

FILED JAN 11 1989

SENATE FILE 31  
BY STURGEON

Filed to Passed Senate, Date 4-3-89 (p.1143) Passed House, Date \_\_\_\_\_  
Vote: Ayes 21 Nays 27 Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

Motion to reconsider 4-3-89 (p.1147)

Ayes 20 NAYS 24

A BILL FOR

passed the senate

Motion prevailed (p.1168) 4-4-89 4-4-89 Ayes 32

NAYS 24  
(p.1169)

1 An Act relating to the violation of a law or rule by a health  
2 care facility.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 31

3.2.69. amended bill

1 Section 1. Section 135C.36, subsection 2, Code 1989, is  
2 amended to read as follows:

3 2. A Class II violation is one which has a direct or  
4 immediate relationship to the health, safety, or security of  
5 residents of a health care facility, but which presents no  
6 imminent danger nor substantial probability of death or  
7 physical harm to them. A physical condition or one or more  
8 practices within a facility, including either physical abuse  
9 of any resident or failure to treat any resident with  
10 consideration, respect, and full recognition of the resident's  
11 dignity and individuality, in violation of a specific rule  
12 adopted by the department, may constitute a Class II  
13 violation. A violation of section 135C.14, subsection 8, or  
14 section 135C.31 ~~and rules~~ or a rule adopted under those  
15 sections ~~shall be~~ is at least a Class II violation and may be  
16 a Class I violation. A Class II violation shall be corrected  
17 within a stated period of time determined by the department  
18 and specified in the citation issued under section 135C.40.  
19 The stated period of time specified in the citation may  
20 subsequently be modified by the department for good cause  
21 shown. A licensee is subject to a penalty of not less than  
22 one five hundred nor more than one thousand five hundred  
23 dollars for each Class II violation for which the licensee's  
24 facility is cited, ~~however the~~ The director may shall not  
25 ~~waive the penalty if the violation is corrected within the~~  
26 ~~time specified in the citation.~~

27 Sec. 2. Section 135C.40, subsection 1, Code 1989, is  
28 amended to read as follows:

29 1. If the director determines, based on the findings of an  
30 inspection or investigation of a health care facility, that  
31 the facility is in violation of this chapter or rules adopted  
32 under this chapter, the director within five working days  
33 after making the determination, ~~may~~ shall issue a written  
34 citation to the facility. The citation shall be served upon  
35 the facility personally or by certified mail, except that a

1 citation for a Class III violation may be sent by ordinary  
2 mail. Each citation shall specifically describe the nature of  
3 the violation, identifying the Code section or subsection or  
4 the rule or standard violated, and the classification of the  
5 violation under section 135C.36. Where appropriate, the  
6 citation shall also state the period of time allowed for  
7 correction of the violation, which shall in each case be the  
8 shortest period of time the department deems feasible.  
9 Failure to correct a violation within the time specified,  
10 unless the licensee shows that the failure was due to  
11 circumstances beyond the licensee's control, shall subject the  
12 facility to a further penalty of fifty dollars for each day  
13 that the violation continues after the time specified for  
14 correction.

15 EXPLANATION

16 This bill increases the monetary penalty for a class II  
17 violation for which a health care facility is cited. The bill  
18 also removes the allowance of a waiver of the penalty by the  
19 director of the department of public health. The bill also  
20 requires the issuance of a citation for all violations  
21 substantiated through inspection or investigation of a health  
22 care facility.

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S-3269

1 Amend Senate File 31 as follows:

2 1. By striking everything after the enacting  
3 clause and inserting the following:

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4 "Section 1. Section 135C.14, subsection 8, Code  
5 1989, is amended by adding the following new  
6 paragraphs:

7 NEW PARAGRAPH. e. For the recoupment of funds or  
8 property to residents when the resident's personal  
9 funds or property have been used without the  
10 resident's written consent or the written consent of  
11 the resident's guardian.

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12 NEW PARAGRAPH. f. To ensure that residents are  
13 paid for work performed at a facility or for others,  
14 when it is verified that uncompensated work has been  
15 performed by residents.

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16 Sec. 2. Section 135C.25, Code 1989, is amended by  
17 adding the following new subsection:

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18 NEW SUBSECTION. 5. If a facility's care review  
19 committee fails to submit the report required pursuant  
20 to the rules adopted pursuant to section 249D.44 for a  
21 period of six months, the facility's administrator  
22 shall notify the director of the department of elder  
23 affairs in writing of the inactivity of the care  
24 review committee. Failure to report an inactive care  
25 review committee is a class II violation under this  
26 chapter.

27 Sec. 3. Section 135C.37, Code 1989, is amended to  
28 read as follows:

29 135C.37 COMPLAINTS ALLEGING VIOLATIONS --  
30 CONFIDENTIALITY.

31 A person may request an inspection of a health care  
32 facility by filing with the department, care review  
33 committee of the facility, or the long-term care  
34 resident's advocate as defined in section 249D.4,  
35 subsection 15, a complaint of an alleged violation of  
36 applicable requirements of this chapter or the rules  
37 adopted pursuant to this chapter. A person alleging  
38 abuse or neglect of a resident with a developmental  
39 disability or with mental illness may also file a  
40 complaint with the protection and advocacy agency  
41 designated pursuant to section 135B.9 or section  
42 135C.2. A copy of a complaint filed with the care  
43 review committee or the long-term care resident's  
44 advocate shall be forwarded to the department. The  
45 complaint shall state in a reasonably specific manner  
46 the basis of the complaint, and a statement of the  
47 nature of the complaint shall be delivered to the  
48 facility involved at the time of ~~or-prior-to~~ the  
49 inspection. The name of the person who files a  
50 complaint with the department, care review committee,

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Page 2

1 or the long-term care resident's advocate shall be  
2 kept confidential and shall not be subject to  
3 discovery, subpoena, or other means of legal  
4 compulsion for its release to a person other than  
5 department employees involved in the investigation of  
6 the complaint.

7 Sec. 4. Section 135C.38, subsection 1, Code 1989,  
8 is amended to read as follows:

9 1. Upon receipt of a complaint made in accordance  
10 with section 135C.37, the department or care review  
11 committee shall make a preliminary review of the  
12 complaint. Unless the department or committee  
13 concludes that the complaint is intended to harass a  
14 facility or a licensee or is without reasonable basis,  
15 it shall within twenty working days of receipt of the  
16 complaint make or cause to be made an on-site  
17 inspection of the health care facility which is the  
18 subject of the complaint. The complaint investigation  
19 shall include, at a minimum, an interview with the  
20 complainant and the victim of the alleged violation,  
21 if the victim is able to communicate. Additionally,  
22 witnesses who have knowledge of facts related to the  
23 complaint shall be interviewed. The names of  
24 witnesses may be obtained from the complainant or the  
25 victim. The files may be reviewed to ascertain the  
26 names of staff persons on duty at the time relevant to  
27 the complaint. An investigator and a reviewing team  
28 shall apply a preponderance of the evidence standard  
29 in determining whether or not a complaint is  
30 substantiated. For the purposes of this subsection,  
31 "a preponderance of the evidence standard" means that  
32 the evidence, considered and compared with the  
33 evidence opposed to it, produces the belief in a  
34 reasonable mind that the allegations are more likely  
35 true than not true. "A preponderance of the evidence  
36 standard" does not require that the investigator and  
37 the reviewing team personally witnessed the alleged  
38 violation. The department may refer to the care  
39 review committee of a facility any complaint received  
40 by the department regarding that facility, for initial  
41 evaluation and appropriate action by the committee.  
42 In any case, the complainant shall be promptly  
43 informed of the result of any action taken by the  
44 department or committee in the matter. The  
45 complainant shall also be notified of the name,  
46 address, and telephone number of the designated  
47 protection and advocacy agency if the alleged  
48 violation involves a facility with one or more  
49 residents with developmental disabilities or mental  
50 illness. Upon conclusion of the investigation, the

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Page 3

1 department shall notify the complainant of the  
2 results. The notification shall include a statement  
3 of the factual findings as determined by the  
4 investigator, the statutory or regulatory provisions  
5 alleged to have been violated, and the reasons for  
6 which the complaint was or was not substantiated. A  
7 person who is dissatisfied with any aspect of the  
8 department's handling of the complaint may contact the  
9 long-term care resident's advocate, established  
10 pursuant to section 249D.42, or may contact the  
11 protection and advocacy agency designated pursuant to  
12 section 135C.2 if the complaint relates to a resident  
13 with a developmental disability or a mental illness.

14 Sec. 5. Section 135C.39, Code 1989, is amended by  
15 adding the following new unnumbered paragraph:

16 NEW UNNUMBERED PARAGRAPH. A person who notifies,  
17 or causes to be notified, a health care facility, of  
18 the time and date on which a survey or on-site  
19 inspection is scheduled, is subject to a civil penalty  
20 of not less than one thousand dollars nor more than  
21 two thousand dollars, and is guilty of a simple  
22 misdemeanor."

23 2. Title page, line 1, by striking the word "by"  
24 and inserting the following: "of".

25 3. Title page, line 2, by inserting after the  
26 word "facility" the following: "and providing  
27 penalties".

By COMMITTEE ON HUMAN RESOURCES  
BEVERLY A. HANNON, Chairperson

S-3269 FILED MARCH 15, 1989

Adopted 4-3-89 (p1143)

S-3443

- 1 Amend the amendment, S-3269, to Senate File 31, as  
 2 follows:  
 3 1. Page 1, by inserting after line 3, the  
 4 following:  
 5 "Sec. \_\_\_\_ . Section 135C.14, subsection 8,  
 6 unnumbered paragraph 1, Code 1989, is amended to read  
 7 as follows:  
 8 Facility policies and procedures regarding the  
 9 treatment, care, and rights of residents. The rules  
 10 shall apply the federal resident's bill of rights  
 11 contained in 42-C.F.R.--442.311, as amended to January  
 12 17, 1981, the federal Omnibus Budget Reconciliation Act  
 13 of 1987, Pub. L. No. 100-203, and the regulations  
 14 adopted pursuant to the Act and contained in 42 C.F.R.  
 15 § 483.10, 483.12, 483.13, and 483.15, as amended to  
 16 February 2, 1989, to all health care facilities as  
 17 defined in this chapter and shall include procedures  
 18 for implementing and enforcing the federal rules. The  
 19 department shall also adopt rules relating to the  
 20 following:"  
 21 2. Page 1, line 15, by inserting after the word  
 22 "residents." the following: "Work programs authorized  
 23 by a resident physician and agreed to by the resident  
 24 do not require compensation."  
 25 3. Page 2, line 21, by inserting after the word  
 26 "communicate" the following: "if the complainant or  
 27 victim is identifiable, and if the complainant or  
 28 victim is available".  
 29 4. Page 2, line 23, by inserting after the word  
 30 "interviewed" the following: "if identifiable and  
 31 available".  
 32 5. Page 2, by striking line 27, and inserting the  
 33 following: "the complaint. The department".  
 34 6. Page 2, by striking lines 36 and 37, and  
 35 inserting the following: "standard does not require  
 36 that the investigator personally witnessed the  
 37 alleged".  
 38 7. Page 3, line 5, by inserting after the word  
 39 "and" the following: "a summary of".  
 40 8. By renumbering as necessary.

By AL STURGEON

S-3443 FILED MARCH 28, 1989

*adopted 3-30-89 (p. 1086)*

SENATE FILE 31

S-3494

- 1 Amend the amendment, S-3269, to Senate File 31, as  
 2 follows:  
 3 1. Page 1, by inserting after line 15, the  
 4 following:  
 5 "Sec. \_\_\_\_ . Section 135C.14, Code 1989, is amended  
 6 by adding the following new subsection:  
 7 NEW SUBSECTION. 9. The department shall not adopt  
 8 any rule requiring the preadmission screening of a  
 9 person entering a health care facility if the person  
 10 does not receive medical assistance under chapter  
 11 249A."  
 12 2. By renumbering as necessary.

By BERL E. PRIEBE  
JOE WELSH

S-3494 FILED MARCH 30, 1989

*Adopted 4-3-89 (p. 1142)*

SENATE FILE 31

S-3328

1 Amend the amendment, S-3269, to Senate File 31, as  
2 follows:  
3 1. Page 1, line 13, by inserting after the word  
4 "others" the following: "at the request and  
5 requirement of the facility".  
6 2. Page 1, line 15, by inserting after the word  
7 "residents." the following: "A determination of a  
8 violation under this paragraph is contingent upon the  
9 complainant's verification that a resident was  
10 required to perform the uncompensated work."

By RAY TAYLOR

S-3328 FILED MARCH 20, 1989

*Withdrawn 4-3-89 (p. 1142)*

SENATE FILE 31

S-3426

1 Amend the amendment, S-3269, to Senate File 31, as  
2 follows:  
3 1. Page 1, by striking lines 24 through 26, and  
4 inserting the following: "review committee."

By RAY TAYLOR

S-3426 FILED MARCH 27, 1989

*Adopted 4-3-89 (p. 1142)*

SENATE FILE 31

S-3526

1 Amend the amendment, S-3269, to Senate File 31, as  
2 follows:  
3 1. Page 1, line 13, by inserting after the word  
4 "others" the following: "at the request and  
5 requirement of the facility".  
6 2. Page 1, line 15, by inserting after the word  
7 "residents." the following: "A determination of a  
8 violation under this paragraph is contingent upon a  
9 verification that a resident was required to perform  
10 the uncompensated work."

By RAY TAYLOR

S-3526 FILED APRIL 3, 1989

ADOPTED *4-3-89 (p. 1142)*



4-5-89 referred to house Human Res Comm.  
Amended DOPass per amend. 3942 4-10-89 (p1440)

SENATE FILE 31  
BY STURGEON

(AS AMENDED AND PASSED BY THE SENATE APRIL 4, 1989)  
ALL New Language by the Senate

~~Failed~~ ~~to~~ ~~Pass~~ Senate Date 4-15-89 (p1674) Passed House, Date 4-14-89 (p1388)  
Vote: Ayes 24 Nays 24 Vote: Ayes 60 Nays 35  
Approved May 27, 1989

Repassed Senate 5-1-89 (p.1800) Motion to Reconsider 4-26-89 (p.1682) Motion Precluded 5-1-89 (p.1799)  
A BILL FOR  
Ayes 28 Nays 21

394272 1 An Act relating to the violation of a law or rule of a health care facility and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 31

1 Section 1. Section 135C.14, subsection 8, unnumbered  
2 paragraph 1, Code 1989, is amended to read as follows:

3 Facility policies and procedures regarding the treatment,  
4 care, and rights of residents. The rules shall apply the  
5 federal resident's bill of rights contained in ~~42-C.F.R.~~  
6 ~~442-311, as amended to January 17, 1981~~ the federal Omnibus  
7 Budget Reconciliation Act of 1987, Pub. L. No. 100-203, and  
8 the regulations adopted pursuant to the Act and contained in  
9 42 C.F.R. § 483.10, 483.12, 483.13, and 483.15, as amended to  
10 February 2, 1989, to all health care facilities as defined in  
11 this chapter and shall include procedures for implementing and  
12 enforcing the federal rules. The department shall also adopt  
13 rules relating to the following:

14 Sec. 2. Section 135C.14, subsection 8, Code 1989, is  
15 amended by adding the following new paragraphs:

16 NEW PARAGRAPH. e. For the recoupment of funds or property  
17 to residents when the resident's personal funds or property  
18 have been used without the resident's written consent or the  
19 written consent of the resident's guardian.

39420 NEW PARAGRAPH. f. To ensure that residents are paid for  
21 work performed at a facility or for others at the request and  
22 requirement of the facility, when it is verified that  
23 uncompensated work has been performed by residents. A  
24 determination of a violation under this paragraph is  
25 contingent upon a verification that a resident was required to  
26 perform the uncompensated work. Work programs authorized by a  
27 resident physician and agreed to by the resident do not  
28 require compensation.

39429 Sec. 3. Section 135C.14, Code 1989, is amended by adding  
30 the following new subsection:

31 NEW SUBSECTION. 9. The department shall not adopt any  
32 rule requiring the preadmission screening of a person entering  
33 a health care facility if the person does not receive medical  
34 assistance under chapter 249A.

39435 Sec. 4. Section 135C.25, Code 1989, is amended by adding

1 the following new subsection:

2 NEW SUBSECTION. 5. If a facility's care review committee  
3 fails to submit the report required pursuant to the rules  
4 adopted pursuant to section 249D.44 for a period of six  
5 months, the facility's administrator shall notify the director  
6 of the department of elder affairs in writing of the  
7 inactivity of the care review committee.

8 Sec. 5. Section 135C.37, Code 1989, is amended to read as  
9 follows:

10 135C.37 COMPLAINTS ALLEGING VIOLATIONS --CONFIDENTIALITY.

11 A person may request an inspection of a health care  
12 facility by filing with the department, care review committee  
13 of the facility, or the long-term care resident's advocate as  
14 defined in section 249D.4, subsection 15, a complaint of an  
15 alleged violation of applicable requirements of this chapter  
16 or the rules adopted pursuant to this chapter. A person  
17 alleging abuse or neglect of a resident with a developmental  
18 disability or with mental illness may also file a complaint  
19 with the protection and advocacy agency designated pursuant to  
20 section 135B.9 or section 135C.2. A copy of a complaint filed  
21 with the care review committee or the long-term care  
22 resident's advocate shall be forwarded to the department. The  
23 complaint shall state in a reasonably specific manner the  
24 basis of the complaint, and a statement of the nature of the  
25 complaint shall be delivered to the facility involved at the  
26 time of ~~or prior to~~ the inspection. The name of the person  
27 who files a complaint with the department, care review  
28 committee, or the long-term care resident's advocate shall be  
29 kept confidential and shall not be subject to discovery,  
30 subpoena, or other means of legal compulsion for its release  
31 to a person other than department employees involved in the  
32 investigation of the complaint.

33 Sec. 6. Section 135C.38, subsection 1, Code 1989, is  
34 amended to read as follows:

35 1. Upon receipt of a complaint made in accordance with

1 section 135C.37, the department or care review committee shall  
2 make a preliminary review of the complaint. Unless the  
3 department or committee concludes that the complaint is  
4 intended to harass a facility or a licensee or is without  
5 reasonable basis, it shall within twenty working days of  
6 receipt of the complaint make or cause to be made an on-site  
7 inspection of the health care facility which is the subject of  
8 the complaint. The complaint investigation shall include, at  
9 a minimum, an interview with the complainant and the victim of  
10 the alleged violation, if the victim is able to communicate,  
11 if the complainant or victim is identifiable, and if the  
12 complainant or victim is available. Additionally, witnesses  
13 who have knowledge of facts related to the complaint shall be  
14 interviewed, if identifiable and available. The names of  
15 witnesses may be obtained from the complainant or the victim.  
16 The files may be reviewed to ascertain the names of staff  
17 persons on duty at the time relevant to the complaint. The  
18 department shall apply a preponderance of the evidence  
19 standard in determining whether or not a complaint is  
20 substantiated. For the purposes of this subsection, "a  
21 preponderance of the evidence standard" means that the  
22 evidence, considered and compared with the evidence opposed to  
23 it, produces the belief in a reasonable mind that the  
24 allegations are more likely true than not true. "A  
25 preponderance of the evidence standard" does not require that  
26 the investigator personally witnessed the alleged violation.  
27 The department may refer to the care review committee of a  
28 facility any complaint received by the department regarding  
29 that facility, for initial evaluation and appropriate action  
30 by the committee. In any case, the complainant shall be  
31 promptly informed of the result of any action taken by the  
32 department or committee in the matter. The complainant shall  
33 also be notified of the name, address, and telephone number of  
34 the designated protection and advocacy agency if the alleged  
35 violation involves a facility with one or more residents with

1 developmental disabilities or mental illness. Upon conclusion  
2 of the investigation, the department shall notify the  
3 complainant of the results. The notification shall include a  
4 statement of the factual findings as determined by the  
5 investigator, the statutory or regulatory provisions alleged  
6 to have been violated, and a summary of the reasons for which  
7 the complaint was or was not substantiated. A person who is  
8 dissatisfied with any aspect of the department's handling of  
9 the complaint may contact the long-term care resident's  
10 advocate, established pursuant to section 249D.42, or may  
11 contact the protection and advocacy agency designated pursuant  
12 to section 135C.2 if the complaint relates to a resident with  
13 a developmental disability or a mental illness.

14 Sec. 7. Section 135C.39, Code 1989, is amended by adding  
15 the following new unnumbered paragraph:

394216 NEW UNNUMBERED PARAGRAPH. A person who notifies, or causes  
17 to be notified, a health care facility, of the time and date  
18 on which a survey or on-site inspection is scheduled, is  
19 subject to a civil penalty of not less than one thousand  
20 dollars nor more than two thousand dollars, and is guilty of a  
21 simple misdemeanor.

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SENATE FILE 31  
FISCAL NOTE

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A fiscal note for SENATE FILE 31 as amended and passed by the Senate is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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Senate File 31, as amended and passed by the Senate, relates to health care facility violations and penalties. Senate File 31 does not increase the monetary penalty associated with Class II violations.

Fiscal Effect: Senate File 31, as amended and passed by the Senate, has no fiscal impact to the Department of Inspections and Appeals. The bill makes changes associated with health care facilities which reflect the current practice of the Department of Inspections and Appeals.

Source: Department of Inspections and Appeals

(LSB 1147s.2, TCF)

FILED APRIL 13, 1989

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE AMENDMENT TO  
SENATE FILE 31

S-3753

- 1 Amend Senate File 31, as amended, passed, and  
2 reprinted by the Senate, as follows:  
3 1. Page 1, line 15, by striking the word  
4 "paragraphs" and inserting the following:  
5 "paragraph".  
6 2. Page 1, by striking lines 20 through 34.  
7 3. By striking page 1, line 35, through page 2,  
8 line 7.  
9 4. Page 4, lines 20 and 21, by striking the words  
10 ", and is guilty of a simple misdemeanor".  
11 5. Page 4, by inserting after line 21, the  
12 following:  
13 "Sec. \_\_\_\_ . Section 249D.33, Code 1989, is amended  
14 by adding the following new subsection:  
15 NEW SUBSECTION. 21. Submit a report to the  
16 department of elder affairs every six months, of the  
17 name of each health care facility in its area for  
18 which the care review committee has failed to submit  
19 the report required by rules adopted pursuant to  
20 section 249D.44."  
21 6. Page 4, by inserting after line 21, the  
22 following:  
23 "Sec. \_\_\_\_ . Section 7 of this Act is repealed at  
24 such time as a penalty is provided by the federal  
25 government for notification or causing the  
26 notification of a health care facility of the time and  
27 date on which a survey or on-site inspection is  
28 scheduled."  
29 7. Title page, line 2, by striking the words "and  
30 providing penalties" and inserting the following: ",  
31 providing a penalty, and providing for the repeal of a  
32 penalty".  
33 8. By renumbering, relettering, or redesignating  
34 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-3753 FILED APRIL 18, 1989

*Senate Concurred 4-23-89 (p.1674)*

SENATE FILE 31

H-3942

1 Amend Senate File 31, as amended, passed, and  
2 reprinted by the Senate, as follows:  
3 1. Page 1, line 15, by striking the word  
4 "paragraphs" and inserting the following:  
5 "paragraph".  
6 2. Page 1, by striking lines 20 through 34.  
7 3. Page 4, lines 20 and 21, by striking the words  
8 ", and is guilty of a simple misdemeanor".  
9 4. Page 4, by inserting after line 21, the  
10 following:  
11 "Sec. \_\_\_\_ . Section 7 of this Act is repealed at  
12 such time as a penalty is provided by the federal  
13 government for notification or causing the  
14 notification of a health care facility of the time and  
15 date on which a survey or on-site inspection is  
16 scheduled."  
17 5. Title page, line 2, by striking the words "and  
18 providing penalties" and inserting the following: ",  
19 providing a penalty, and providing for the repeal of a  
20 penalty".

By COMMITTEE ON HUMAN RESOURCES  
FEY of Scott, Chairperson

H-3942 FILED APRIL 10, 1989

*Adopted 4-14-89 (p. 1594)*

SENATE FILE 31

H-3996

1 Amend Senate File 31, as amended, passed, and  
2 reprinted by the Senate, as follows:  
3 1. By striking page 1, line 35, through page 2,  
4 line 7.  
5 2. Page 4, by inserting after line 21, the  
6 following:  
7 "Sec. \_\_\_\_ . Section 249D.33, Code 1989, is amended  
8 by adding the following new subsection:  
9 NEW SUBSECTION. 21. Submit a report to the  
10 department of elder affairs every six months, of the  
11 name of each health care facility in its area for  
12 which the care review committee has failed to submit  
13 the report required by rules adopted pursuant to  
14 section 249D.44."

By HARPER of Black Hawk  
CARPENTER of Polk

H-3996 FILED APRIL 12, 1989

*Adopted 4-14-89 (p. 1594)*



**SENATE FILE 31  
FISCAL NOTE**

A fiscal note for **SENATE FILE 31** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 31 increases the monetary penalty for a class II violation for which a health care facility is cited. The bill removes the allowance of a waiver of the penalty by the director of the Department of Public Health. The bill also requires the issuance of a citation for all violations substantiated through inspection or investigation of a health care facility.

ASSUMPTIONS

1. There are approximately 850 facilities in the state.
2. There are an average of 3.7 class II violations in each facility surveyed.
3. 3.7 violations at each facilities (850) = 3,145 violations.
4. Average fine would be \$1000.
5. There would be approximately 275 informal hearings at an average cost of \$500 each (based on current experience).
6. There would be approximately 55 administrative hearings held at an average cost of \$2,000 each (based on current experience).

Fiscal Effect: The fiscal effect of Senate File 31 is as follows:

(\$'s In Millions)

	FY 1990			FY 1991		
	Current Law	Proposed Law	Incr/ (Decr)	Current Law	Proposed Law	Incr/ (Decr)
<u>REVENUES</u>						
Class II Fines	\$ .054	3.145	3.091	.054	3.145	3.091
<u>EXPENDITURES</u>						
Hearing Expense-Salary/Support	\$ .023	.248	.225	.023	.248	.225
Rev Over/(Under) Expenditures	\$ .031	2.897	2.866	.031	2.897	2.866

Source: Department of Inspections and Appeals

(LSB 1147s, TCF)

FILED MARCH 27, 1989

BY DENNIS PROUTY, FISCAL DIRECTOR

Budget Reconciliation Act of 1987, Pub. L. No. 100-203, and the regulations adopted pursuant to the Act and contained in 42 C.F.R. § 483.10, 483.12, 483.13, and 483.15, as amended to February 2, 1989, to all health care facilities as defined in this chapter and shall include procedures for implementing and enforcing the federal rules. The department shall also adopt rules relating to the following:

Sec. 2. Section 135C.14, subsection 8, Code 1989, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. For the recoupment of funds or property to residents when the resident's personal funds or property have been used without the resident's written consent or the written consent of the resident's guardian.

Sec. 3. Section 135C.37, Code 1989, is amended to read as follows:

135C.37 COMPLAINTS ALLEGING VIOLATIONS -- CONFIDENTIALITY.

A person may request an inspection of a health care facility by filing with the department, care review committee of the facility, or the long-term care resident's advocate as defined in section 249D.4, subsection 15, a complaint of an alleged violation of applicable requirements of this chapter or the rules adopted pursuant to this chapter. A person alleging abuse or neglect of a resident with a developmental disability or with mental illness may also file a complaint with the protection and advocacy agency designated pursuant to section 135B.9 or section 135C.2. A copy of a complaint filed with the care review committee or the long-term care resident's advocate shall be forwarded to the department. The complaint shall state in a reasonably specific manner the basis of the complaint, and a statement of the nature of the complaint shall be delivered to the facility involved at the time of or prior to the inspection. The name of the person who files a complaint with the department, care review committee, or the long-term care resident's advocate shall be kept confidential and shall not be subject to discovery.

SENATE FILE 31

AN ACT

RELATING TO THE VIOLATION OF A LAW OR RULE OF A HEALTH CARE FACILITY, PROVIDING A PENALTY, AND PROVIDING FOR THE REPEAL OF A PENALTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 135C.14, subsection 8, unnumbered paragraph 1, Code 1989, is amended to read as follows:

Facility policies and procedures regarding the treatment, care, and rights of residents. The rules shall apply the federal resident's bill of rights contained in 42-C.F.R. 442-3117-~~as amended to January 17, 1981~~ the federal Omnibus

subpoena, or other means of legal compulsion for its release to a person other than department employees involved in the investigation of the complaint.

Sec. 4. Section 135C.38, subsection 1, Code 1989, is amended to read as follows:

1. Upon receipt of a complaint made in accordance with section 135C.37, the department or care review committee shall make a preliminary review of the complaint. Unless the department or committee concludes that the complaint is intended to harass a facility or a licensee or is without reasonable basis, it shall within twenty working days of receipt of the complaint make or cause to be made an on-site inspection of the health care facility which is the subject of the complaint. The complaint investigation shall include, at a minimum, an interview with the complainant and the victim of the alleged violation, if the victim is able to communicate, if the complainant or victim is identifiable, and if the complainant or victim is available. Additionally, witnesses who have knowledge of facts related to the complaint shall be interviewed, if identifiable and available. The names of witnesses may be obtained from the complainant or the victim. The files may be reviewed to ascertain the names of staff persons on duty at the time relevant to the complaint. The department shall apply a preponderance of the evidence standard in determining whether or not a complaint is substantiated. For the purposes of this subsection, "a preponderance of the evidence standard" means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations are more likely true than not true. "A preponderance of the evidence standard" does not require that the investigator personally witnessed the alleged violation. The department may refer to the care review committee of a facility any complaint received by the department regarding that facility, for initial evaluation and appropriate action

by the committee. In any case, the complainant shall be promptly informed of the result of any action taken by the department or committee in the matter. The complainant shall also be notified of the name, address, and telephone number of the designated protection and advocacy agency if the alleged violation involves a facility with one or more residents with developmental disabilities or mental illness. Upon conclusion of the investigation, the department shall notify the complainant of the results. The notification shall include a statement of the factual findings as determined by the investigator, the statutory or regulatory provisions alleged to have been violated, and a summary of the reasons for which the complaint was or was not substantiated. A person who is dissatisfied with any aspect of the department's handling of the complaint may contact the long-term care resident's advocate, established pursuant to section 249D.42, or may contact the protection and advocacy agency designated pursuant to section 135C.2 if the complaint relates to a resident with a developmental disability or a mental illness.

Sec. 5. Section 135C.39, Code 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A person who notifies, or causes to be notified, a health care facility, of the time and date on which a survey or on-site inspection is scheduled, is subject to a civil penalty of not less than one thousand dollars nor more than two thousand dollars.

Sec. 6. Section 249D.33, Code 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 21. Submit a report to the department of elder affairs every six months, of the name of each health care facility in its area for which the care review committee has failed to submit the report required by rules adopted pursuant to section 249D.44.

Sec. 7. Section 5 of this Act is repealed at such time as a penalty is provided by the federal government for

notification or causing the notification of a health care facility of the time and date on which a survey or on-site inspection is scheduled.

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JO ANN ZIMMERMAN  
President of the Senate

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DONALD D. AVENSON  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 31, Seventy-third General Assembly.

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JOHN F. DWYER  
Secretary of the Senate

Approved May 27, 1989

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TERRY E. BRANSTAD  
Governor