

3 Senate Bill No. 1879

4 SENATE BILL NO. 1879 - By: Newberry of the Senate and Thompson of
5 the House.

6 An Act relating to public health and safety; amending 63
7 O.S. 2001, Section 1-1939, as amended by Section 2, Chapter
8 429, O.S.L. 2003 (63 O.S. Supp. 2009, Section 1-1939), which
9 relates to nursing homes; requiring incidents where rape is
10 suspected to be reported to local law enforcement
11 immediately; and providing an effective date.

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

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

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

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

25 C. Any damages recoverable under this section, including
26 minimum damages as provided by this section, may be recovered in any

1 action which a court may authorize to be brought as a class action.
2 The remedies provided in this section, are in addition to and
3 cumulative with any other legal remedies available to a resident.
4 Exhaustion of any available administrative remedies shall not be
5 required prior to commencement of suit hereunder.

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

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

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

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

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

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

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

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

1 enforcement. Situations where rape is suspected shall
2 be reported to local law enforcement immediately, and
3 e. resident abuse, neglect and misappropriation of the
4 property of a resident.

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

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

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

12 COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN SERVICES, dated
13 2-4-10 - DO PASS, As Coauthored.