

House Bill 342 (COMMITTEE SUBSTITUTE)

By: Representatives Kelley of the 16<sup>th</sup>, Willard of the 51<sup>st</sup>, Ramsey of the 72<sup>nd</sup>, Benton of the 31<sup>st</sup>, Fleming of the 121<sup>st</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 31-7-3.2 of the Official Code of Georgia Annotated, relating to the  
2 notice of cited deficiencies and imposition of sanctions for nursing homes or intermediate  
3 care homes, so as to provide that a violation of certain regulations shall not constitute  
4 negligence per se; to provide for limitations on advertisements that use or reference the  
5 results of federal or state surveys or inspections of nursing homes; to provide for related  
6 matters; to provide for an effective date and applicability; to repeal conflicting laws; and for  
7 other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Code Section 31-7-3.2 of the Official Code of Georgia Annotated, relating to the notice of  
11 cited deficiencies and imposition of sanctions for nursing homes or intermediate care homes,  
12 is amended by adding new subsections to read as follows:

13 "(i) No violation of any regulation promulgated pursuant to the federal Nursing Home  
14 Reform Act, 42 U.S.C. Sections 1396r and 1395i-3, or any regulation included in Ga.  
15 Comp. R. & Regs. 111-8-50 or 111-8-56 as they existed on the effective date of this  
16 subsection, shall constitute negligence per se; provided, however, that the court in any civil  
17 action shall take judicial notice of these regulations and admit them into evidence. Nothing  
18 in this subsection shall abrogate any express cause of action authorized under law or be  
19 construed to amend or repeal any provision of the 'Bill of Rights for Residents of  
20 Long-term Care Facilities' in Article 5 of Chapter 8 of Title 31.

21 (j)(1) The results or findings of a federal or state survey or inspection of a nursing home  
22 facility, including any statement of deficiencies or reports, shall not be used or referenced  
23 in an advertisement or solicitation by any person or any entity, unless the advertisement  
24 or solicitation includes all of the following:

25 (A) The date the survey was conducted;

- 26 (B) A statement that the Department of Community Health conducts a survey of all  
 27 nursing home facilities at least once every 15 months;
- 28 (C) If a finding or deficiency cited in the statement of deficiencies has been  
 29 substantially corrected, a statement that the finding or deficiency has been substantially  
 30 corrected and the date that the finding or deficiency was substantially corrected;
- 31 (D) The number of findings and deficiencies cited in the statement of deficiencies on  
 32 the basis of the survey and a disclosure of the severity level for each finding and  
 33 deficiency;
- 34 (E) The average number of findings and deficiencies cited in statements of deficiencies  
 35 on the basis of surveys conducted by the department during the same calendar year as  
 36 the survey used in the advertisement;
- 37 (F) A disclosure of whether each finding or deficiency caused actual bodily harm to  
 38 any residents and the number of residents harmed thereby; and
- 39 (G) A statement that the advertisement is neither authorized nor endorsed by any  
 40 government agency.
- 41 (2) In addition to any other remedies and damages allowed by law, a party found to have  
 42 violated paragraph (1) of this subsection shall be liable for attorney fees and expenses of  
 43 litigation incurred in an action to restrain or enjoin such violation; provided, however,  
 44 that damages, attorney fees, and expenses of litigation shall not be recoverable against  
 45 any newspaper, news outlet, or broadcaster publishing an advertisement or solicitation  
 46 submitted by a third party for a fee."

47 **SECTION 2.**

48 This Act shall become effective upon its approval by the Governor or upon its becoming law  
 49 without such approval and shall apply to all causes of actions arising on and after such date.

50 **SECTION 3.**

51 All laws and parts of laws in conflict with this Act are repealed.