

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION BY SENATE

FLOOR AMENDMENT

No. _____

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 647, Page 33, Line 2 ½ , as follows:

By inserting a new SECTION 16 to read as per attached, by renumbering subsequent sections, and by amending the title to conform.

Submitted by:

Senator Lerblance

Lerblance-TEK-FA-SB647
3/3/2009 5:22 PM

1 “SECTION 16. AMENDATORY 63 O.S. 2001, Section 1-1939, as amended by Section
2 2, Chapter 429, O.S.L. 2003 (63 O.S. Supp. 2008, Section 1-1939), is amended to read as follows:

3 Section 1-1939. A. The owner and licensee are liable to a resident for any intentional or
4 negligent act or omission of their agents or employees which injures the resident. The owner and
5 licensee shall maintain sufficient assets to cover all claims resulting from the intentional or negligent
6 acts or omissions of their agents or employees which injure a resident. A liability insurance policy
7 in the minimum amount of One Million Dollars (\$1,000,000.00) that would compensate the
8 resident or the resident’s family for injuries or death of a resident shall be prima facie evidence that
9 the owner or licensee has maintained sufficient assets to adequately cover injury claims. If the
10 owner or licensee is a domestic or foreign corporation, partnership, limited liability company, or
11 other similar entity, regardless of whether formed for profit or non-profit, and does not have a
12 minimum of One Million Dollars (\$1,000,000.00) of liability insurance at the time of the claim for
13 injuries or death of the resident, then a direct action may be brought against the officers,
14 shareholders, partners, members or other similar persons of the corporation or entity which is the
15 owner or licensee, or against the officers, shareholders, partners, members or other similar persons
16 of any other corporation or entity owning all or part of the owner or licensee, and such persons shall
17 be individually liable for the injuries and death of the resident. In addition, any state employee that
18 aids, abets, assists, or conspires with an owner or licensee to perform an act that causes injury to a
19 resident shall be individually liable.

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

22 C. Any damages recoverable under this section, including minimum damages as provided by
23 this section, may be recovered in any action which a court may authorize to be brought as a class
24 action. The remedies provided in this section, are in addition to and cumulative with any other legal

1 remedies available to a resident. Exhaustion of any available administrative remedies shall not be
2 required prior to commencement of suit hereunder.

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

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

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

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

19 H. A facility employee or agent who becomes aware of abuse, neglect or exploitation of a
20 resident prohibited by the Nursing Home Care Act shall immediately report the matter to the facility
21 administrator. A facility administrator who becomes aware of abuse, neglect, or exploitation of a
22 resident shall immediately act to rectify the problem and shall make a report of the incident and its
23 correction to the State Department of Health.

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

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

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

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