

THE HOUSE OF REPRESENTATIVES
Wednesday, March 24, 2010

Committee Substitute for
ENGROSSED
Senate Bill No. 1879

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 1879 - By:
NEWBERRY of the Senate and THOMPSON, PITTMAN, COOKSEY AND TERRILL of
the House.

An Act relating to public health and safety; amending 63 O.S. 2001, Section 1-1939, as amended by Section 2, Chapter 429, O.S.L. 2003 (63 O.S. Supp. 2009, Section 1-1939), which relates to nursing homes; requiring incidents where rape is suspected to be reported to local law enforcement immediately; and providing an effective date.

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

1 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1939, as amended by
2 Section 2, Chapter 429, O.S.L. 2003 (63 O.S. Supp. 2009, Section 1-1939), is amended to
3 read as follows:

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

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

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

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

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

15 F. A licensee or its agents or employees shall not transfer, discharge, evict, harass,
16 dismiss or retaliate against a resident, a resident's guardian or an employee or agent
17 who makes a report, 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 Care Act,
20 participating in good faith in the making of a report, or in the investigation of such a
21 report shall not be deemed to have violated any privileged communication and shall have
22 immunity from any liability, civil or criminal, or any other proceedings, civil or criminal,

1 as a consequence of making such report. The good faith of any persons required, or
2 permitted to report cases of suspected resident abuse or neglect under this act shall be
3 presumed.

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

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

- 11 a. communicable diseases,
- 12 b. deaths by unusual occurrence, including accidental deaths or deaths
13 other than by natural causes, and deaths that may be attributed to a
14 medical device,
- 15 c. missing residents. In addition, the facility shall make a report to local
16 law enforcement agencies within two (2) hours if the resident is still
17 missing,
- 18 d. situations arising where a rape or a criminal intent act is suspected.
19 Such situations shall also be reported to local law enforcement
20 immediately. The facility shall make every effort to preserve the scene
21 of the suspected rape or crime until local law enforcement has arrived,
22 and

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 e. resident abuse, neglect and misappropriation of the property of a
2 resident.

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

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

7 SECTION 2. This act shall become effective November 1, 2010.

8 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03-23-10 - DO PASS,
9 As Amended and Coauthored.