

SENATE BILL NO. 164

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHNELTING.

0916S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 198.036 and 565.184, RSMo, and to enact in lieu thereof three new sections relating to the abuse or neglect of certain persons, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 198.036 and 565.184, RSMo, are
2 repealed and three new sections enacted in lieu thereof, to be
3 known as sections 198.019, 198.036, and 565.184, to read as
4 follows:

198.019. 1. As used in this section, the term "long-
2 term care facility" means any facility licensed under this
3 chapter.

4 2. Except as otherwise provided in subsection 3 of
5 this section, each long-term care facility shall maintain
6 liability insurance coverage in a minimum amount of two
7 million dollars to insure against losses resulting from the
8 negligent or criminal acts of the facility that constitute
9 abuse, neglect, or wrongful death of any resident.

10 3. A long-term care facility shall be exempt from the
11 requirement to maintain liability insurance coverage under
12 subsection 2 of this section if the long-term care facility
13 maintains a reserve account, segregated from its operational
14 funds, of at least two million dollars to cover losses
15 resulting from the negligent or criminal acts of the
16 facility that constitute abuse, neglect, or wrongful death
17 of any resident.

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

198.036. 1. The department may revoke a license in
2 any case in which it finds that:

3 (1) The operator failed or refused to comply with
4 class I or II standards, as established by the department
5 pursuant to section 198.085; or failed or refused to comply
6 with class III standards as established by the department
7 pursuant to section 198.085, where the aggregate effect of
8 such noncompliances presents either an imminent danger to
9 the health, safety or welfare of any resident or a
10 substantial probability that death or serious physical harm
11 would result;

12 (2) The operator refused to allow representatives of
13 the department to inspect the facility for compliance with
14 standards or denied representatives of the department access
15 to residents and employees necessary to carry out the duties
16 set forth in this chapter and rules promulgated thereunder,
17 except where employees of the facility are in the process of
18 rendering immediate care to a resident of such facility;

19 (3) The operator knowingly acted or knowingly omitted
20 any duty in a manner which would materially and adversely
21 affect the health, safety, welfare or property of a resident;

22 (4) The operator demonstrated financial incapacity to
23 operate and conduct the facility in accordance with the
24 provisions of sections 198.003 to 198.096;

25 (5) The operator or any principals in the operation of
26 the facility have ever been convicted of, or pled guilty or
27 nolo contendere to a felony offense concerning the operation
28 of a long-term health care facility or other health care
29 facility, or ever knowingly acted or knowingly failed to
30 perform any duty which materially and adversely affected the
31 health, safety, welfare, or property of a resident while
32 acting in a management capacity. The operator of the

33 facility or any principal in the operation of the facility
34 shall not be under exclusion from participation in the Title
35 XVIII (Medicare) or Title XIX (Medicaid) program of any
36 state or territory; [or]

37 (6) The operator or any principals involved in the
38 operation of the facility have ever been convicted of or
39 pled guilty or nolo contendere to a felony in any state or
40 federal court arising out of conduct involving either
41 management of a long-term care facility or the provision or
42 receipt of health care; or

43 **(7) The operator failed to maintain liability**
44 **insurance coverage or a reserve account as required under**
45 **section 198.019.**

46 2. Nothing in subdivision (2) of subsection 1 of this
47 section shall be construed as allowing the department access
48 to information not necessary to carry out the duties set
49 forth in sections 198.006 to 198.186.

50 3. Upon revocation of a license, the director of the
51 department shall so notify the operator in writing, setting
52 forth the reason and grounds for the revocation. Notice of
53 such revocation shall be sent by a delivery service that
54 provides a dated receipt of delivery to the operator and
55 administrator, or served personally upon the operator and
56 administrator. The department shall provide the operator
57 notice of such revocation at least ten days prior to its
58 effective date.

565.184. 1. A person commits the offense of abuse of
2 an elderly person, a person with a disability, or a
3 vulnerable person if he or she:

4 (1) Purposely engages in conduct involving more than
5 one incident that causes emotional distress to an elderly
6 person, a person with a disability, or a vulnerable person.

7 The course of conduct shall be such as would cause a
8 reasonable elderly person, person with a disability, or
9 vulnerable person to suffer substantial emotional distress;
10 or

11 (2) Intentionally fails to provide care, goods or
12 services to an elderly person, a person with a disability,
13 or a vulnerable person. The result of the conduct shall be
14 such as would cause a reasonable elderly person, person with
15 a disability, or vulnerable person to suffer physical or
16 emotional distress; or

17 (3) Knowingly acts or knowingly fails to act in a
18 manner which results in a substantial risk to the life, body
19 or health of an elderly person, a person with a disability,
20 or a vulnerable person.

21 2. The offense of abuse of an elderly person, a person
22 with a disability, or a vulnerable person is a class A
23 misdemeanor; **however, if a person commits the offense of**
24 **abuse of an elderly person, a person with a disability, or a**
25 **vulnerable person under subdivision (3) of subsection 1 of**
26 **this section and such person is a care provider subject to**
27 **employee disqualification under the provisions of section**
28 **192.2490, the offense of abuse of an elderly person, a**
29 **person with a disability, or a vulnerable person is a class**
30 **E felony.** Nothing in this section shall be construed to
31 mean that an elderly person, a person with a disability, or
32 a vulnerable person is abused solely because such person
33 chooses to rely on spiritual means through prayer, in lieu
34 of medical care, for his or her health care, as evidence by
35 such person's explicit consent, advance directive for health
36 care, or practice.

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