

1 ENGROSSED HOUSE
2 BILL NO. 1627

By: Pittman, Sherrer and Wright
(John) of the House

3 and

4 Crain, Johnson (Constance)
5 and Eason McIntyre of the
6 Senate

7
8 An Act relating to public health and safety; amending
9 63 O.S. 2001, Section 1-1939, as amended by Section
10 2, Chapter 429, O.S.L. 2003 (63 O.S. Supp. 2008,
11 Section 1-1939), which relates to the Nursing Home
12 Care Act; requiring certain acts be reported
13 immediately; providing for preservation of the crime
14 scene; providing for certain examination; and
15 providing an effective date.

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

17 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1939, as
18 amended by Section 2, Chapter 429, O.S.L. 2003 (63 O.S. Supp. 2008,
19 Section 1-1939), is amended to read as follows:

20 Section 1-1939. A. The owner and licensee are liable to a
21 resident for any intentional or negligent act or omission of their
22 agents or employees which injures the resident. In addition, any
23 state employee that aids, abets, assists, or conspires with an owner
24 or licensee to perform an act that causes injury to a resident shall
be individually liable.

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

4 C. Any damages recoverable under this section, including
5 minimum damages as provided by this section, may be recovered in any
6 action which a court may authorize to be brought as a class action.
7 The remedies provided in this section, are in addition to and
8 cumulative with any other legal remedies available to a resident.
9 Exhaustion of any available administrative remedies shall not be
10 required prior to commencement of suit hereunder.

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

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

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

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

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

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

- 19 a. communicable diseases,
- 20 b. deaths by unusual occurrence, including accidental
21 deaths or deaths other than by natural causes, and
22 deaths that may be attributed to a medical device,

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- 1 c. missing residents. ~~In addition, the facility shall~~
2 ~~make a report to local law enforcement agencies within~~
3 ~~two (2) hours if the resident is still missing,~~
- 4 d. situations arising where criminal intent is suspected.
5 ~~Such situations shall also be reported to local law~~
6 ~~enforcement, and~~
- 7 e. resident abuse, neglect, and misappropriation of the
8 property of a resident.

9 2. Situations described in subparagraphs b, c, d and e of
10 paragraph 1 of this subsection shall be reported to local law
11 enforcement immediately upon discovery.

12 3. All other incident reports shall be made in accordance with
13 federal law.

14 ~~3.~~ 4. All initial written reports of incidents or situations
15 shall be mailed to the Department within five (5) working days after
16 the incident or situation. The final report shall be filed with the
17 Department when the full investigation is complete.

18 J. When a criminal act is witnessed and/or suspected, the
19 suspected crime scene shall be preserved. The victim shall remain
20 in the position in which the victim was discovered, unless emergency
21 medical care is required. The victim shall not be bathed or
22 cleaned, the clothing of the victim and the linens on the bed of the
23 victim shall not be changed or washed, the trash shall not be
24 removed and no other changes shall be made to the suspected crime

1 scene until law enforcement officials arrive and give authorization
2 to take any of these actions.

3 K. In the event of witnessed and/or suspected rape, sexual
4 assault, or sexual battery, the victim shall be given an examination
5 with the consent of the victim or the legal representative of such
6 victim. Said examination shall be performed by a sexual assault
7 nurse examiner, if available, or a physician or a registered nurse.

8 SECTION 2. This act shall become effective November 1, 2009.

9 Passed the House of Representatives the 3rd day of March, 2009.

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Presiding Officer of the House of
Representatives

14 Passed the Senate the ____ day of _____, 2009.

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Presiding Officer of the Senate