

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SENATE BILL 1805

By: Lerblance

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5
6 AS INTRODUCED

7 An Act relating to the Nursing Home Care Act;
8 amending 63 O.S. 2001, Section 1-1939, as amended by
9 Section 2, Chapter 429, O.S.L. 2003 (63 O.S. Supp.
10 2007, Section 1-1939), which relates to liability to
11 residents; requiring assets to cover certain claims;
12 allowing certain action; providing for personal
13 liability under certain circumstances; and providing
14 an effective date.

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

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

19 Section 1-1939. A. The owner and licensee are liable to a
20 resident for any intentional or negligent act or omission of their
21 agents or employees which injures the resident. The owner and
22 licensee shall maintain sufficient assets to cover all claims
23 resulting from the intentional or negligent acts or omissions of
24 their agents or employees which injure a resident. A liability
insurance policy in the minimum amount of One Million Dollars

1 (\$1,000,000.00) that would compensate the resident or the
2 resident's family for injuries or death of a resident shall be prima
3 facie evidence that the owner or licensee has maintained sufficient
4 assets to adequately cover claims. If the owner or licensee is a
5 domestic or foreign corporation, partnership, limited liability
6 company, or other similar entity, regardless of whether formed for
7 profit or non-profit, and does not have a minimum of One Million
8 Dollars (\$1,000,000.00) of liability insurance at the time of the
9 claim for injuries or death of the resident, then a direct action
10 may be brought against the officers, shareholders, partners, members
11 or other similar persons of the corporation or entity which is the
12 owner or licensee, or against the officers, shareholders, partners,
13 members or other similar persons of any other corporation or entity
14 owning all or part of the owner or licensee, and such persons shall
15 be individually liable for the injuries and death of the resident.

16 In addition, any state employee that aids, abets, assists, or
17 conspires with an owner or licensee to perform an act that causes
18 injury to a resident shall be individually liable.

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

22 C. Any damages recoverable under this section, including
23 minimum damages as provided by this section, may be recovered in any
24 action which a court may authorize to be brought as a class action.

1 The remedies provided in this section, are in addition to and
2 cumulative with any other legal remedies available to a resident.
3 Exhaustion of any available administrative remedies shall not be
4 required prior to commencement of suit hereunder.

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

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

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

19 G. Any person, institution or agency, under the Nursing Home
20 Care Act, participating in good faith in the making of a report, or
21 in the investigation of such a report shall not be deemed to have
22 violated any privileged communication and shall have immunity from
23 any liability, civil or criminal, or any other proceedings, civil or
24 criminal, as a consequence of making such report. The good faith of

1 any persons required, or permitted to report cases of suspected
2 resident abuse or neglect under this act shall be presumed.

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

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

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

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

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

7 SECTION 2. This act shall become effective November 1, 2008.

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