

By the Committee on Judiciary; and Senator Burton

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1 A bill to be entitled
2 An act relating to claims against assisted living
3 facilities; amending s. 429.29, F.S.; defining terms;
4 providing requirements for the bringing of an
5 exclusive cause of action for residents' rights
6 violations or negligence against specified
7 individuals; providing certain individuals with
8 immunity from liability for such claims; providing
9 exceptions; amending s. 429.297, F.S.; revising
10 requirements for recovery of certain damages and
11 liability for such damages; revising definitions;
12 deleting obsolete language; providing applicability;
13 providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Section 429.29, Florida Statutes, is amended to
18 read:

19 429.29 Civil actions to enforce rights.—

20 (1) As used in this section, the term:

21 (a) "Licensee" means an individual, corporation,
22 partnership, firm, association, governmental entity, or other
23 entity that is issued a permit, registration, certificate, or
24 license by the agency and is legally responsible for all aspects
25 of the operation of the facility.

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

29 1. Hiring or firing the administrator or director of

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30 nursing;

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

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

34 4. Implementing and enforcing the policies and procedures
35 of the facility; or

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

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

43 (2) An exclusive cause of action for a residents' ~~Any~~
44 person or resident whose rights violation or for negligence as
45 specified under ~~in~~ this part which alleges direct or vicarious
46 liability for the personal injury or death of a resident arising
47 from such rights violation or negligence and which seeks damages
48 for such injury or death may be brought only against the
49 licensee, the licensee's management company or active
50 participant, the licensee's managing employees, or any direct
51 caregivers, whether employees or contractors. A passive investor
52 is not liable under this section. An action against any other
53 individual or entity may be brought only pursuant to subsection
54 (3) are violated shall have a cause of action.

55 (a) The action may be brought by the resident or his or her
56 guardian, or by an individual ~~a person~~ or organization acting on
57 behalf of a resident with the consent of the resident or his or
58 her guardian, or by the personal representative of the estate of

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59 a deceased resident regardless of the cause of death.

60 (b) If the action alleges a claim for a residents' the
61 ~~resident's~~ rights violation or for negligence that caused the
62 death of the resident, the claimant, after the verdict, but
63 before the judgment is entered, must ~~shall be required to~~ elect
64 ~~either~~ survival damages pursuant to s. 46.021 or wrongful death
65 damages pursuant to s. 768.21. If the action alleges a claim for
66 a residents' the resident's rights violation or for negligence
67 that did not cause the death of the resident, the personal
68 representative of the estate may recover damages for the
69 negligence that caused injury to the resident.

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

74 (d) A ~~Any~~ resident who prevails in seeking injunctive
75 relief or ~~a claim for~~ an administrative remedy is entitled to
76 recover the costs of the action and ~~a~~ reasonable attorney fees
77 ~~attorney's fee~~ assessed against the defendant of up not to
78 ~~exceed~~ \$25,000. Such attorney fees must ~~shall~~ be awarded solely
79 for the injunctive or administrative relief and not for any
80 claim or action for damages whether such claim or action is
81 brought ~~together~~ with a request for an injunction or
82 administrative relief or as a separate action, except as
83 provided under s. 768.79 or the Florida Rules of Civil
84 Procedure. ~~Sections 429.29-429.298 provide the exclusive remedy~~
85 ~~for a cause of action for recovery of damages for the personal~~
86 ~~injury or death of a resident arising out of negligence or a~~
87 ~~violation of rights specified in s. 429.28.~~

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88 (e) This section does not preclude theories of recovery not
89 arising out of negligence or s. 429.28 which are available to a
90 resident or to the agency. ~~The provisions of Chapter 766~~ does de
91 not apply to any cause of action brought under ss. 429.29-
92 429.298.

93 (3) A cause of action for a residents' rights violation or
94 for negligence may not be asserted against an individual or
95 entity other than the licensee, the licensee's management
96 company or active participant, the licensee's managing
97 employees, and any direct caregivers, whether employees or
98 contractors, unless, after a motion for leave to amend hearing,
99 the court or an arbitration panel determines that there is
100 sufficient evidence in the record or proffered by the claimant
101 to establish a reasonable showing that:

102 (a) The individual or entity owed a duty of reasonable care
103 to the resident and breached that duty; and

104 (b) The breach of that duty is a legal cause of loss,
105 injury, death, or damage to the resident.

106
107 For purposes of this subsection, if it is asserted in a proposed
108 amended pleading that such cause of action arose out of the
109 conduct, transaction, or occurrence set forth or attempted to be
110 set forth in the original pleading, the proposed amendment
111 relates back to the original pleading.

112 (4)~~(2)~~ In any claim brought pursuant to this part alleging
113 a violation of residents' ~~resident's~~ rights or negligence
114 causing injury to or the death of a resident, the claimant has
115 ~~shall have~~ the burden of proving, by a preponderance of the
116 evidence, that:

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117 (a) The defendant owed a duty to the resident;

118 (b) The defendant breached the duty to the resident;

119 (c) The breach of the duty is a legal cause of loss,
120 injury, death, or damage to the resident; and

121 (d) The resident sustained loss, injury, death, or damage
122 as a result of the breach.

123
124 ~~Nothing in~~ This part does not ~~shall be interpreted to~~ create
125 strict liability. A violation of the rights provided ~~set forth~~
126 in s. 429.28 or in any other standard or guidelines specified in
127 this part or in any applicable administrative standard or
128 guidelines of this state or a federal regulatory agency may
129 ~~shall~~ be evidence of negligence but is ~~shall~~ not be considered
130 negligence per se.

131 ~~(5)(3)~~ In a ~~any~~ claim brought pursuant to this section, a
132 licensee, individual ~~person~~, or entity has ~~shall have~~ a duty to
133 exercise reasonable care. Reasonable care is that degree of care
134 which a reasonably careful licensee, individual ~~person~~, or
135 entity would use under like circumstances.

136 ~~(6)(4)~~ In a ~~any~~ claim for a residents' ~~resident's~~ rights
137 violation or for negligence by a nurse licensed under part I of
138 chapter 464, such nurse has ~~shall have~~ the duty to exercise care
139 consistent with the prevailing professional standard of care for
140 a nurse. The prevailing professional standard of care for a
141 nurse is ~~shall be~~ that level of care, skill, and treatment
142 which, in light of all relevant surrounding circumstances, is
143 recognized as acceptable and appropriate by reasonably prudent
144 similar nurses.

145 ~~(7)(5)~~ Discovery of financial information for the purpose

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146 of determining the value of punitive damages may not be
147 conducted ~~had~~ unless the plaintiff shows the court by proffer or
148 evidence in the record that a reasonable basis exists to support
149 a claim for punitive damages.

150 (8) ~~(6)~~ In addition to any other standards for punitive
151 damages, any award of punitive damages must be reasonable in
152 light of the actual harm suffered by the resident and the
153 egregiousness of the conduct that caused the actual harm to the
154 resident.

155 (9) ~~(7)~~ The resident or the resident's legal representative
156 shall serve a copy of a ~~any~~ complaint alleging in whole or in
157 part a violation of any rights specified in this part to the
158 agency ~~for Health Care Administration~~ at the time of filing the
159 initial complaint with the clerk of the court for the county in
160 which the action is pursued. The requirement of providing a copy
161 of the complaint to the agency does not impair the resident's
162 legal rights or ability to seek relief for his or her claim.

163 Section 2. Section 429.297, Florida Statutes, is amended to
164 read:

165 429.297 Punitive damages; pleading; burden of proof.—

166 (1) A ~~In any action for damages brought under this part, no~~
167 claim for punitive damages may not be brought under this part
168 ~~shall be permitted~~ unless there is a ~~reasonable~~ showing by
169 admissible evidence submitted by the parties which provides in
170 ~~the record or proffered by the claimant which would provide a~~
171 reasonable basis for recovery of such damages pursuant to this
172 section.

173 (a) The claimant may move to amend her or his complaint to
174 assert a claim for punitive damages as allowed by the rules of

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175 civil procedure in accordance with evidentiary requirements
176 provided in this section.

177 (b) The court shall conduct a hearing to determine whether
178 there is sufficient admissible evidence submitted by the parties
179 to ensure that there is a reasonable basis to believe that the
180 claimant, at trial, will be able to demonstrate by clear and
181 convincing evidence that the recovery of such damages is
182 warranted under a claim for direct liability as specified in
183 subsection (2) or under a claim for vicarious liability as
184 specified in subsection (3).

185 (c) The rules of civil procedure must ~~shall~~ be liberally
186 construed so as to allow the claimant discovery of evidence
187 which appears reasonably calculated to lead to admissible
188 evidence on the issue of punitive damages. ~~No~~ Discovery of
189 financial worth may not ~~shall~~ proceed until ~~after~~ the pleading
190 concerning punitive damages is approved by the court ~~permitted~~.

191 (2) A defendant may be held liable for punitive damages
192 only if the trier of fact, by ~~based on~~ clear and convincing
193 evidence, finds that a specific individual or corporate
194 defendant actively and knowingly participated in intentional
195 misconduct or actively and knowingly engaged in conduct that
196 constitutes gross negligence and contributed to the loss,
197 damages, or injury suffered by the claimant ~~the defendant was~~
198 ~~personally guilty of intentional misconduct or gross negligence.~~
199 As used in this section, the term:

200 (b) ~~(a)~~ "Intentional misconduct" means that the defendant
201 against whom punitive damages are sought had actual knowledge of
202 the wrongfulness of the conduct and the high probability that
203 injury or damage to the claimant would result and, despite that

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204 knowledge, intentionally pursued that course of conduct,
205 resulting in injury or damage.

206 ~~(a)(b)~~ "Gross negligence" means that the defendant's
207 conduct was so reckless or wanting in care that it constituted a
208 conscious disregard or indifference to the life, safety, or
209 rights of individuals ~~persons~~ exposed to such conduct.

210 (3) In the case of vicarious liability of an individual,
211 employer, principal, corporation, or other legal entity,
212 punitive damages may not be imposed for the conduct of an
213 employee or agent unless ~~only if~~ the conduct of the employee or
214 agent meets the criteria specified in subsection (2) and an
215 officer, director, or manager of the actual employer,
216 corporation, or legal entity condoned, ratified, or consented to
217 the specific conduct as provided in subsection (2)÷

218 ~~(a) The employer, principal, corporation, or other legal~~
219 ~~entity actively and knowingly participated in such conduct;~~

220 ~~(b) The officers, directors, or managers of the employer,~~
221 ~~principal, corporation, or other legal entity condoned,~~
222 ~~ratified, or consented to such conduct; or~~

223 ~~(c) The employer, principal, corporation, or other legal~~
224 ~~entity engaged in conduct that constituted gross negligence and~~
225 ~~that contributed to the loss, damages, or injury suffered by the~~
226 ~~claimant.~~

227 (4) The plaintiff must establish at trial, by clear and
228 convincing evidence, its entitlement to an award of punitive
229 damages. The "greater weight of the evidence" burden of proof
230 applies to a determination of the amount of damages.

231 ~~(5) This section is remedial in nature and shall take~~
232 ~~effect upon becoming a law.~~

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233 Section 3. The amendments to ss. 429.29 and 429.297,
234 Florida Statutes, made by this act apply to causes of action
235 that accrue on or after July 1, 2024.

236 Section 4. This act shall take effect July 1, 2024.