

# SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION BY SENATE

## FLOOR AMENDMENT

No. \_\_\_\_\_

\_\_\_\_\_  
(Date)

Mr./Madame President:

I move to amend Senate Bill No. 1879, by striking the title, enacting clause and entire body of the bill and substituting the attached floor substitute.

Submitted by:

\_\_\_\_\_  
Senator Newberry

Newberry-JM-FS-Req#3643  
2/22/2010 3:15 PM

STATE OF OKLAHOMA

2nd Session of the 52nd Legislature (2010)

FLOOR SUBSTITUTE  
FOR

SENATE BILL NO. 1879

By: Newberry of the Senate

and

Thompson of the House

FLOOR SUBSTITUTE

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 certain situations to be reported to local law enforcement immediately; requiring certain facilities to preserve specified scene; and providing an effective date.

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

SECTION 1. AMENDATORY 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), is amended to read as follows:

Section 1-1939. A. The owner and licensee are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the resident. In addition, any state employee that aids, abets, assists, or conspires with an owner

1 or licensee to perform an act that causes injury to a resident shall  
2 be individually liable.

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

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

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

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

22 F. A licensee or its agents or employees shall not transfer,  
23 discharge, evict, harass, dismiss or retaliate against a resident, a  
24 resident's guardian or an employee or agent who makes a report,

1 brings, or testifies in, an action under this section, or files a  
2 complaint because of a report, testimony or complaint.

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

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

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

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

- 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 a rape or a criminal intent  
5 act is suspected. Such situations shall also be  
6 reported to local law enforcement immediately. The  
7 facility shall make every effort to preserve the scene  
8 of the suspected rape or crime until local law  
9 enforcement has arrived, and  
10 e. resident abuse, neglect and misappropriation of the  
11 property of a resident.

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

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

18 SECTION 2. This act shall become effective November 1, 2010.  
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20 52-2-3643 JM 2/22/2010 3:15:00 PM  
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