

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2462

By: Boyd (Betty)

AS INTRODUCED

An Act relating to damages; amending 23 O.S. 1991, Section 9, which relates to damages; providing that certain percentage of exemplary or punitive damages shall be awarded to the state; amending 12 O.S. 1991, Sections 1447.3, 1448 and 1449, which relate to libel, slander and unauthorized use of a person's right of publicity; amending 16 O.S. 1991, Section 85, which relates to affidavits concerning title to real property; amending 17 O.S. 1991, Section 408, which relates to the Oklahoma Aboveground Tank Regulation Act; amending 24 O.S. 1991, Section 139, which relates to the Credit Services Organization Act; amending 25 O.S. 1991, Section 1506.3, which relates to discriminatory practices; amending 26 O.S. 1991, Section 8-119, which relates to election certifications and contests; amending Section 28, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1993, Section 2-3-504), which relates to the Department of Environmental Quality; amending 43A O.S. 1991, Section 10-104, as amended by Section 1, Chapter 159, O.S.L. 1993 (43A O.S. Supp. 1993, Section 10-104), which relates to the Protective Services for the Elderly and for Incapacitated Adults Act; amending 52 O.S. 1991, Section 47.7, which relates to the Hazardous Liquid

Transportation System Safety Act; amending 63 O.S. 1991, Section 1-1918, as amended by Section 1, Chapter 173, O.S.L. 1992 (63 O.S. Supp. 1993, Section 1-1918), which relates to the Nursing Home Care Act; providing for distribution of exemplary or punitive damages; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 23 O.S. 1991, Section 9, is amended to read as follows:

Section 9. A. In any action for the breach of an obligation not arising from contract, where the defendant has been guilty of conduct evincing a wanton or reckless disregard for the rights of another, oppression, fraud or malice, actual or presumed, the jury, in addition to the actual damages, may ~~give~~ assess damages for the sake of example, and by way of punishing the defendant, in an amount not exceeding the amount of actual damages awarded. Provided, however, if at the conclusion of the evidence and prior to the submission of the case to the jury, the court shall find, on the record and out of the presence of the jury, that there is clear and convincing evidence that the defendant is guilty of conduct evincing a wanton or reckless disregard for the rights of another, oppression, fraud or malice, actual or presumed, then the jury may ~~give~~ assess damages for the sake of example, and by way of punishing the defendant, and the percentage limitation on such damages set forth in this section shall not apply.

B. Except as otherwise provided by law, in any action where exemplary or punitive damages are awarded, seventy-five percent

(75%) of the amount paid, less a reasonable amount for attorneys fees as determined by the court, shall be remitted to the State Treasurer for deposit in the General Revenue Fund.

C. The provisions of this section shall be strictly construed.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 1447.3, is amended to read as follows:

Section 1447.3 In any action for damages for any defamatory statement published in or uttered as a part of a television and/or radio broadcast, the complaining party shall be allowed such actual ~~and/or punitive~~ damages as he has alleged and proved. Any punitive damages that are recovered shall be awarded pursuant to Section 9 of Title 23 of the Oklahoma Statutes.

SECTION 3. AMENDATORY 12 O.S. 1991, Section 1448, is amended to read as follows:

Section 1448. A. Any person who uses a deceased personality's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without prior consent from the person or persons specified in subsection C of this section, shall be liable for any damages sustained by the person or persons injured as a result thereof, and any profits from the unauthorized use that are attributable to the use shall be taken into account in computing the actual damages. In establishing these profits, the injured party or parties shall be required to present proof only of the gross revenue attributable to the use and the person who violated this section is required to prove his or her deductible expenses. ~~Punitive damages may also be awarded to the injured party or parties.~~ The prevailing party or parties in any action under this section shall also be entitled to ~~attorney's~~ attorneys fees and costs.

B. The rights recognized under this section are property rights, freely transferable, in whole or in part, by contract or by means of trust or testamentary documents, whether the transfer occurs before the death of the deceased personality, by the deceased personality or his or her transferees, or, after the death of the deceased personality, by the person or persons in whom such rights vest under this section or the transferees of that person or persons.

C. The consent required by this section shall be exercisable by the person or persons to whom such right of consent (or portion thereof) has been transferred in accordance with subsection B of this section, or if no such transfer has occurred, then by the person or persons to whom such right of consent (or portion thereof) has passed in accordance with subsection D of this section.

D. Subject to subsections B and C of this section, after the death of any person, the rights under this section shall belong to the decedents' spouse, issue, or parents in accordance with Section 213 of Title 84 of the Oklahoma Statutes. Said rights shall be exercised on behalf of and for the benefit of all those persons, by those persons who, in the aggregate, are entitled to more than a one-half (1/2) interest in such rights.

E. If any deceased personality does not transfer his or her rights under this section by contract, or by means of a trust or testamentary document, and there are no surviving persons as described in subsection D of this section, then the rights set forth in subsection A of this section shall terminate.

F. 1. A successor-in-interest to the rights of a deceased personality under this section or a licensee thereof may not recover damages for a use prohibited by this section that occurs before the successor-in-interest or licensee registers a claim of the rights under paragraph 2 of this subsection.

2. Any person claiming to be a successor-in-interest to the rights of a deceased personality under this section or a licensee thereof may register that claim with the Secretary of State on a form prescribed by the Secretary of State and upon payment of a fee of Ten Dollars (\$10.00). The form shall be verified and shall include the name and date of death of the deceased personality, the name and address of the claimant, the basis of the claim, and the rights claimed.

3. Upon receipt and after filing of any document under this section, the Secretary of State may microfilm or reproduce by other techniques any of the filings or documents and destroy the original filing or document. The microfilm or other reproduction of any document under the provision of this section shall be admissible in any court of law. The microfilm or other reproduction of any document may be destroyed by the Secretary of State fifty (50) years after the death of the personality named therein.

4. Claims registered under this subdivision shall be public records.

G. No action shall be brought under this section by reason of any use of a deceased personality's name, voice, signature, photograph, or likeness occurring after the expiration of one hundred (100) years from the death of the deceased personality.

H. As used in this section, "deceased personality" means any natural person whose name, voice, signature, photograph, or likeness has commercial value at the time of his or her death, whether or not during the lifetime of that natural person the person used his or her name, voice, signature, photograph, or likeness on or in products, merchandise or goods, or for purposes of advertising or selling, or solicitation of purchase of, products, merchandise, goods, or services. A "deceased personality" shall include, without limitation, any such natural person who has died within fifty (50) years prior to January 1, 1986.

I. As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the deceased personality is readily identifiable. A deceased personality shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine who the person depicted in the photograph is.

J. For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subsection A of this section.

K. The use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subsection A of this section solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the deceased personality's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required under subsection A of this section.

L. Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that such owners or employees had knowledge of the unauthorized use of the deceased personality's name, voice, signature, photograph, or likeness as prohibited by this section.

M. The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

N. This section shall not apply to the use of a deceased personality's name, voice, signature, photograph, or likeness, in any of the following instances:

1. A play, book, magazine, newspaper, musical composition, exhibit, display, film, radio or television program, other than an advertisement or commercial announcement not exempt under paragraph 4 of this subsection;

2. Material that is of political or newsworthy value;

3. Single and original works of fine art; and

4. An advertisement or commercial announcement for a use permitted by paragraph 1, 2 or 3 of this subsection.

O. Punitive damages also may be recovered against the person proximately causing the injury. Such damages, if recovered, shall be distributed as provided in Section 9 of Title 23 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 12 O.S. 1991, Section 1449, is amended to read as follows:

Section 1449. A. Any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without such person's prior consent, or, in the case of a minor, the prior consent of his parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof, and any profits from the unauthorized use that are attributable to the use shall be taken into account in computing the actual damages. In establishing such profits, the injured party or parties are required to present proof only of the gross revenue attributable to such use, and the person who violated this section is required to prove his or her deductible expenses. ~~Punitive~~

~~damages may also be awarded to the injured party or parties.~~ The prevailing party in any action under this section shall also be entitled to ~~attorney's~~ attorneys fees and costs.

B. As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the person is readily identifiable.

1. A person shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine that the person depicted in the photograph is the same person who is complaining of its unauthorized use.

2. If the photograph includes more than one person so identifiable, then the person or persons complaining of the use shall be represented as individuals rather than solely as members of a definable group represented in the photograph. A definable group includes, but is not limited to, the following examples: A crowd at any sporting event, a crowd in any street or public building, the audience at any theatrical or stage production, a glee club, or a baseball team.

3. A person or persons shall be considered to be represented as members of a definable group if they are represented in the photograph solely as a result of being present at the time the photograph was taken and have not been singled out as individuals in any manner.

C. Where a photograph or likeness of an employee of the person using the photograph or likeness appearing in the advertisement or other publication prepared by or in behalf of the user is only incidental, and not essential, to the purpose of the publication in which it appears, there shall arise a rebuttable presumption affecting the burden of producing evidence that the failure to obtain the consent of the employee was not a knowing use of the employee's photograph or likeness.

D. For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subsection A of this section.

E. The use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subsection A of this section solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the person's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required under subsection A of this section.

F. Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that such owners or employees had knowledge of the unauthorized use of the person's name, voice, signature, photograph, or likeness as prohibited by this section.

G. Punitive damages also may be recovered against the person proximately causing the injury. Such damages, if recovered, shall be distributed pursuant to Section 9 of Title 23 of the Oklahoma Statutes.

H. The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

SECTION 5. AMENDATORY 16 O.S. 1991, Section 85, is amended to read as follows:

Section 85. Any person who knowingly makes or causes to be made a false statement in an affidavit shall be guilty of perjury and be liable for actual damages suffered or incurred by any person or other entity as a result or consequence of the making of or reliance upon such false affidavit. The court may award punitive damages, costs and attorney fees. If punitive damages are awarded, such damages shall be distributed as provided in Section 9 of Title 23 of the Oklahoma Statutes.

SECTION 6. AMENDATORY 17 O.S. 1991, Section 408, is amended to read as follows:

Section 408. The Commission may request the Attorney General to bring an action in a court of competent jurisdiction for equitable relief to redress or restrain a violation by any person of a provision of the Oklahoma Aboveground Tank Regulation Act or a rule, regulation, or order issued pursuant thereto. Said court has jurisdiction to determine said action, and to grant the necessary or appropriate relief, including but not limited to mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages. If punitive damages are awarded, such damages shall be deposited in the Corporation Commission Underground Storage Tank Regulation Revolving Fund.

SECTION 7. AMENDATORY 24 O.S. 1991, Section 139, is amended to read as follows:

Section 139. A. Any buyer injured by a violation of this act may bring any action for recovery of damages. Judgment shall be entered for actual damages, but in no case less than the amount paid by the buyer to the credit services organization, plus reasonable ~~attorney's~~ attorneys fees and costs. An award may also be entered for punitive damages. If punitive damages are awarded, such damages shall be distributed as provided in Section 9 of Title 23 of the Oklahoma Statutes.

B. The remedies provided under this act are in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

SECTION 8. AMENDATORY 25 O.S. 1991, Section 1506.3, is amended to read as follows:

Section 1506.3 A. In an action pursuant to Section ~~24~~ 1506.1 of this ~~act~~ title, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff:

1. Actual ~~and punitive~~ damages;
2. Reasonable attorneys fees;
3. Court costs; and

4. Subject to Section ~~27~~ 1506.4 of this ~~act~~ title, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering appropriate affirmative action.

B. In addition to actual damages awarded pursuant to subsection A of this section, the court also may award punitive damages which shall be distributed as provided in Section 9 of Title 23 of the Oklahoma Statutes.

SECTION 9. AMENDATORY 26 O.S. 1991, Section 8-119, is amended to read as follows:

Section 8-119. When a petition alleging fraud is filed, said petition must be accompanied by a cash bond of Five Thousand Dollars (\$5,000.00) for each county in which fraud is alleged to have occurred, running in favor of the contestee and conditioned upon payment of any and all liabilities or judgments arising from the contest so filed. In said petition, contestant must allege that fraud occurred in certain precincts or in the casting of absentee ballots. He must further allege the name of the precincts wherein such fraud occurred, the specific act constituting such alleged fraud and the names of the alleged perpetrators of such fraud. If

such petition is filed in the manner herein provided, the district judge of the county in which the alleged fraud occurred, or such other judge as may be assigned by the Supreme Court, shall hear and determine said issue without delay or continuance of more than one (1) day. On the day of such hearing, the contestee may file answer to such petition or may file cross petition, setting forth in detail, as required of a petitioner herein, such claim of fraud. An original petition or cross petition must be under oath and under penalty of perjury. The judge shall try and determine the issues formed by such pleadings and render such judgment as he may deem just and proper, according to the evidence submitted. The decision of said district judge shall be final as to any changes in the total votes, and a copy of such judgment and decision shall be furnished the appropriate election board. In any case where fraud is proved on the part of a candidate, he shall be declared ineligible for the office for which he was a candidate. In all cases where a petition is filed which alleges fraud, but after hearing said allegations are not reasonably sustained by competent evidence, the contestant shall be civilly liable in damages to the contestee for all damages sustained, including a reasonable attorney fee and all reasonable and proper costs of conducting such contests; and in the event it be alleged and found that such petition was frivolous in nature, ~~the contestee may also be allowed~~ punitive damages may be allowed, to be paid by said petitioner and distributed pursuant to Section 9 of Title 23 of the Oklahoma Statutes.

SECTION 10. AMENDATORY Section 28, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1993, Section 2-3-504), is amended to read as follows:

Section 2-3-504. A. Except as otherwise specifically provided by law, any person who violates any of the provisions of, or who fails to perform any duty imposed by, this Code or who violates any

order, permit or license issued by the Department or rule promulgated by the Board pursuant to this Code:

1. Shall be guilty of a misdemeanor and upon conviction thereof may be punished by a fine of not less than Two Hundred Dollars (\$200.00) for each violation and not more than Ten Thousand Dollars (\$10,000.00) for each violation or by imprisonment in the county jail for not more than six (6) months or by both such fine and imprisonment;

2. May be punished in civil proceedings in district court by assessment of a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) for each violation;

3. May be assessed an administrative penalty pursuant to Section ~~26~~ 2-3-502 of this ~~act~~ title not to exceed Ten Thousand Dollars (\$10,000.00) per day of noncompliance; or

4. May be subject to injunctive relief granted by a district court. A district court may grant injunctive relief to prevent a violation of, or to compel a compliance with, any of the provisions of this Code or any rule promulgated thereunder or order, license or permit issued pursuant to this Code.

B. Nothing in this part shall preclude the Department from seeking penalties in district court in the maximum amount allowed by law. The assessment of penalties in an administrative enforcement proceeding shall not prevent the subsequent assessment by a court of the maximum civil or criminal penalties for violations of this Code.

C. Any person assessed an administrative or civil penalty shall be required to pay, in addition to such penalty amount and interest thereon, attorneys fees and costs associated with the collection of such penalties.

D. For purposes of this section, each day or part of a day upon which such violation occurs shall constitute a separate violation.

E. The Attorney General or the district attorney of the appropriate district court of Oklahoma may bring an action in a

court of competent jurisdiction for the prosecution of a violation by any person of a provision of this Code or any rule promulgated thereunder, or order, license or permit issued pursuant thereto.

F. 1. Any action for injunctive relief to redress or restrain a violation by any person of this Code or for any rule promulgated thereunder, or order, license, or permit issued pursuant thereto or recovery of any administrative or civil penalty assessed pursuant to this Code may be brought by:

- a. the district attorney of the appropriate district court of the State of Oklahoma,
- b. the Attorney General on behalf of the State of Oklahoma, or
- c. the Department on behalf of the State of Oklahoma.

2. The court shall have jurisdiction to determine said action, and to grant the necessary or appropriate relief, including but not limited to mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages. If punitive damages are awarded, such damages shall be distributed to the Department of Environmental Quality Revolving Fund.

3. It shall be the duty of the Attorney General and district attorney if requested by the Executive Director to bring such actions.

G. Except as otherwise provided by law, administrative and civil penalties shall be paid into the Department of Environmental Quality Revolving Fund.

H. In determining the amount of a civil penalty the court shall consider such factors as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the defendant from the violation, the history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the defendant, the defendant's

degree of culpability, and such other matters as justice may require.

I. In addition to or in lieu of any administrative enforcement proceedings available to the Department, the Department may take or request civil action or request criminal prosecution, or both, as provided by law for any violation of this Code, rules promulgated thereunder, or orders issued, or conditions of permits, licenses, certificates or other authorizations prescribed pursuant thereto.

SECTION 11. AMENDATORY 43A O.S. 1991, Section 10-104, as amended by Section 1, Chapter 159, O.S.L. 1993 (43A O.S. Supp. 1993, Section 10-104), is amended to read as follows:

Section 10-104. A. Any person having reasonable cause to believe that an elderly person or incapacitated adult is suffering from abuse, neglect, or financial exploitation shall make a report to either the Department of Human Services or the office of the district attorney in the county in which the suspected abuse, neglect, or exploitation occurred as soon as said person is aware of the situation. If a report is made to the Department of Human Services, the county office, after investigating the report, shall forward its findings to the office of the district attorney in the county in which the suspected abuse, neglect, or exploitation occurred. Persons required to make reports pursuant to this section shall include, but not be limited to: physicians, operators of emergency response vehicles and other medical professionals, social workers and other mental health professionals, law enforcement officials, staff of domestic violence programs and nursing home personnel.

B. The report shall contain the name and address of the elderly person or incapacitated adult, the name and address of the caretaker, if any, and a description of the situation of the elderly person or incapacitated adult.

C. Any person who knowingly and willfully fails to promptly report any abuse, neglect, or exploitation as required by the provisions of subsection A of this section, upon conviction, shall be guilty of a misdemeanor.

D. Any person participating in good faith and exercising due care in the making of a report pursuant to the provisions of this section shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

E. Any person who willfully or recklessly makes a false report or a report without a reasonable basis in fact for such a report pursuant to the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons being reported and for any punitive damages set by the court or jury which may be allowed in the discretion of the court or jury. If punitive damages are awarded, such damages shall be distributed as provided in Section 9 of Title 23 of the Oklahoma Statutes.

F. Any state or county medical examiner or physician who has reasonable cause to suspect that the death of any elderly or incapacitated adult may be the result of abuse or neglect as defined by Section 10-103 of this title shall make a report to the district attorney of the county in which the death occurred. The report shall include the name of the person making the report, the name of the deceased person, the facts or other evidence supporting said suspicion, and any other information that may be of assistance to the district attorney in conducting an investigation into the matter.

SECTION 12. AMENDATORY 52 O.S. 1991, Section 47.7, is amended to read as follows:

Section 47.7 The Commission may request the Attorney General to bring an action in a court of competent jurisdiction for equitable

relief to redress or restrain a violation by any person of a provision of the Hazardous Liquid Transportation System Safety Act or a rule, regulation, or order issued pursuant to the provisions of the Hazardous Liquid Transportation System Safety Act. Said court has jurisdiction to determine said action, and to grant the necessary or appropriate relief, including but not limited to mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages. If punitive damages are awarded, such damages shall be deposited in the Pipeline Enforcement Fund.

SECTION 13. AMENDATORY 63 O.S. 1991, Section 1-1918, as amended by Section 1, Chapter 173, O.S.L. 1992 (63 O.S. Supp. 1993, Section 1-1918), is amended to read as follows:

Section 1-1918. A. All principles enunciated in this section shall be posted in a conspicuous, easily accessible place in each facility and each resident and personally appointed representative, if any, shall be provided a copy of these principles and advised verbally prior to or upon admission. The facility shall ensure that its staff is familiar with and observes the rights and responsibilities enumerated in this section. The facility shall make available to each resident, upon reasonable requests, a current written statement of such rights.

B. A statement of rights and responsibilities shall include, but not be limited to, the following:

1. Every resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and the facility shall encourage and assist in the exercise of these rights;

2. Every resident shall have the right to have private communications, including telephonic communications and visits and consultations with the physician, attorney, meetings of family and resident groups or any other person or persons of his choice, and may send and promptly receive, unopened, his personal mail;

3. Every resident shall have the right, without fear of reprisal or discrimination, to present grievances with respect to treatment or care that is or fails to be furnished on behalf of himself or others to the facility's staff or administrator, to governmental officials or to any other person and to organize to join with other residents or individuals within or outside of the facility to work for improvements in resident care. The family of a resident shall have the right to meet in the facility with other residents' families. Every resident shall have the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents;

4. Every resident shall have the right to manage his own financial affairs, unless the resident delegates the responsibility, in writing, to the facility. The resident shall have at least a quarterly accounting of any personal financial transactions undertaken in his behalf by the facility during any period of time the resident has delegated such responsibilities to the facility;

5. Every resident shall have the right to receive adequate and appropriate medical care consistent with established and recognized medical practice standards within the community. Every resident unless adjudged to be mentally incapacitated shall be fully informed by his attending physician of his medical condition and advised in advance of proposed treatment or changes in treatment in terms and language that the resident can understand, unless medically contraindicated, and to participate in the planning of care and treatment or changes in care and treatment. Every resident shall have the right to refuse medication and treatment after being fully informed of and understanding the consequences of such actions unless adjudged to be mentally incapacitated;

6. Every resident shall receive respect and privacy in his medical care program. Case discussion, consultation, examination and treatment shall remain confidential and shall be conducted

discreetly. Personal and medical records shall be confidential, and shall include such documentation or information so as to alert a health care provider or an emergency medical care facility of the existence of a directive to physicians or a living will;

7. Every resident shall have the right to reside and to receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered;

8. Every resident shall have the right to receive notice before the room or roommate of the resident in the facility is changed and if the resident has a telephone in his or her room, the resident must be informed of any charges to be incurred when moving;

9. Every resident shall have the right to retain and use his personal clothing and possessions, unless medically contraindicated, and shall have the right to security in the storage and use of such clothing and possessions;

10. Every resident shall have the right to receive courteous and respectful care and treatment and a written statement of the services provided by the facility, including those required to be offered on an as-needed basis, and a statement of related charges, including any costs for services not covered under medicare or medicaid, or not covered by the facility's basic per diem rate;

11. Every resident shall be free from mental and physical abuse, corporal punishment, involuntary seclusion, and from any physical and chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms, except those restraints authorized in writing by a physician for a specified period of time or as are necessitated by an emergency where the restraint may only be applied by a physician, qualified licensed nurse or other personnel under the supervision of said physician who shall set forth in writing the circumstances requiring the use of restraint. Use of a chemical or physical

restraint shall require the consultation of a physician within twenty-four (24) hours of such emergency;

12. Every resident shall receive a statement of the facility's regulations and an explanation of the resident's responsibility to obey all reasonable regulations of the facility and to respect the personal rights and private property of the other residents;

13. Every resident shall receive a statement that, should they be adjudicated incompetent and have no ability to be restored to legal capacity, the above rights and responsibilities shall be exercised by a court-appointed representative;

14. No resident shall be required to perform services for a facility;

15. Every resident shall have privacy for spousal visits. Every resident may share a room with their spouse, if the spouse is residing in the same facility;

16. When a physician indicates it is appropriate, a facility shall immediately notify the resident's next of kin, or representative of the resident's death or when the resident's death appears to be imminent;

17. Every resident shall have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility; and

18. Every resident shall have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Department with respect to the facility and any plan of correction in effect with respect to the facility.

C. No licensed facility shall deny appropriate care on the basis of the resident's source of payment as defined in the regulations. Appropriate care shall not include duplication of services by a nursing home, hospice, or any combination of care providers.

D. Each facility shall prepare a written plan and provide appropriate staff training to implement each resident's rights as stated in this section.

E. Any person convicted of violating any provisions of this section shall be guilty of a misdemeanor, punishable by a fine of not less than One Hundred Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00) or imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

F. In addition to the penalties provided in this section, an action may be brought against an individual by any resident who is injured by any violation of this section, or who shall suffer injury from any person whose threats would cause a violation of this section if carried through, may maintain an action to prevent, restrain or enjoin a violation or threatened violation. If a violation or threatened violation of this section shall be established in any action, the court shall enjoin and restrain or otherwise prohibit the violation or threatened violation and assess in favor of the plaintiff and against the defendant the cost of the suit, and the reasonable attorney fees incurred by the plaintiff. If damages are alleged and proved in the action, the plaintiff shall be entitled to recover from the defendant the actual damages sustained by the plaintiff. If it is proved in an action that the defendant's conduct was willful or in reckless disregard of the rights provided by this section, punitive damages may be assessed. If punitive damages are awarded, such damages shall be distributed as provided in Section 9 of Title 23 of the Oklahoma Statutes.

G. Any employee of a state agency that inspects any nursing facility or special facility shall report any flagrant violations of this act or any other statute to the administrative head of the state agency, who shall immediately take whatever steps are necessary to correct the situation including, when appropriate,

reporting the violation to the district attorney of the county in which the violation occurred.

H. Upon the death of a resident who has no sources of payment for funeral services, the facility shall immediately notify appropriate county officials who shall be responsible for funeral and burial procedures of the deceased in the same manner as with any indigent resident of the county.

SECTION 14. This act shall become effective September 1, 1994.

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