An Act

ENROLLED SENATE
BILL NO. 1879

By: Newberry and Johnson (Constance) of the Senate

and

Thompson, Pittman, Cooksey, Terrill, Tibbs and Duncan 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:

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

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

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

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

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

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

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

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

I. 1. The facility shall be responsible for reporting the following serious incidents to the 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 a rape or a criminal ~~intent~~ act is suspected. Such situations shall also be reported to local law enforcement immediately. The facility shall make every effort to preserve the scene of the suspected rape or crime until local law enforcement has arrived, 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.

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

Passed the Senate the 3rd day of May, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 19th day of April, 2010.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 4th
day of May, **20**10,
at 1:27 **o'clock** P **M.**

By:

Approved by the Governor of the State of Oklahoma the 6th **day of**
May, **20**10, **at** 5:46 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this
7th **day of** May, **20**10,
at 3:23 **o'clock** P **M.**

By: M. Susan Savage