

By: Uresti

S.B. No. 871

A BILL TO BE ENTITLED

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AN ACT

relating to the enforcement of civil penalties against certain assisted living facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 247.045, Health and Safety Code, is amended by amending Subsections (d) and (e) and adding Subsections (h) and (i) to read as follows:

(d) The attorney general may institute and conduct a suit to collect a penalty and fees under this section at the request of the department. If the attorney general fails to notify the department ~~[take action]~~ within 30 days of referral from the department that the attorney general will accept the case, the department shall refer the case to the local district attorney, county attorney, or city attorney. The district attorney, county attorney, or city attorney shall file suit in a district court to collect and retain the penalty.

(e) Investigation and attorney's fees may not be assessed or collected by or on behalf of the department or other state agency unless ~~[the department or other state agency assesses and collects]~~ a penalty described under this chapter is assessed.

(h) If a person who is liable under this section fails to pay any amount the person is obligated to pay under this section, the state may seek satisfaction from any owner, other controlling person, or affiliate of the person found liable. The owner, other

1 controlling person, or affiliate may be found liable in the same  
2 suit or in another suit on a showing by the state that the amount to  
3 be paid has not been paid or otherwise legally discharged. The  
4 department by rule may establish a method for satisfying an  
5 obligation imposed under this section from an insurance policy,  
6 letter of credit, or other contingency fund.

7 (i) In this section, "affiliate" means:

8 (1) with respect to a partnership other than a limited  
9 partnership, each partner of the partnership;

10 (2) with respect to a corporation:

11 (A) an officer;

12 (B) a director;

13 (C) a stockholder who owns, holds, or has the  
14 power to vote at least 10 percent of any class of securities issued  
15 by the corporation, regardless of whether the power is of record or  
16 beneficial; and

17 (D) a controlling individual;

18 (3) with respect to an individual:

19 (A) each partnership and each partner in the  
20 partnership in which the individual or any other affiliate of the  
21 individual is a partner; and

22 (B) each corporation or other business entity in  
23 which the individual or another affiliate of the individual is:

24 (i) an officer;

25 (ii) a director;

26 (iii) a stockholder who owns, holds, or has  
27 the power to vote at least 10 percent of any class of securities

1 issued by the corporation, regardless of whether the power is of  
2 record or beneficial; and

3 (iv) a controlling individual;

4 (4) with respect to a limited partnership:

5 (A) a general partner; and

6 (B) a limited partner who is a controlling  
7 individual;

8 (5) with respect to a limited liability company:

9 (A) an owner who is a manager as described by the  
10 Texas Limited Liability Company Act (Article 1528n, Vernon's Texas  
11 Civil Statutes); and

12 (B) each owner who is a controlling individual;  
13 and

14 (6) with respect to any other business entity, a  
15 controlling individual.

16 SECTION 2. The change in law made by this Act applies only  
17 to a violation that occurs on or after the effective date of this  
18 Act. A violation occurs before the effective date of this Act if  
19 any element of the violation occurs before that date. A violation  
20 that occurs before the effective date of this Act is covered by the  
21 law in effect when the violation occurred, and the former law is  
22 continued in effect for that purpose.

23 SECTION 3. This Act takes effect September 1, 2007.