

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 670

INTRODUCER: Health Policy Committee and Senator Thrasher

SUBJECT: Nursing Home Litigation

DATE: March 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	Fav/CS
2.	Munroe	Cibula	JU	Pre-meeting
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 670 amends statutory provisions relating to civil causes of action against nursing homes and the release of nursing home resident records and establishes provisions to help ensure timely payment of adverse final judgments. The bill:

- Limits the class of persons who may be sued in the initial pleading for negligence or a violation of a nursing home resident's rights to only the nursing home licensee and its management or consulting company, managing employees, and direct caregivers, whether employees or contracted. A passive investor is shielded from liability. Definitions are provided for these individuals or entities.
- Requires the court to hold a hearing on a motion for leave to amend the initial pleading before other parties may be sued.
- Makes these provisions of law the exclusive remedy against a nursing home licensee, its management or consulting company, managing employees, and direct caregivers for a cause of action alleging direct or vicarious liability for the recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of a resident's statutory rights.
- Specifies when the claimant must elect either survival damages or wrongful death damages, which is after the verdict but before the judgment is entered.
- Requires certain proposed amended pleadings to related back to the original pleading.
- Requires the court to hold an evidentiary hearing before allowing a claim for punitive damages to proceed.

- Requires payment of a judgment within 60 days, unless agreed otherwise, or the nursing home is subject to licensure sanction by the Agency for Health Care Administration.
- Revises provisions relating to the release of a nursing home resident's records.

II. Present Situation:

“Nursing Homes and Related Health Care Facilities” is the subject of ch. 400, F.S. Part I of ch. 400, F.S., establishes the Office of State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council, and the local long-term care ombudsman councils. Part II of ch. 400, F.S., provides for the regulation of nursing homes, and part III of ch. 400, F.S., provides for the regulation of home health agencies.

The Agency for Health Care Administration (AHCA) is charged with the responsibility of developing rules related to the operation of nursing homes. Section 400.022, F.S., specifies the rights and responsibilities of nursing home residents. Section 400.023, F.S., creates a statutory cause of action against nursing homes that violate the statutory rights of residents. The action may be brought in any court to enforce the resident's rights and to recover actual and punitive damages for any violation of a resident's statutory rights or for negligence.¹ Prevailing plaintiffs may be entitled to recover reasonable attorney fees plus costs of the action along with actual and punitive damages.²

Sections 400.023-400.0238, F.S., provide the exclusive remedy for a cause of action for recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of a resident's statutory rights. A claim for punitive damages is not permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages.³ A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence as defined in s. 400.0237(2), F.S.⁴

In the case of an employer, principal, corporation, or other entity, punitive damages may be imposed for conduct of an employee or agent only for intentional misconduct or gross negligence which is proven by clear and convincing evidence, and if the employer actively and knowingly participated in the conduct, ratified or consented to the conduct, or engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.⁵

Named Defendants and Causes of Action in Nursing Home Cases

Section 400.023, F.S., provides that “any resident whose rights as specified in this part are violated shall have a cause of action.” However, the section does not indicate who may be named as a defendant. Current law in ss. 400.023- 400.0238, F.S., provides the exclusive remedy for a

¹ Sections 400.023 and 400.0237, F.S.

² *Id.*

³ Section 400.0237(1), F.S.

⁴ Section 400.0237(2), F.S.

⁵ Section 400.0237(3), F.S.

cause of action for personal injury or death of a nursing home resident or a violation of the resident's rights statute. Current law further provides that s. 400.023, F.S., "does not preclude theories of recovery not arising out of negligence or s. 400.022[, F.S.,] which are available to the resident or to the [Agency for Health Care Administration]."

Liability of Employees, Officers, Directors, or Owners

In *Estate of Canavan v. National Healthcare Corp.*, 889 So. 2d 825 (Fla. 2d DCA 2004), the court considered whether the managing member of a limited liability company could be held personally liable for damages suffered by a resident in a nursing home. The claimant argued the managing member, Friedbauer, could be held liable.

[The claimant] argues that the concept of piercing the corporate veil does not apply in the case of a tort, and that it presented sufficient evidence of Friedbauer's negligence, by act or omission, for the jury to reasonably conclude that Friedbauer caused harm to Canavan. [The claimant] argues that Friedbauer had the responsibility of approving the budget for the nursing home. He also functioned as the sole member of the "governing body" of the nursing home, and pursuant to federal regulation 42 C.F.R. § 483.75(d) 2002, the governing body is legally responsible for establishing and implementing policies regarding the management and operation of the facility and for appointing the administrator who is responsible for the management of the facility. Friedbauer was thus required by federal mandate to create, approve, and implement the facility's policies and procedures. Because he ignored complaints of inadequate staffing while cutting the operating expenses, and because the problems Canavan suffered, pressure sores, infections, poor hygiene, malnutrition and dehydration, were the direct result of understaffing, [The claimant] argues that a reasonable jury could have found that Friedbauer's elevation of profit over patient care was negligent.⁶

The trial court granted a directed verdict in favor of Friedbauer, finding that there was no basis upon which a corporate officer could be held liable. On appeal, the district court reversed:

We conclude that the trial court erred in granting the directed verdict because there was evidence by which the jury could have found that Friedbauer's negligence in ignoring the documented problems at the facility contributed to the harm suffered by Canavan. This was not a case in which the plaintiffs were required to pierce the corporate veil in order to establish individual liability because Friedbauer's alleged negligence constituted tortious conduct, which is not shielded from individual liability. We, therefore, reverse the order granting the directed verdict and remand for a new trial against Friedbauer.⁷

⁶ *Estate of Canavan v. National Healthcare Corp.*, 889 So. 2d 825, 826 (Fla. 2d DCA 1994).

⁷ *Estate of Canavan v. National Healthcare Corp.*, 889 So. 2d 825, 826-827 (Fla. 2d DCA 1994) (citations omitted). One author has criticized the *Canavan* decision as "arguably an example of personal liability founded on business decisions normally protected by the 'business judgment rule,' which immunizes directors' business decisions from claims founded on

Elements in a Civil Action Under s. 400.023, F.S.

Section 400.023(2), F.S., provides that in any claim alleging a violation of a resident's rights or alleging that negligence caused injury to or the death of a resident, the claimant must prove, by a preponderance of the evidence:

- The defendant owed a duty to the resident;
- The defendant breached the duty to the resident;
- The breach of the duty is a legal cause of loss, injury, death, or damage to the resident; and
- The resident sustained loss, injury, death, or damage as a result of the breach.

The Florida Supreme Court has set forth the elements of a negligence action:

1. A duty, or obligation, recognized by the law, requiring the [defendant] to conform to a certain standard of conduct, for the protection of others against unreasonable risks.
2. A failure on the [defendant's] part to conform to the standard required: a breach of the duty....
3. A reasonably close causal connection between the conduct and the resulting injury. This is what is commonly known as "legal cause," or "proximate cause," and which includes the notion of cause in fact.
4. Actual loss or damage....⁸

Current law provides in any claim brought pursuant to s. 400.023, F.S., a licensee, person, or entity has the duty to exercise "reasonable care" and nurses⁹ have the duty to exercise care "consistent with the prevailing professional standard of care."¹⁰

Punitive Damages

Current law provides for recovery of punitive damages by a claimant. Punitive damages "are not compensation for injury. Instead, they are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence."¹¹ Punitive damages are generally limited to three times the amount of compensatory damages or \$1 million, whichever is greater.¹² Damages can exceed \$1 million if the jury finds that the wrongful conduct was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature

simple negligence." Christopher A. Cazin, *Personal Liability Exposure for Nursing Home Operators: Canavan's Encroachment on the Business Judgment Rule*, 85 FLA. B.J. 46, 46 (May 2011). "Under the [business judgment rule], a company's directors are given liberal discretion to make management and policy decisions, and a court should not substitute its judgment for that of the directors." *Id.* (citing *Lobato-Bleidt v. Lobato*, 668 So. 2d 431, 434 (Fla. 5th DCA 1997)).

⁸ *United States v. Stevens*, 994 So. 2d 1062, 1065-66 (Fla. 2008).

⁹ "The prevailing professional standard of care for a nurse shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar nurses." s. 400.023(4), F.S.

¹⁰ See s. 400.023(3) and (4), F.S.

¹¹ *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974).

¹² See s. 400.0238(1)(a), F.S.

of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant.¹³ If the jury finds that the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there is no cap on punitive damages.¹⁴

Evidentiary Requirements to Bring a Punitive Damages Claim

Section 400.0237(1), F.S., provides:

In any action for damages brought under this part, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No discovery of financial worth shall proceed until after the pleading concerning punitive damages is permitted.

A court discussed how a claimant can make a proffer to assert a punitive damages claim:

[A] 'proffer' according to traditional notions of the term, connotes merely an 'offer' of evidence and neither the term standing alone nor the statute itself calls for an adjudication of the underlying veracity of that which is submitted, much less for countervailing evidentiary submissions. Therefore, a proffer is merely a representation of what evidence the defendant proposes to present and is not actual evidence. A reasonable showing by evidence in the record would typically include depositions, interrogatories, and requests for admissions that have been filed with the court. Hence, an evidentiary hearing where witnesses testify and evidence is offered and scrutinized under the pertinent evidentiary rules, as in a trial, is neither contemplated nor mandated by the statute in order to determine whether a reasonable basis has been established to plead punitive damages.^{15, 16}

Punitive damages claims are often raised after the initial complaint has been filed. Once a claimant discovers enough evidence that the claimant believes justifies a punitive damages claim, the claimant files a motion to amend the complaint to add a punitive damages action. Current law provides that the rules of civil procedure are to be liberally construed to allow the claimant discovery of admissible evidence on the issue of punitive damages. The trial judge

¹³ See s. 400.0238(1)(b), F.S.

¹⁴ See s. 400.0238(1)(c), F.S.

¹⁵ *Estate of Despain v. Avante Group, Inc.*, 900 So. 2d 637, 642 (Fla. 5th DCA 2005)(internal citations omitted).

¹⁶ The *Despain* court was discussing a prior version of the punitive damages statute relating to nursing home litigation, but the language on proffering in that statute is the same as that in current law.

considers the evidence presented and proffered by the claimant to determine whether the claim should proceed.

Individual Liability for Punitive Damages

Section 400.0237(2), F.S., provides:

A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct¹⁷ or gross negligence.¹⁸

Vicarious Liability for Punitive Damages

Punitive damages claims are sometimes brought under a theory of vicarious liability where an employer is held responsible for the acts of an employee. Section 400.0273(3), F.S., provides:

In the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets the criteria specified in subsection (2)¹⁹ and:

- (a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;
- (b) The officers, directors, or managers of the employer, principal, corporation, or other legal entity condoned, ratified, or consented to such conduct; or
- (c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

III. Effect of Proposed Changes:

Section 1 amends s. 400.023, F.S., as follows:

Named Defendants in Nursing Home Cases

The bill provides that any claimant who alleges negligence or a violation of nursing home resident's rights for personal injury or death of a nursing home resident has a cause of action against the licensee, the licensee's management company or consulting company, the licensee's managing employees, and any direct caregivers, whether they are employees or contractors. In effect, the bill limits the persons who may be sued in the initial pleading to only these categories of defendants without a preliminary hearing to determine whether there is sufficient evidence in

¹⁷ "Intentional misconduct" is actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant will result and, despite that knowledge, intentionally pursuing a course of conduct that results in injury or damage. *See* s. 400.0237(2)(a), F.S.

¹⁸ "Gross negligence" is conduct that is so reckless or wanting in care such that it constitutes a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct. *See* s. 400.0237(2)(b), F.S.

¹⁹ Criteria are whether the defendant was personally guilty of intentional misconduct or gross negligence.

the record or proffered by the claimant to establish a reasonable showing that the elements of liability exist for other parties.

The bill defines “licensee,” “management or consulting company,” and “passive investor.” A passive investor is an individual or entity that does not participate in the decisionmaking or operations of a facility. A passive investor is shielded from liability in a cause of action for damages for the personal injury or death of a nursing home resident due to negligence or a violation of residents’ rights.

Liability of those Other than a Nursing Home Licensee, Management or Consulting Company, Managing Employee, or Direct Caregiver

As a prerequisite to asserting a claim against a party who is not a licensee, management or consulting company, managing employee or direct caregiver, a claimant must file a motion for leave to amend the initial pleading. The court, or an arbitration panel if applicable, will hold a hearing to determine if there is sufficient evidence in the record or proffered by the claimant to establish a reasonable showing that the individual or entity owed a duty of reasonable care to the resident, the individual or entity breached that duty, and that breach is a legal cause of loss, injury, or damage to, or death of the resident.

The proposed amended pleading, if it asserts that the cause of action arose out of the conduct, transaction, or occurrence as alleged in the initial pleading, the pleading relates back to the original pleading. This is a legal doctrine²⁰ that requires the original pleading to give fair notice of the general fact situation out of which the claim or defense arises and allows amendments to relate back even though the statute of limitations has since expired.

Causes of Action in Nursing Home Cases

Under current law, s. 400.023, F.S., states that “any resident whose rights as specified in this part are violated shall have a cause of action.” An aggrieved nursing home resident may sue under the statute²¹ and may sue under other appropriate legal theories. A remedy created by statute may only supplant other statutory and common law remedies if the statute specifically states that it is an exclusive remedy.²² Section 400.023, F.S., is not an exclusive remedy statute.²³

The bill amends s. 400.023, F.S., to establish an exclusive remedy for a cause of action claiming direct or vicarious liability against a nursing home licensee, a management or consulting company, managing employees, or direct caregivers for recovery of personal injury or death of a nursing home resident arising out of negligence or a violation of a resident’s statutory rights.

²⁰ Florida Rule of Civil Procedure 1.190(c).

²¹ Section 400.023, F.S.

²² *St. Angelo v. Healthcare and Retirement Corp. of America*, 824 So. 2d 997, 999 (Fla. 4th DCA 2002).

²³ “Appellant has sufficiently alleged violations of right which are guaranteed him under section 400.022[, F.S.]. Nothing in the statute precludes this lawsuit or requires appellant to first bring a simple negligence action.” *Id.* at 1000.

Section 2 amends s. 400.0237, F.S.

Evidentiary Requirements to Bring a Punitive Damages Claim

The bill provides that a claimant may not bring a claim for punitive damages unless admissible evidence submitted by the parties provides a reasonable basis for the recovery of punitive damages. The bill requires the court to conduct an evidentiary hearing where both sides present evidence. The judge must determine whether there is sufficient admissible evidence to ensure that there is a reasonable basis to believe that the claimant can demonstrate at trial, by clear and convincing evidence, that the recovery of punitive damages is warranted under a claim for direct or vicarious liability.

Current law does not require a showing of admissibility at this stage of the proceedings or authorize the claimant and defendant to present evidence before a judge authorizes a claim for punitive damages. Current law contemplates that the claimant will proffer evidence and the court, considering the proffer in the light most favorable to the claimant, will determine whether reasonable basis exists to allow the claimant's punitive damages case to proceed.²⁴ Under the bill, the claimant may not proceed with discovery on the defendant's net worth until after the trial judge approves the pleading on punitive damages.

Individual Liability for Punitive Damages

The bill provides that a defendant against whom punitive damages is sought, may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that "a specific person or corporate defendant actively and knowingly participated in intentional misconduct or engaged in conduct that constitutes gross negligence and contributed to the loss, damages, or injury suffered by the claimant."

The current law and standard jury instructions provide for punitive damages if the defendant was "personally guilty of intentional misconduct."²⁵ The bill requires that the defendant "actively and knowingly participated in intentional misconduct," instead.

Vicarious Liability for Punitive Damages

The bill provides that in the case of vicarious liability of an individual, employer, principal, corporation, or other legal entity, punitive damages may not be imposed for the conduct of an employee or agent unless:

- An identified employee or agent actively and knowingly participated in intentional misconduct, or engaged in conduct that constituted gross negligence, and that conduct contributed to the loss, damages, or injury suffered by the claimant; and,
- An officer, director, or manager of the actual employer, corporation, or legal entity condoned, ratified, or consented to the specific conduct alleged.

²⁴ See *Estate of Despain*, *supra*, note 16.

²⁵ Standard Jury Instructions in Civil Cases, 503.1, Punitive Damages - Bifurcated Procedure *available at* http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#500 (last visited February 19, 2014).

Section 3 creates s. 400.024, F.S.

Satisfying a Judgment or Settlement Agreement

The bill provides that when an adverse judgment that arises from a court award, arbitration award, or settlement agreement relating to a claim of negligence or violation of residents' rights against a licensee is final, the licensee must pay the judgment creditor the entire amount of the judgment and all accrued interest within 60 days, unless otherwise mutually agreed to in writing by the parties. This requirement applies to an adverse final judgment from a claim in contract or tort. If the licensee does not do so, the Agency for Health Care Administration may suspend the nursing home's license, deny a license renewal application, or deny a change of ownership application.

The bill outlines the procedures the Agency must follow upon notification of the existence of an unsatisfied judgment or settlement. The Agency must notify the licensee that within 30 days after receipt of the notification the licensee is subject to disciplinary action unless it provides the Agency with proof of compliance with one of five conditions pertaining to the judgment or settlement. The five conditions are:

- The judgment or settlement has been paid;
- A mutually agreed upon payment plan exists;
- A notice of appeal has been timely filed;
- A court order staying execution of the final judgment exists; or
- The court or arbitration panel that is overseeing the action documents that the licensee is seeking indemnification from an insurance carrier or other party that may be required to pay the award.

If the licensee fails to provide proof of one of the five conditions within the 30 days, the Agency must issue an emergency order finding that the nursing home facility lacks financial ability to operate and that the agency is in the process of suspending the facility's license. Following or during the period of suspension, a controlling interest in that facility may not seek licensure for the facility at issue. Additionally, if the judgment results from a trial or arbitration, the Agency may not approve a change of ownership until one of the five conditions is met with respect to the judgment.

Section 4 amends s. 400.145, F.S.

Release of a resident's records

This section of law is substantially reworded to comply with the federal Health Insurance Portability and Accountability Act (HIPAA) and to provide for release of a deceased resident's medical records.

Upon receipt of a written request that complies with HIPAA or this section of law, a nursing home must provide to a competent resident or to a resident's representative who is authorized to make requests for the resident's records copies of medical records and records concerning the care and treatment of the resident performed by the facility. However, progress notes and consultation report sections of a psychiatric nature may not be released.

The bill requires the nursing home to provide the requested records within 14 working days after receipt of a request relating to a current resident or within 30 working days after receipt of a request relating to a former resident. Current law requires a nursing home to release requested records pertaining to a current resident within 7 working days after receipt of a written request and within 10 working days after receipt of a written request pertaining to a former resident.

The bill identifies to whom and under what circumstances medical records relating to a deceased resident may be released. The list is presented in the order of priority, as follows:

- A court appointed personal representative, executor, administrator, or temporary administrator of the deceased resident's estate, upon submission of a copy of the court order.
- If a judicial appointment has not been made, a person designated in the deceased resident's legally valid will to act as his or her representative, upon submission of a copy of the will.
- If a judicial appointment or person designated by will is not available, the following individuals may request the medical records upon submission of a letter from the person's attorney verifying the relationship to the deceased resident:
 - A surviving spouse.
 - A surviving child of the resident if there is no spouse.
 - A parent of the resident if there is no spouse or child.

The bill authorizes a nursing home to refuse to release records to the resident if it would be detrimental to the physical or mental health of the resident. However, the nursing home must provide the records to another medical provider if requested to do so by the resident.

A nursing home is granted immunity from criminal or civil laws and is not civilly liable to the resident or other persons for any damages resulting from release of the medical records if the nursing home relies on this section of law and releases the records in good faith. The agency may not cite a nursing home through the survey process for noncompliance with the requirements of this section of law.

The bill restates current law with respect to the fees a nursing home may charge for copies of the records and allowing an authorized person to examine original records on site. The fees may not exceed \$1 per page for the first 25 pages and 25 cents for each additional page. As in current law, the bill provides that a nursing home is not required to provide copies of requested records more frequently than once per month, except that copies of physician reports must be released as often as necessary to allow the effective monitoring of the resident's condition.

Section 5 creates an unnumbered section of law to apply the amendments to ss. 400.023 and 400.0237, F.S., to causes of action accruing on or after the effective date of this bill.

Effective Date

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may facilitate the payment of judgments against nursing homes by requiring the Agency for Health Care Administration to take action against nursing homes that do not timely pay a judgment. The provisions that facilitate access to the records of nursing home residents may facilitate the monitoring of patient care.

C. Government Sector Impact:

The Agency for Health Care Administration will incur administrative and legal costs to take action against licensees that do not satisfy adverse final judgments or terms of a settlement agreement. As of the date of this analysis, the Agency has not provided staff with an estimate of its additional costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 3 of the bill, creating s. 400.024, F.S., may need to address additional procedural matters, including but not limited to, abatement of suspension actions or other sanctions if conditions such as those enumerated in subsection (2) occur.

On line 322 in section 4 of the bill, amending s. 400.145, F.S., the bill authorizes a nursing home to furnish records to a competent resident or to a representative of *that* resident who is authorized to make requests for the resident's records. This appears to limit release of resident records to competent residents and to representatives of competent residents. The bill is silent regarding release of a resident's records to his or her representative when the resident is not competent.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.023, 400.0237, and 400.145. This bill creates section 400.024 of the Florida Statutes. The bill creates an undesignated section of Florida Law.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on February 18, 2014:

Clarifies that the exclusive cause of action for negligence or a violation of residents' rights relates to claims arising from either direct or vicarious liability.

- Sets the timeframe for electing survival damages or wrongful death damages.
- Specified parties who may be sued in original pleading:
 - Adds two more categories of defendants to include the licensee's consulting company and the licensee's managing employees and clarifies that the defendants may be either employees or contractors.
 - Shields a passive investor from liability.
 - Defines "licensee," "management or consulting company," and "passive investor."
- Hearing to sue non-specified parties:
 - Changes the type of hearing to a "motion for leave to amend hearing" instead of an "evidentiary hearing."
 - Includes an arbitration panel, in addition to the court, as a body that may determine whether the requirements are met to sue non-specified parties.
 - Rather than a finding of sufficient evidence to establish a reasonable basis for duty, breach, and causation; there is a determination of sufficient evidence to establish a reasonable showing of duty, breach, and causation.
 - Requires that a proposed amended pleading that asserts the cause of action arose out of the conduct, transaction, or occurrence set forth in the original pleading must relate back to the original pleading.
- Punitive Damages:
 - Clarifies that the hearing to determine whether the evidentiary requirements have been met to amend the complaint to include a claim for punitive damages applies to both a claim for direct liability and vicarious liability.
 - Reinstates current law that the rules of civil procedures shall be liberally construed to allow discovery to support the issue of punitive damages.
 - No longer prohibits using the state or federal survey report to establish an entitlement to punitive damages.
- Requires the payment of the judgment, arbitration award, or settlement agreement to occur within 60 days after it becomes final, unless otherwise agreed and provides administrative procedures for sanctions by the AHCA.
- Revises provisions relating to the release of a resident's records to comply with HIPAA; increases the timeframe for producing the records; specifies who and under what conditions a person may get a deceased resident's medical records; authorizes a

nursing home to refuse to release records to the resident under certain conditions; provides immunity for good faith compliance with this section of law; and precludes the AHCA from citing a nursing home for noncompliance.

- Provides that the amendments made to the civil enforcement and punitive damages sections of law apply to causes of action accruing on or after the date the act becomes a law.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
