

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 358 Session of
1999

INTRODUCED BY FEESE, DEMPSEY, PHILLIPS, GEIST, HERMAN, READSHAW,
FAIRCHILD, CORRIGAN, S. MILLER, DALLY, FARGO, WALKO,
E. Z. TAYLOR, MICHLOVIC, SATHER, HENNESSEY, STERN, WILLIAMS,
ROSS, M. COHEN, ORIE, PLATTS, JAMES, YOUNGBLOOD, HARHAI,
STEELMAN AND WASHINGTON, FEBRUARY 8, 1999

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
NOVEMBER 9, 1999

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for neglect of care-
3 dependent person.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 ~~Section 1. The definition of "caretaker" in section 2713(f)~~ <—
7 ~~of Title 18 of the Pennsylvania Consolidated Statutes is amended~~
8 ~~to read:~~

9 SECTION 1. SECTION 2713(E) AND THE DEFINITION OF "CARETAKER" <—
10 IN SUBSECTION (F) OF TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED
11 STATUTES ARE AMENDED TO READ:

12 § 2713. Neglect of care-dependent person.

13 * * *

14 (E) TREATMENT IN CONFORMANCE WITH CARE-DEPENDENT PERSON'S <—
15 RIGHT TO ACCEPT OR REFUSE SERVICES.--A CARETAKER OR ANY OTHER
16 INDIVIDUAL OR FACILITY MAY OFFER AN AFFIRMATIVE DEFENSE TO

1 CHARGES FILED PURSUANT TO THIS SECTION IF THE CARETAKER,
2 INDIVIDUAL OR FACILITY CAN DEMONSTRATE THROUGH [A PREPONDERANCE
3 OF THE] CLEAR AND CONVINCING EVIDENCE THAT THE ALLEGED
4 VIOLATIONS RESULT DIRECTLY FROM:

5 (1) THE CARETAKER'S, INDIVIDUAL'S OR FACILITY'S LAWFUL
6 COMPLIANCE WITH A CARE-DEPENDENT PERSON'S ADVANCE DIRECTIVE
7 FOR HEALTH CARE AS PROVIDED IN 20 PA.C.S. CH. 54 (RELATING TO
8 ADVANCE DIRECTIVE FOR HEALTH CARE);

9 (2) THE CARETAKER'S, INDIVIDUAL'S OR FACILITY'S LAWFUL
10 COMPLIANCE WITH THE CARE-DEPENDENT PERSON'S WRITTEN, SIGNED
11 AND WITNESSED INSTRUCTIONS, COMPOSED WHEN THE CARE-DEPENDENT
12 PERSON IS COMPETENT AS TO THE TREATMENT HE WISHES TO RECEIVE;

13 (3) THE CARETAKER'S, INDIVIDUAL'S OR FACILITY'S LAWFUL
14 COMPLIANCE WITH THE DIRECTION OF THE CARE-DEPENDENT PERSON'S
15 ATTORNEY-IN-FACT ACTING PURSUANT TO A LAWFUL DURABLE POWER OF
16 ATTORNEY; OR

17 (4) THE CARETAKER'S, INDIVIDUAL'S OR FACILITY'S LAWFUL
18 COMPLIANCE WITH A "DO NOT RESUSCITATE" ORDER WRITTEN AND
19 SIGNED BY THE CARE-DEPENDENT PERSON'S ATTENDING PHYSICIAN.

20 (f) Definitions.--As used in this section, the following
21 words and phrases shall have the meanings given to them in this
22 subsection:

23 * * *

24 "Caretaker." Any person who:

25 (1) is an owner, operator, manager or employee of a
26 nursing home, personal care home, domiciliary care home,
27 community residential facility, intermediate care facility
28 for the mentally retarded, adult daily living center, home
29 health agency or home health service provider whether
30 licensed or unlicensed;

1 (1.1) assumes the responsibility of care for a care-
2 dependent person and who is a member of the care-dependent
3 person's family, as defined in 23 Pa.C.S. § 6102 (relating to
4 definitions);

5 (2) provides care to a care-dependent person in the
6 setting described in paragraph (1); or

7 (3) has an obligation to care for a care-dependent
8 person for monetary consideration in the settings described
9 in paragraph (1) or in the care-dependent person's home.

10 ~~partnership, unincorporated association or other business~~ <—
11 ~~entity.~~

12 * * *

13 Section 2. This act shall take effect in 60 days.