

1-1 By: Uresti S.B. No. 871
1-2 (In the Senate - Filed February 23, 2007; March 7, 2007,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; April 2, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 April 2, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 871 By: Uresti

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the enforcement of civil penalties against certain
1-11 assisted living facilities.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 247.045, Health and Safety Code, is
1-14 amended by amending Subsections (d) and (e) and adding Subsections
1-15 (h) and (i) to read as follows:

1-16 (d) The attorney general may institute and conduct a suit to
1-17 collect a penalty and fees under this section at the request of the
1-18 department. If the attorney general fails to notify the department
1-19 [take action] within 30 days of referral from the department that
1-20 the attorney general will accept the case, the department shall
1-21 refer the case to the local district attorney, county attorney, or
1-22 city attorney. The district attorney, county attorney, or city
1-23 attorney shall file suit in a district court to collect and retain
1-24 the penalty.

1-25 (e) Investigation and attorney's fees may not be assessed or
1-26 collected by or on behalf of the department or other state agency
1-27 unless [the department or other state agency assesses and collects]
1-28 a penalty described under this chapter is assessed.

1-29 (h) If a person who is liable under this section fails to pay
1-30 any amount the person is obligated to pay under this section, the
1-31 state may seek satisfaction from any owner, other controlling
1-32 person, or affiliate of the person found liable. The owner, other
1-33 controlling person, or affiliate may be found liable in the same
1-34 suit or in another suit on a showing by the state that the amount to
1-35 be paid has not been paid or otherwise legally discharged. The
1-36 department by rule may establish a method for satisfying an
1-37 obligation imposed under this section from an insurance policy,
1-38 letter of credit, or other contingency fund.

1-39 (i) In this section, "affiliate" means:

1-40 (1) with respect to a partnership other than a limited
1-41 partnership, each partner of the partnership;

1-42 (2) with respect to a corporation:

1-43 (A) an officer;

1-44 (B) a director;

1-45 (C) a stockholder who owns, holds, or has the
1-46 power to vote at least 10 percent of any class of securities issued
1-47 by the corporation, regardless of whether the power is of record or
1-48 beneficial; and

1-49 (D) a controlling individual;

1-50 (3) with respect to an individual:

1-51 (A) each partnership and each partner in the
1-52 partnership in which the individual or any other affiliate of the
1-53 individual is a partner; and

1-54 (B) each corporation or other business entity in
1-55 which the individual or another affiliate of the individual is:

1-56 (i) an officer;

1-57 (ii) a director;

1-58 (iii) a stockholder who owns, holds, or has
1-59 the power to vote at least 10 percent of any class of securities
1-60 issued by the corporation, regardless of whether the power is of
1-61 record or beneficial; and

1-62 (iv) a controlling individual;

1-63 (4) with respect to a limited partnership:

(A) a general partner; and

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

(5) with respect to a limited liability company:

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

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

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

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

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

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