

SENATE BILL No. 762

September 20, 2005, Introduced by Senators BERNERO, OLSHOVE, GEORGE, SCOTT, PRUSI, GOSCHKA, BARCIA, JACOBS, LELAND, SCHAUER and CLARKE and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 20198 and 21799c (MCL 333.20198 and 333.21799c), section 20198 as added by 1998 PA 270 and section 21799c as amended by 1996 PA 546.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20198. (1) Subject to subsection (3), an individual shall
2 not enter upon the premises of a health facility or agency that is
3 an inpatient facility, an outpatient facility, or a residential
4 facility for the purpose of engaging in an activity that would
5 cause a reasonable person to feel terrorized, frightened,
6 intimidated, threatened, harassed, or molested and that actually
7 causes a health facility or agency employee, patient, resident, or
8 visitor to feel terrorized, frightened, intimidated, threatened,

1 harassed, or molested. This subsection does not prohibit
 2 constitutionally protected activity or conduct that serves a
 3 legitimate purpose.

4 (2) An individual who violates subsection (1) is guilty of a
 5 misdemeanor, punishable by imprisonment for not more than 1 year or
 6 a fine of not less than \$1,000.00 or more than \$10,000.00, or both.

7 (3) Subsections (1) and (2) do not apply to a nursing home
 8 covered under sections 21763(5) and ~~21799c(1)(e)~~ **21799C(1)(D)**.

9 Sec. 21799c. (1) A person who violates 1 of the following
 10 sections is guilty of a misdemeanor ~~—~~ punishable by imprisonment
 11 for not more than 1 year or a fine of not less than \$1,000.00 ~~—~~
 12 ~~nor~~ OR more than \$10,000.00, or both:

13 (a) Section 21711.

14 (b) Section 21712.

15 (C) **SECTION 21713(B)**.

16 (D) ~~(e)~~ Section 21763(5).

17 (E) ~~(d)~~ Section 21765a(1) or (2).

18 (F) ~~(e)~~ Section 21771(1) or (6).

19 (G) ~~(f)~~ Section 21791.

20 (2) A person who violates section 21765a(1) or (2) is liable
 21 to an applicant or patient in a civil action for treble the amount
 22 of actual damages or \$1,000.00, whichever is greater, together with
 23 costs and reasonable attorney fees.

24 (3) For the purpose of computing administrative penalties
 25 under ~~this section~~ **SUBSECTION (4)**, the number of patients per day
 26 is based on the average number of patients in the nursing home
 27 during the 30 days immediately preceding the discovery of the

1 violation.

2 (4) If the department finds a violation of section 20201 as to
3 a particular nursing home patient, the department shall issue an
4 order requiring the nursing home to pay to the patient ~~-\$100.00~~
5 \$500.00, or to reimburse the patient for costs incurred or injuries
6 sustained as a result of the violation, whichever is greater. The
7 department also shall assess the nursing home an administrative
8 penalty that is the lesser of the following:

9 (a) Not more than ~~-\$1,500.00~~ \$2,500.00.

10 (b) \$15.00 per patient bed.

11 (5) The department of community health shall promulgate rules
12 for a quality of care allowance formula that is consistent with the
13 recommendations of the fiscal incentives subcommittee to the
14 committee on nursing home reimbursement established pursuant to
15 ~~Act No. 241 of the Public Acts of 1975~~ 1975 PA 241, as described
16 in the November 24, 1975 interim report, in the December 3, 1975
17 final report, and the November 24, 1976 report of the committee
18 recommending appropriate changes in the procedures utilized.

19 (6) The department shall not assess an administrative penalty
20 under subsection (4) for a violation of this part for which a
21 nursing home's reimbursement is withheld under subsection (5).

22 (7) IF THE DEPARTMENT DETERMINES THAT A LICENSEE OR
23 ADMINISTRATOR IS IN VIOLATION OF THIS PART, A RULE PROMULGATED
24 UNDER THIS PART, OR A FEDERAL LAW OR REGULATION, THE DEPARTMENT
25 SHALL ASSESS AN ADMINISTRATIVE FINE UP TO THE FOLLOWING AMOUNTS FOR
26 EACH VIOLATION OR EACH DAY THAT A VIOLATION CONTINUES:

27 (A) FOR A FIRST VIOLATION, \$100.00.

1 (B) FOR A SECOND VIOLATION THAT OCCURS WITHIN 1 YEAR OF A
2 PRIOR VIOLATION, \$250.00.

3 (C) FOR A THIRD OR SUBSEQUENT VIOLATION THAT OCCURS WITHIN 1
4 YEAR OF 2 OR MORE VIOLATIONS, \$500.00.