



945238

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Burton) recommended the following:

Senate Amendment

Delete lines 26 - 91

and insert:

(b) "Management company or active participant" means an individual or entity that contracts or receives a fee to provide any of the following services for a facility:

1. Hiring or firing the administrator or director of nursing;

2. Controlling or having control over staffing levels at the facility;



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12 3. Having control over the budget of the facility;

13 4. Implementing and enforcing the policies and procedures
14 of the facility; or

15 5. Receiving and controlling a line of credit, loan, or
16 other credit instrument that is used either in whole or in part
17 by, or for the benefit of, the subject facility where a resident
18 resides or resided during the subject residency.

19 (c) "Passive investor" means an individual or entity that
20 has an interest in a facility but does not participate in the
21 decisionmaking or operations of the facility.

22 (2) An exclusive cause of action for a residents' ~~Any~~
23 ~~person or resident whose~~ rights violation or for negligence as
24 specified under ~~in~~ this part which alleges direct or vicarious
25 liability for the personal injury or death of a resident arising
26 from such rights violation or negligence and which seeks damages
27 for such injury or death may be brought only against the
28 licensee, the licensee's management company or active
29 participant, the licensee's managing employees, or any direct
30 caregivers, whether employees or contractors. A passive investor
31 is not liable under this section. An action against any other
32 individual or entity may be brought only pursuant to subsection
33 (3) are violated shall have a cause of action.

34 (a) The action may be brought by the resident or his or her
35 guardian, or by an individual ~~a person~~ or organization acting on
36 behalf of a resident with the consent of the resident or his or
37 her guardian, or by the personal representative of the estate of
38 a deceased resident regardless of the cause of death.

39 (b) If the action alleges a claim for a residents' ~~the~~
40 ~~resident's~~ rights violation or for negligence that caused the



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41 death of the resident, the claimant, after the verdict, but
42 before the judgment is entered, must ~~shall be required to~~ elect
43 ~~either~~ survival damages pursuant to s. 46.021 or wrongful death
44 damages pursuant to s. 768.21. If the action alleges a claim for
45 a residents' the resident's rights violation or for negligence
46 that did not cause the death of the resident, the personal
47 representative of the estate may recover damages for the
48 negligence that caused injury to the resident.

49 (c) The action may be brought in any court of competent
50 jurisdiction to enforce such rights and to recover actual
51 ~~damages,~~ and punitive damages for the residents' rights
52 ~~violation of the rights of a resident~~ or negligence.

53 (d) A ~~Any~~ resident who prevails in seeking injunctive
54 relief or ~~a claim for~~ an administrative remedy is entitled to
55 recover the costs of the action and a reasonable attorney fees
56 ~~attorney's fee~~ assessed against the defendant of up not to
57 ~~exceed~~ \$25,000. Such attorney fees must ~~shall~~ be awarded solely
58 for the injunctive or administrative relief and not for any
59 claim or action for damages whether such claim or action is
60 brought ~~together~~ with a request for an injunction or
61 administrative relief or as a separate action, except as
62 provided under s. 768.79 or the Florida Rules of Civil
63 Procedure. ~~Sections 429.29-429.298 provide the exclusive remedy~~
64 ~~for a cause of action for recovery of damages for the personal~~
65 ~~injury or death of a resident arising out of negligence or a~~
66 ~~violation of rights specified in s. 429.28.~~

67 (e) This section does not preclude theories of recovery not
68 arising out of negligence or s. 429.28 which are available to a
69 resident or to the agency. ~~The provisions of Chapter 766~~ does de



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70 not apply to any cause of action brought under ss. 429.29-
71 429.298.

72 (3) A cause of action for a residents' rights violation or
73 for negligence may not be asserted against an individual or
74 entity other than the licensee, the licensee's management
75 company or active participant, the licensee's managing
76 employees, and any