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HOUSE BILL 843

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO HEALTH CARE; ENACTING THE PRIVATE ENFORCEMENT OF
LONG-TERM CARE PROTECTIONS ACT; PROVIDING FOR PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the
"Private Enforcement of Long-Term Care Protections Act".

Section 2. PURPOSE. -- The purpose of the Private
Enforcement of Long-Term Care Protections Act is to establish
the right of individuals to enforce the statutes and rules
applicable to long-term care facilities by way of civil action
or injunctive relief.

Section 3. DEFINITIONS. -- As used in the Private
Enforcement of Long-Term Care Protections Act:

A. "injury" means physical harm, pain or mental
anguish;

underscored material = new
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1 B. "long-term care facility" means a residential
2 facility that provides care to one or more patients unrelated
3 to the owner or operator of the facility and includes:

- 4 (1) a skilled nursing facility;
- 5 (2) an intermediate care nursing facility,
6 including an intermediate care facility for the mentally
7 retarded;
- 8 (3) a nursing facility;
- 9 (4) an adult residential shelter care home;
- 10 (5) a boarding home;
- 11 (6) any other adult care home or adult
12 residential care facility;
- 13 (7) a continuing care community;
- 14 (8) a swing bed in an acute care facility or
15 extended care facility; and
- 16 (9) an adult day care facility; and

17 C. "resident" means a patient, client or person
18 residing in and receiving care in a long-term care facility.

19 Section 4. PRIVATE RIGHT OF ACTION FOR DAMAGES--
20 PENALTY. --

21 A. Any resident, as a class or otherwise, may
22 bring an action against a long-term care facility to recover
23 actual and punitive damages for injury resulting from a
24 violation of a federal or state statute or rule, including
25 statutes or rules that establish minimum standards of care

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1 required for the long-term care facility to obtain or retain
2 its license to operate or to receive medicaid or medicare
3 payments.

4 B. An action brought pursuant to the provisions of
5 the Private Enforcement of Long-Term Care Protections Act, in
6 addition to seeking damages, may also seek to enforce the
7 violated federal or state statutes or regulations through
8 injunctive relief.

9 C. If a resident or his representative is the
10 prevailing party in an action brought pursuant to the Private
11 Enforcement of Long-Term Care Protections Act, the court shall
12 award no less than one thousand dollars (\$1,000) minimum
13 compensatory damages and shall award reasonable attorney fees
14 and costs to the prevailing resident.

15 D. If a resident is not able to bring a cause of
16 action personally due to death, incapacity or otherwise, his
17 guardian, legal representative, family member or the estate's
18 personal representative may maintain an action on his behalf.

19 E. The rights established in the Private
20 Enforcement of Long-Term Care Protections Act are in addition
21 to any other rights or remedies that may be available by
22 statute, rule or common law, including relief pursuant to the
23 provisions of the Unfair Practices Act.

24 Section 5. EFFECTIVE DATE. --The effective date of the
25 provisions of this act is July 1, 1999.

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 March 9, 1999
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8 Mr. Speaker:
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10 Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to
11 whom has been referred
12

13 HOUSE BILL 843
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15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

- 17 1. On page 3, line 17, delete "family member".,
18

19 and thence referred to the JUDICIARY COMMITTEE.
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HCPAC/HB 843

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Respectfully submitted,

Patsy Trujillo Knauer,
Chairwoman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

Excused: Hamilton, Hawkins

Absent: None

J: \99BillsWP\H0843

1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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4 March 15, 1999
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6
7 Mr. Speaker:
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9 Your JUDICIARY COMMITTEE, to whom has been referred
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11 HOUSE BILL 843, as amended
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13 has had it under consideration and reports same with
14 recommendation that it DO PASS, amended as follows:
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16 1. On page 2, line 18, strike "and" and insert in lieu
17 thereof "or".

18 2. On page 3, line 16, after the word "his", insert
19 "court
20 appointed guardian".

21 3. On page 3, line 17, after the word "guardian", strike
22 the comma and insert in lieu thereof "or".
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJC/HB 843

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Respectfully submitted,

R. David Pederson, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 2 Against

Yes: 6

No: Mallory, Thompson

Excused: Luna, Stewart, T. Taylor, Sanchez

Absent: None

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[bracketed material] = delete