

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION BY SENATE

FLOOR AMENDMENT

No. _____

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 1549, Page 1, Line 8 ½ , as follows:

By inserting a new SECTION 1 to read as per attached, by renumbering subsequent sections, and by amending the title to conform.

Submitted by:

Senator Lerblance

Lerblance-TEK-FA-SB1549

“SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1939, as amended by Section 2, Chapter 429, O.S.L. 2003 (63 O.S. Supp. 2007, Section 1-1939), is amended to read as follows:

Section 1-1939. A. The owner and licensee are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the resident. The owner and licensee shall maintain sufficient assets to cover all claims resulting from the intentional or negligent acts or omissions of their agents or employees which injure a resident. A liability insurance policy in the minimum amount of Twenty-five Thousand Dollars (\$25,000.00) that would compensate the resident or the resident’s family for injuries or death of a resident shall be prima facie evidence that the owner or licensee has maintained sufficient assets to adequately cover claims. If the owner or licensee is a domestic or foreign corporation, partnership, limited liability company, or other similar entity, regardless of whether formed for profit or non-profit, and does not have a minimum of Twenty-five Thousand Dollars (\$25,000.00) of liability insurance at the time of the claim for injuries or death of the resident, then a direct action may be brought against the officers, shareholders, partners, members or other similar persons of the corporation or entity which is the owner or licensee, or against the officers, shareholders, partners, members or other similar persons of any other corporation or entity owning all or part of the owner or licensee, and such persons shall be individually liable for the injuries and death of the resident. In addition, any state employee that aids, abets, assists, or conspires with an owner or licensee to perform an act that causes injury to a resident shall be individually liable.

B. A resident may maintain an action under the Nursing Home Care Act for any other type of relief, including injunctive and declaratory relief, permitted by law.

C. Any damages recoverable under this section, including minimum damages as provided by this section, may be recovered in any action which a court may authorize to be brought as a class action. The remedies provided in this section, are in addition to and cumulative with any other legal

remedies available to a resident. Exhaustion of any available administrative remedies shall not be required prior to commencement of suit hereunder.

D. Any waiver by a resident or the legal representative of the resident of the right to commence an action under this section, whether oral or in writing, shall be null and void, and without legal force or effect.

E. Any party to an action brought under this section shall be entitled to a trial by jury and any waiver of the right to a trial by a jury, whether oral or in writing, prior to the commencement of an action, shall be null and void, and without legal force or effect.

F. A licensee or its agents or employees shall not transfer, discharge, evict, harass, dismiss or retaliate against a resident, a resident's guardian or an employee or agent who makes a report, brings, or testifies in, an action under this section, or files a complaint because of a report, testimony or complaint.

G. Any person, institution or agency, under the Nursing Home Care Act, participating in good faith in the making of a report, or in the investigation of such a report shall not be deemed to have violated any privileged communication and shall have immunity from any liability, civil or criminal, or any other proceedings, civil or criminal, as a consequence of making such report. The good faith of any persons required, or permitted to report cases of suspected resident abuse or neglect under this act shall be presumed.

H. A facility employee or agent who becomes aware of abuse, neglect or exploitation of a resident prohibited by the Nursing Home Care Act shall immediately report the matter to the facility administrator. A facility administrator who becomes aware of abuse, neglect, or exploitation of a resident shall immediately act to rectify the problem and shall make a report of the incident and its correction to the Department.

I. 1. The facility shall be responsible for reporting the following serious incidents to the Department within twenty-four (24) hours:

- a. communicable diseases,
- b. deaths by unusual occurrence, including accidental deaths or deaths other than by natural causes, and deaths that may be attributed to a medical device,
- c. missing residents. In addition, the facility shall make a report to local law enforcement agencies within two (2) hours if the resident is still missing,
- d. situations arising where criminal intent is suspected. Such situations shall also be reported to local law enforcement, and
- e. resident abuse, neglect and misappropriation of the property of a resident.

2. All other incident reports shall be made in accordance with federal law.

3. All initial written reports of incidents or situations shall be mailed to the Department within five (5) working days after the incident or situation. The final report shall be filed with the Department when the full investigation is complete.”