

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 329

By: Johnson (Rob) of the Senate

and

Cox of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to public health and safety; amending
12 63 O.S. 2001, Section 1-1939, as last amended by
13 Section 1, Chapter 221, O.S.L. 2010 (63 O.S. Supp.
14 2010, Section 1-1939), which relates to liability to
15 certain residents; providing that any voluntary
16 agreement to submit disputes to binding arbitration
17 may be executed by both parties; providing for venue
18 of certain action; providing for an exception; and
19 providing an effective date.

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

21 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1939, as
22 last amended by Section 1, Chapter 221, O.S.L. 2010 (63 O.S. Supp.
23 2010, Section 1-1939), is amended to read as follows:

24 Section 1-1939. A. The owner and licensee are liable to a
resident for any intentional or negligent act or omission of their

1 agents or employees which injures the resident. In addition, any
2 state employee that aids, abets, assists, or conspires with an owner
3 or licensee to perform an act that causes injury to a resident shall
4 be individually liable.

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

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

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

19 E. Any party to an action brought under this section shall be
20 entitled to a trial by jury and any waiver of the right to a trial
21 by a jury, whether oral or in writing, prior to the commencement of
22 an action, shall be null and void, and without legal force or
23 effect; provided, however, that any voluntary agreement to submit

1 disputes to arbitration, including binding arbitration, may be
2 executed by both parties at any time. Venue for any action
3 asserting liability against a facility, unless waived by the
4 facility or altered by written agreement of the parties, shall
5 reside in the county in which the facility is located.

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

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

19 H. A facility employee or agent who becomes aware of abuse,
20 neglect or exploitation of a resident prohibited by the Nursing Home
21 Care Act shall immediately report the matter to the facility
22 administrator. A facility administrator who becomes aware of abuse,
23 neglect, or exploitation of a resident shall immediately act to

1 rectify the problem and shall make a report of the incident and its
2 correction to the Department.

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

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

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

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

5 SECTION 2. This act shall become effective November 1, 2011.

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7 COMMITTEE REPORT BY: COMMITTEE ON LONG-TERM CARE & SENIOR SERVICES,
8 dated 03-30-2011 - DO PASS, As Amended.
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