THE CLOSING OF LONG TERM CARE FACIL-30 ITIES AND FACILITATE THE RELOCATION OF LONG TERM CARE FACILITY RESIDENTS 31 32 A MANNER THAT IS IN THE BEST INTERESTS OF THE RESIDENTS IN THE EVENT IN33 OF A CLOSURE OF A LONG TERM CARE FACILITY. THE COMMISSION SHALL FURTHER 34 STUDY THE NEED, IF ANY, TO DEVISE A NOTIFICATION SYSTEM TO ALERT RESI-35 DENTS AND FAMILIES NOT LESS THAN ONE YEAR IN ADVANCE OF THE CLOSURE OR POTENTIAL CLOSURE OF A LONG TERM CARE FACILITY. 36 37 3. (A) THE COMMISSION SHALL CONSIST OF ELEVEN MEMBERS TO BE APPOINTED 38 AS FOLLOWS: FIVE MEMBERS SHALL BE APPOINTED BY THE GOVERNOR AND SHALL INCLUDE THE COMMISSIONER OF HEALTH, THE DIRECTOR OF THE OFFICE FOR THE 39 40 AGING, THE STATE ATTORNEY GENERAL, THE STATE OMBUDSMAN, AND ONE ADDI-TIONAL MEMBER WHO SHALL BE A RESIDENT OF THE STATE WITH EXPERTISE AND 41 EXPERIENCE IN THE FIELDS OF LONG TERM CARE AND ADVOCACY; TWO MEMBERS 42 43 SHALL BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE; TWO MEMBERS 44 SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY; ONE MEMBER SHALL BE 45 APPOINTED BY THE MINORITY LEADER OF THE SENATE; AND ONE MEMBER SHALL BE APPOINTED BY THE MINORITY LEADER OF THE ASSEMBLY. ALL OF THE MEMBERS 46 47 APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE 48 ASSEMBLY, THE MINORITY LEADER OF THE SENATE AND THE MINORITY LEADER OF THE ASSEMBLY SHALL BE RESIDENTS OF THE STATE WITH EXPERTISE AND EXPERI-49 50 IN THE FIELDS OF LONG TERM CARE AND ADVOCACY. NO PERSON SHALL BE A ENCE 51 MEMBER OF SUCH COMMISSION WHILE SUCH PERSON IS A MEMBER OF THE SENATE OR ASSEMBLY. ANY VACANCY ON SUCH COMMISSION SHALL BE FILLED IN THE SAME 52 MANNER AS THE ORIGINAL APPOINTMENT WAS MADE. A CHAIRPERSON AND 53 54 VICE-CHAIRPERSON OF SUCH COMMISSION SHALL BE ELECTED BY THE MAJORITY OF 55 ITS MEMBERS, ALL MEMBERS BEING PRESENT.

EXCEPT AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION, NO 1 (B) 2 MEMBER, OFFICER OR EMPLOYEE OF THE COMMISSION SHALL BE DISQUALIFIED FROM 3 HOLDING ANY OTHER PUBLIC OFFICE OR EMPLOYMENT, NOR SHALL HE OR SHE 4 FORFEIT ANY SUCH OFFICE OR EMPLOYMENT BY REASON OF HIS OR HER APPOINT-5 MENT HEREUNDER, NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL, SPECIAL 6 OR LOCAL LAW, ORDINANCE OR CITY CHARTER.

7 (C) ALL MEMBERS OF THE COMMISSION SHALL BE APPOINTED WITHIN SIXTY DAYS 8 OF THE EFFECTIVE DATE OF THIS SECTION. THE FIRST MEETING OF THE COMMIS-9 SION SHALL TAKE PLACE WITHIN THIRTY DAYS AFTER APPOINTMENT OF ALL 10 MEMBERS OF THE COMMISSION.

11 4. THE MEMBERS OF THE COMMISSION SHALL RECEIVE NO COMPENSATION FOR 12 THEIR SERVICES.

13 THE COMMISSION MAY EMPLOY AND AT PLEASURE REMOVE SUCH PERSONNEL AS 5. 14 IT MAY DEEM NECESSARY FOR THE PERFORMANCE OF ITS FUNCTIONS AND FIX THEIR 15 COMPENSATION WITHIN THE AMOUNTS MADE AVAILABLE BY APPROPRIATION THERE-16 IF ANY, OR BY DONATION, IF ANY. THE COMMISSION MAY MEET AND HOLD FOR, 17 PUBLIC AND/OR PRIVATE HEARINGS WITHIN OR WITHOUT THE STATE, AND SHALL HAVE ALL THE POWERS OF A LEGISLATIVE COMMITTEE PURSUANT TO THE LEGISLA-18 19 TIVE LAW.

6. FOR THE ACCOMPLISHMENT OF ITS PURPOSES, THE COMMISSION SHALL BE AUTHORIZED AND EMPOWERED TO UNDERTAKE ANY STUDIES, INQUIRIES, SURVEYS OR ANALYSES IT MAY DEEM RELEVANT THROUGH ITS OWN PERSONNEL OR IN COOPER-ATION WITH OR BY AGREEMENT WITH ANY OTHER PUBLIC OR PRIVATE AGENCY.

7. THE COMMISSION MAY REQUEST AND SHALL RECEIVE FROM ANY AGENCY IN THE
STATE AND FROM ANY SUBDIVISION, DEPARTMENT, BOARD, BUREAU, COMMISSION,
OFFICE, AGENCY OR OTHER INSTRUMENTALITY OF THE STATE OR OF ANY POLITICAL
SUBDIVISION THEREOF SUCH FACILITIES, ASSISTANCE AND DATA AS IT DEEMS
NECESSARY OR DESIRABLE FOR THE PROPER EXECUTION OF ITS POWERS AND DUTIES
AND TO EFFECTUATE THE PURPOSES SET FORTH IN THIS SECTION.

8. THE COMMISSION IS HEREBY AUTHORIZED AND EMPOWERED TO ENTER INTO ANY
 AGREEMENTS AND TO DO AND PERFORM ANY ACTS THAT MAY BE NECESSARY, DESIRA BLE OR PROPER TO CARRY OUT THE PURPOSES AND OBJECTIVES OF THIS SECTION.

9. THE COMMISSION MAY ADMINISTER OATHS OR AFFIRMATIONS, SUBPOENA
WITNESSES, COMPEL THEIR ATTENDANCE, EXAMINE THEM UNDER OATH OR AFFIRMATION AND REQUIRE THE PRODUCTION OF ANY BOOKS, RECORDS, DOCUMENTS OR
OTHER EVIDENCE IT MAY DEEM RELEVANT OR MATERIAL TO AN INVESTIGATION.

10. THE COMMISSION SHALL MAKE A REPORT OF ITS FINDINGS AND RECOMMENDA-37 38 TIONS AND SHALL SUBMIT SUCH REPORT, INCLUDING ANY RECOMMENDATIONS FOR LEGISLATIVE ACTION AS IT MAY DEEM NECESSARY AND APPROPRIATE, 39 ΤO THE 40 THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE GOVERNOR, ASSEMBLY, THE MINORITY LEADER OF THE SENATE AND THE MINORITY LEADER OF 41 THE ASSEMBLY ONE YEAR AFTER THE FIRST MEETING OF THE COMMISSION. 42

43 S 2. This act shall take effect immediately and shall continue in full 44 force and effect until one year after the report and recommendations of 45 the commission on long term care facilities is delivered to the governor and the legislature when upon such date the provisions of this act shall 46 47 be deemed repealed; provided that the office for the aging shall notify 48 the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in section one of this act in 49 order that the commission may maintain an accurate and timely effective 50 data base of the official text of the laws of the state of New York in 51 furtherance of effectuating the provisions of section 44 of the legisla-52 tive law and section 70-b of the public officers law. 53