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HOUSE BILL 395

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

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;**

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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 or 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 regulation,
25 including statutes or regulations that establish minimum

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1 standards of care required for the long-term care facility to
2 obtain or retain its license to operate or to receive medicaid
3 or medicare 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 court-appointed guardian, legal representative 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, 2001.

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