

1                                   A bill to be entitled  
2           An act relating to claims against long-term care  
3           facilities; amending s. 400.023, F.S.; providing  
4           requirements for admissible evidence for specified  
5           claims; providing requirements for an individual to  
6           provide expert opinions; prohibiting an expert witness  
7           from testifying on a contingency fee basis; amending  
8           ss. 400.0233 and 429.293, F.S.; providing requirements  
9           for corroboration of reasonable grounds to initiate a  
10          claim as to each prospective defendant for residents'  
11          rights violation or alleged negligence; removing a  
12          provision authorizing a licensed physician or nurse to  
13          be retained for specified purposes; repealing ss.  
14          400.0235 and 429.295, F.S., relating to specified  
15          actions not being claims for medical malpractice;  
16          amending ss. 400.0236 and 429.296, F.S.; removing  
17          provisions providing applicability of certain  
18          limitations; amending s. 429.29, F.S.; providing  
19          requirements for an exclusive cause of action for  
20          residents' rights violation or negligence to be  
21          brought against specified individuals; providing  
22          definitions; prohibiting such action from being  
23          asserted against certain individuals or entities under  
24          certain circumstances; providing exceptions; providing  
25          requirements for admissible evidence for specified

26 | claims; providing requirements for an individual to  
 27 | provide expert opinions; prohibiting an expert witness  
 28 | from testifying on a contingency fee basis; providing  
 29 | immunity from liability for certain individuals;  
 30 | providing that such actions are not claims for medical  
 31 | negligence; amending s. 429.294, F.S.; providing  
 32 | requirements for residents' records; prohibiting a  
 33 | facility from being cited by the Agency for Health  
 34 | Care Administration under certain circumstances;  
 35 | providing construction; amending s. 429.297, F.S.;;  
 36 | revising requirements for recovery of certain damages  
 37 | and liability of such damages; removing an obsolete  
 38 | date; creating s. 429.299, F.S.; providing  
 39 | requirements for a licensee to satisfy a judgment or  
 40 | settlement agreement; providing applicability; making  
 41 | technical changes; providing an effective date.

42 |  
 43 | Be It Enacted by the Legislature of the State of Florida:

44 |  
 45 | Section 1. Subsections (5), (6), (7), (8), and (9) of  
 46 | section 400.023, Florida Statutes, are renumbered as subsections  
 47 | (6), (7), (8), (14), and (15), respectively, subsection (4) and  
 48 | present subsection (9) are amended, and new subsections (5) and  
 49 | (9) and subsections (10) through (13) are added to that section,  
 50 | to read:

51 400.023 Civil enforcement.—

52 (4) In a claim brought pursuant to this part alleging a  
 53 violation of residents' rights or negligence causing injury to  
 54 or the death of a resident, the claimant has the burden of  
 55 proving, by a preponderance of the evidence, that:

- 56 (a) The defendant owed a duty to the resident;
- 57 (b) The defendant breached the duty to the resident;
- 58 (c) The breach of the duty is a legal cause of loss,  
 59 injury, death, or damage to the resident; and
- 60 (d) The resident sustained loss, injury, death, or damage  
 61 as a result of the breach.

62  
 63 This part does not create strict liability. A violation of the  
 64 rights provided ~~set forth~~ in s. 400.022, in any other standard  
 65 or guidelines specified in this part, or in any applicable  
 66 administrative standard or guidelines of this state or a federal  
 67 regulatory agency may be ~~is~~ evidence of negligence but is not  
 68 considered negligence per se.

69 (5) Notwithstanding this section, evidence of a violation  
 70 described in subsection (4), including licensure inspections  
 71 and surveys, cited deficiencies, plans of correction, or  
 72 sanctions imposed by the agency, is admissible as evidence in a  
 73 claim under this part only if the evidence relates to a  
 74 material violation of the standards or guidelines specified in  
 75 this part or an applicable administrative standard or guideline

76 relating to:

77 (a) The alleged occurrence and the particular individual  
 78 whose injury or death is the basis for the claim; or

79 (b) A finding by the agency that directly involves  
 80 substantially similar conduct that occurred at the nursing home  
 81 facility within a period of 12 months before the date of the  
 82 alleged occurrence that is the basis for the claim.

83 (9) An individual may provide an expert opinion on the  
 84 appropriate degree of reasonable care that a reasonably careful  
 85 licensee, individual, or entity would use under like  
 86 circumstances in operating a nursing home facility as to  
 87 administrative and other nonclinical issues if the individual  
 88 has substantial knowledge in operating a nursing home facility  
 89 in the state by virtue of his or her training and experience  
 90 during the 3 years immediately preceding the date of the alleged  
 91 occurrence that is the basis for the claim.

92 (10) An individual who holds an active and valid health  
 93 care professional license issued by the Department of Health may  
 94 provide an expert opinion concerning the prevailing professional  
 95 standard of care that a reasonably prudent similar health care  
 96 professional would use under the relevant surrounding  
 97 circumstances. The expert witness must have devoted professional  
 98 time during the 3 years immediately preceding the date of the  
 99 alleged occurrence that is the basis for the claim to:

100 (a) The active clinical practice of, or active clinical

101 consultation with respect to, the care and treatment of patients  
102 residing in a nursing home facility;

103 (b) The instruction of students or active work in an  
104 accredited health professional school or accredited residency  
105 or clinical research program with respect to the care and  
106 treatment of patients residing in a nursing home facility; or

107 (c) The active clinical practice of, or active clinical  
108 consultation with respect to, the care and treatment of  
109 patients who are 65 years of age or older.

110 (11) A physician licensed under chapter 458 or chapter 459  
111 who qualifies to provide an expert opinion under subsection  
112 (10) and who, by reason of active clinical practice or  
113 instruction of students, has knowledge of the applicable  
114 standard of care for physicians or other medical support staff,  
115 may give expert testimony in a negligence action with respect  
116 to the professional standard of care of such physicians or  
117 other medical support staff.

118 (12) A nurse licensed to practice professional nursing  
119 under chapter 464 who qualifies to provide an expert opinion  
120 under subsection (10) and who, by reason of active clinical  
121 practice or instruction of students, has knowledge of the  
122 applicable standard of care for nurses or other medical support  
123 staff, may give expert testimony in a negligence action with  
124 respect to the professional standard of care of such nurses or  
125 other medical support staff.

126           (13) An expert witness may not testify on a contingency  
127           fee basis.

128           ~~(15)-(9)~~ An action under this part for a violation of the  
129 rights or negligence recognized herein is not a claim for  
130 medical negligence; however, malpractice, and s. 768.21(8)  
131 applies does not apply to a claim alleging death of a the  
132 resident.

133           Section 2. Subsections (1), (2), (4), and (5) of section  
134 400.0233, Florida Statutes, are amended to read:

135           400.0233 Presuit notice; investigation; notification of  
136 violation of residents' resident's rights or alleged negligence;  
137 claims evaluation procedure; informal discovery; review;  
138 settlement offer; mediation.—

139           (1) As used in ss. 400.023-400.0238 ~~this section~~, the  
140 term:

141           (a) "Claim for residents' ~~resident's~~ rights violation or  
142 negligence" means a negligence claim alleging injury to or the  
143 death of a resident arising out of an asserted violation of the  
144 rights of a resident under s. 400.022 or an asserted deviation  
145 from the applicable standard of care.

146           (b) "Insurer" means any self-insurer authorized under s.  
147 627.357, liability insurance carrier, joint underwriting  
148 association, or uninsured prospective defendant.

149           (2) Before ~~Prior to~~ filing a claim for residents' rights a  
150 violation ~~of a resident's rights~~ or a ~~claim for~~ negligence, a

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151 claimant alleging injury to or the death of a resident shall  
152 notify each prospective defendant by certified mail, return  
153 receipt requested, of an asserted violation of a resident's  
154 rights provided in s. 400.022 or deviation from the standard of  
155 care. Such notification shall include an identification of the  
156 rights the prospective defendant has violated and the negligence  
157 alleged to have caused the incident or incidents and a brief  
158 description of the injuries sustained by the resident which are  
159 reasonably identifiable at the time of notice. The notice shall  
160 contain a certificate of counsel that counsel's reasonable  
161 investigation gave rise to a good faith belief that grounds  
162 exist for an action against each prospective defendant.  
163 Corroboration of reasonable grounds to initiate a claim as to  
164 each prospective defendant for residents' rights violation or  
165 negligence shall be provided by the claimant's submission of a  
166 written expert opinion from an individual qualified as an expert  
167 pursuant to s. 400.023 at the time the notice of intent to file  
168 a claim is mailed, which stated opinion must corroborate  
169 reasonable grounds to support the claim.

170 (4) The notification of a violation of residents' a  
171 ~~resident's~~ rights or alleged negligence shall be served within  
172 the applicable statute of limitations period; however, during  
173 the 75-day period, the statute of limitations is tolled as to  
174 all prospective defendants. Upon stipulation by the parties, the  
175 75-day period may be extended and the statute of limitations is

176 tolled during any such extension. Upon receiving written notice  
 177 by certified mail, return receipt requested, of termination of  
 178 negotiations in an extended period, the claimant shall have 60  
 179 days or the remainder of the period of the statute of  
 180 limitations, whichever is greater, within which to file suit.

181 (5) A ~~No~~ statement, discussion, written document, report,  
 182 or other work product generated by presuit claims evaluation  
 183 procedures under this section is not discoverable or admissible  
 184 in any civil action for any purpose by the opposing party. All  
 185 participants, including, but not limited to, physicians,  
 186 investigators, witnesses, and employees or associates of the  
 187 defendant, are immune from civil liability arising from  
 188 participation in the presuit claims evaluation procedure. ~~Any~~  
 189 ~~licensed physician or registered nurse may be retained by either~~  
 190 ~~party to provide an opinion regarding the reasonable basis of~~  
 191 ~~the claim.~~ The presuit opinions of the expert are not  
 192 discoverable or admissible in any civil action for any purpose  
 193 by the opposing party.

194 Section 3. Section 400.0235, Florida Statutes, is  
 195 repealed.

196 Section 4. Subsection (3) of section 400.0236, Florida  
 197 Statutes, is amended to read:

198 400.0236 Statute of limitations.—

199 ~~(3) This section shall apply to causes of action that have~~  
 200 ~~accrued prior to the effective date of this section; however,~~



201 ~~any such cause of action that would not have been barred under~~  
 202 ~~prior law may be brought within the time allowed by prior law or~~  
 203 ~~within 2 years after the effective date of this section,~~  
 204 ~~whichever is earlier, and will be barred thereafter. In actions~~  
 205 ~~where it can be shown that fraudulent concealment or intentional~~  
 206 ~~misrepresentation of fact prevented the discovery of the injury,~~  
 207 ~~the period of limitations is extended forward 2 years from the~~  
 208 ~~time that the injury is discovered with the exercise of due~~  
 209 ~~diligence, but in no event more than 4 years from the effective~~  
 210 ~~date of this section.~~

211 Section 5. Section 429.29, Florida Statutes, is amended to  
 212 read:

213 429.29 Civil actions to enforce rights.—

214 (1) An exclusive cause of action for residents' ~~Any person~~  
 215 ~~or resident whose rights violation or negligence~~ as specified  
 216 under in this part which alleges direct or vicarious liability  
 217 for the personal injury or death of a resident arising from such  
 218 rights violation or negligence and which seeks damages for such  
 219 injury or death may be brought only against the licensee, the  
 220 licensee's management or consulting company, the licensee's  
 221 managing employees, and any direct caregivers, whether employees  
 222 or contractors ~~are violated shall have a cause of action.~~

223 (a) The action may be brought by the resident or his or  
 224 her guardian, or by an individual ~~a person~~ or organization  
 225 acting on behalf of a resident with the consent of the resident

226 or his or her guardian, or by the personal representative of the  
 227 estate of a deceased resident regardless of the cause of death.

228 (b) If the action alleges a claim for residents' the  
 229 ~~resident's~~ rights violation or ~~for~~ negligence that caused the  
 230 death of the resident, the claimant shall, after the verdict,  
 231 but before the judgment is entered, ~~be required to~~ elect either  
 232 survival damages pursuant to s. 46.021 or wrongful death damages  
 233 pursuant to s. 768.21. If the action alleges a claim for  
 234 residents' the resident's rights violation or ~~for~~ negligence  
 235 that did not cause the death of the resident, the personal  
 236 representative of the estate may recover damages for the  
 237 negligence that caused injury to the resident.

238 (c) The action may be brought in any court of competent  
 239 jurisdiction to enforce such rights and to recover actual  
 240 damages, and punitive damages for violation of the rights of a  
 241 resident or negligence.

242 (d) ~~A~~ Any resident who prevails in seeking injunctive  
 243 relief or ~~a claim for~~ an administrative remedy is entitled to  
 244 recover the costs of the action and ~~a~~ reasonable attorney fees  
 245 ~~attorney's fee~~ assessed against the defendant of up to not to  
 246 ~~exceed~~ \$25,000. Such attorney fees shall be awarded solely for  
 247 the injunctive or administrative relief and not for any claim or  
 248 action for damages whether such claim or action is brought  
 249 ~~together~~ with a request for an injunction or administrative  
 250 relief or as a separate action, except as provided under s.

251 768.79 or the Florida Rules of Civil Procedure. ~~Sections 429.29-~~  
 252 ~~429.298 provide the exclusive remedy for a cause of action for~~  
 253 ~~recovery of damages for the personal injury or death of a~~  
 254 ~~resident arising out of negligence or a violation of rights~~  
 255 ~~specified in s. 429.28.~~

256 (e) This section does not preclude theories of recovery  
 257 not arising out of negligence or s. 429.28 which are available  
 258 to a resident or to the agency. ~~The provisions of Chapter 766~~  
 259 does ~~de~~ not apply to any cause of action brought under ss.  
 260 429.29-429.298. An action against any other individual or entity  
 261 may be brought only pursuant to subsection (3).

262 (2) As used in this section, the term:

263 (a) "Licensee" means an individual, corporation,  
 264 partnership, firm, association, governmental entity, or other  
 265 entity that is issued a permit, registration, certificate, or  
 266 license by the agency and is legally responsible for all aspects  
 267 of the operation of the facility.

268 (b) "Management or consulting company" means an individual  
 269 or entity that contracts with, or receives a fee from, a  
 270 licensee to provide any of the following services for a  
 271 facility:

- 272 1. Hiring or firing the administrator;  
 273 2. Controlling or having control over the staffing levels  
 274 at the facility;  
 275 3. Having control over the budget of the facility; or

276 4. Implementing and enforcing the policies and procedures  
 277 of the facility.

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

281 (3) An exclusive cause of action for residents' rights  
 282 violation or negligence may not be asserted against an  
 283 individual or entity other than the licensee, the licensee's  
 284 management or consulting company, the licensee's managing  
 285 employees, and any direct caregivers, whether employees or  
 286 contractors, unless, after a motion for leave to amend hearing,  
 287 the court or an arbitration panel determines that there is  
 288 sufficient evidence in the record or proffered by the claimant  
 289 to establish a reasonable showing that:

290 (a) The individual or entity owed a duty of reasonable  
 291 care to the resident and the individual or entity breached that  
 292 duty; and

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

295  
 296 For purposes of this subsection, if, in a proposed amended  
 297 pleading, it is asserted that such cause of action arose out of  
 298 the conduct, transaction, or occurrence set forth or attempted  
 299 to be set forth in the original pleading, the proposed amendment  
 300 relates back to the original pleading.

301        ~~(4)(2)~~ In any claim brought pursuant to this part alleging  
 302 a violation of residents' ~~resident's~~ rights or negligence  
 303 causing injury to or the death of a resident, the claimant has  
 304 ~~shall have~~ the burden of proving, by a preponderance of the  
 305 evidence, that:

- 306            (a) The defendant owed a duty to the resident;
- 307            (b) The defendant breached the duty to the resident;
- 308            (c) The breach of the duty is a legal cause of loss,  
 309 injury, death, or damage to the resident; and
- 310            (d) The resident sustained loss, injury, death, or damage  
 311 as a result of the breach.

312  
 313 ~~Nothing in~~ This part does not ~~shall be interpreted to~~ create  
 314 strict liability. A violation of the rights provided ~~set forth~~  
 315 in s. 429.28 or in any other standard or guidelines specified in  
 316 this part or in any applicable administrative standard or  
 317 guidelines of this state or a federal regulatory agency may  
 318 ~~shall~~ be evidence of negligence but is ~~shall~~ not ~~be~~ considered  
 319 negligence per se.

320        (5) Notwithstanding this section, evidence of a violation  
 321 described in subsection (4), including licensure inspections  
 322 and surveys, cited deficiencies, plans of correction, or  
 323 sanctions imposed by the agency, is admissible as evidence in a  
 324 claim under this part only if the evidence relates to a  
 325 material violation of the standards or guidelines specified in

326 this part or an applicable administrative standard or guideline  
327 relating to:

328 (a) The alleged occurrence and the particular individual  
329 whose injury or death is the basis for the claim; or

330 (b) A finding by the agency that directly involves  
331 substantially similar conduct that occurred at the assisted  
332 living facility within a period of 12 months before the date of  
333 the alleged occurrence that is the basis for the claim.

334 ~~(6)(3)~~ In a ~~any~~ claim brought pursuant to this section, a  
335 licensee, individual person, or entity has ~~shall have~~ a duty to  
336 exercise reasonable care. Reasonable care is that degree of care  
337 which a reasonably careful licensee, individual person, or  
338 entity would use under like circumstances.

339 ~~(7)(4)~~ In a ~~any~~ claim for residents' ~~resident's~~ rights  
340 violation or negligence by a nurse licensed under part I of  
341 chapter 464, such nurse has ~~shall have~~ the duty to exercise care  
342 consistent with the prevailing professional standard of care for  
343 a nurse. The prevailing professional standard of care for a  
344 nurse is ~~shall be~~ that level of care, skill, and treatment  
345 which, in light of all relevant surrounding circumstances, is  
346 recognized as acceptable and appropriate by reasonably prudent  
347 similar nurses.

348 ~~(8)(5)~~ Discovery of financial information for the purpose  
349 of determining the value of punitive damages may not be had  
350 unless the plaintiff shows the court by proffer or evidence in

351 the record that a reasonable basis exists to support a claim for  
352 punitive damages.

353 (9) An individual may provide an expert opinion on the  
354 appropriate degree of reasonable care that a reasonably careful  
355 licensee, individual, or entity would use under like  
356 circumstances in operating an assisted living facility as to  
357 administrative and other nonclinical issues if the individual  
358 has substantial knowledge in operating an assisted living  
359 facility in the state by virtue of his or her training and  
360 experience during the 3 years immediately preceding the date of  
361 the alleged occurrence that is the basis for the claim.

362 (10) An individual who holds an active and valid health  
363 care professional license issued by the Department of Health may  
364 provide an expert opinion concerning the prevailing professional  
365 standard of care that a reasonably prudent similar health care  
366 professional would use under the relevant surrounding  
367 circumstances. The expert witness must have devoted professional  
368 time during the 3 years immediately preceding the date of the  
369 alleged occurrence that is the basis for the claim to:

370 (a) The active clinical practice of, or active clinical  
371 consultation with respect to, the care and treatment of patients  
372 residing in an assisted living facility;

373 (b) The instruction of students or active work in an  
374 accredited health professional school or accredited residency  
375 or clinical research program with respect to the care and

376 treatment of patients residing in an assisted living facility;  
377 or

378 (c) The active clinical practice of, or active clinical  
379 consultation with respect to, the care and treatment of  
380 patients who are 65 years of age or older.

381 (11) A physician licensed under chapter 458 or chapter 459  
382 who qualifies to provide an expert opinion under subsection  
383 (10) and who, by reason of active clinical practice or  
384 instruction of students, has knowledge of the applicable  
385 standard of care for physicians or other medical support staff,  
386 may give expert testimony in a negligence action with respect  
387 to the professional standard of care of such physicians or  
388 other medical support staff.

389 (12) A nurse licensed to practice professional nursing  
390 under chapter 464 who qualifies to provide an expert opinion  
391 under subsection (10) and who, by reason of active clinical  
392 practice or instruction of students, has knowledge of the  
393 applicable standard of care for nurses or other medical support  
394 staff, may give expert testimony in a negligence action with  
395 respect to the professional standard of care of such nurses or  
396 other medical support staff.

397 (13) An expert witness may not testify on a contingency  
398 fee basis.

399 (14)~~(6)~~ In addition to any other standards for punitive  
400 damages, any award of punitive damages must be reasonable in



401 light of the actual harm suffered by the resident and the  
 402 egregiousness of the conduct that caused the actual harm to the  
 403 resident.

404 (15)~~(7)~~ The resident or the resident's legal  
 405 representative shall serve a copy of a ~~any~~ complaint alleging in  
 406 whole or in part a violation of any rights specified in this  
 407 part to the agency ~~for Health Care Administration~~ at the time of  
 408 filing the initial complaint with the clerk of the court for the  
 409 county in which the action is pursued. The requirement of  
 410 providing a copy of the complaint to the agency does not impair  
 411 the resident's legal rights or ability to seek relief for his or  
 412 her claim.

413 (16) A passive investor is not liable under this section.

414 (17) An exclusive cause of action for residents' rights  
 415 violation or negligence as specified under this part is not a  
 416 claim for medical negligence; however, s. 768.21(8) applies to a  
 417 claim alleging death of a resident.

418 Section 6. Subsections (1) and (2), paragraph (a) of  
 419 subsection (3), and subsection (5) of section 429.293, Florida  
 420 Statutes, are amended to read:

421 429.293 Presuit notice; investigation; notification of a  
 422 claim for ~~violation of~~ residents' rights violation or alleged  
 423 negligence; claims evaluation procedure; informal discovery;  
 424 review; settlement offer; mediation.—

425 (1) As used in ss. 429.29-429.299 ~~this section~~, the term:

426 (a) "Claim for residents' rights violation or negligence"  
 427 means a negligence claim alleging injury to or the death of a  
 428 resident arising out of an asserted violation of the rights of a  
 429 resident under s. 429.28 or an asserted deviation from the  
 430 applicable standard of care.

431 (b) "Insurer" means any self-insurer authorized under s.  
 432 627.357, liability insurance carrier, joint underwriting  
 433 association, or uninsured prospective defendant.

434 (2) Before ~~Prior to~~ filing a claim for residents' rights a  
 435 ~~violation of a resident's rights or a claim for~~ negligence, a  
 436 claimant alleging injury to or the death of a resident shall  
 437 notify each prospective defendant by certified mail, return  
 438 receipt requested, of an asserted violation of a resident's  
 439 rights provided in s. 429.28 or deviation from the standard of  
 440 care. Such notification shall include an identification of the  
 441 rights the prospective defendant has violated and the negligence  
 442 alleged to have caused the incident or incidents and a brief  
 443 description of the injuries sustained by the resident which are  
 444 reasonably identifiable at the time of notice. The notice shall  
 445 contain a certificate of counsel that counsel's reasonable  
 446 investigation gave rise to a good faith belief that grounds  
 447 exist for an action against each prospective defendant.  
 448 Corroboration of reasonable grounds to initiate a claim as to  
 449 each prospective defendant for residents' rights violation or  
 450 negligence shall be provided by the claimant's submission of a

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451 written expert opinion from an individual qualified as an expert  
452 pursuant to s. 400.023 at the time the notice of intent to file  
453 a claim is mailed, which stated opinion must corroborate  
454 reasonable grounds to support the claim.

455 (3) (a) A ~~No~~ suit may not be filed for a period of 75 days  
456 after notice is mailed to any prospective defendant. During the  
457 75-day period, the prospective defendants or their insurers  
458 shall conduct an evaluation of the claim to determine the  
459 liability of each defendant and to evaluate the damages of the  
460 claimants. Each defendant or insurer of the defendant shall have  
461 a procedure for the prompt evaluation of claims during the 75-  
462 day period. The procedure shall include one or more of the  
463 following:

464 1. Internal review by a duly qualified facility risk  
465 manager or claims adjuster;

466 2. Internal review by counsel for each prospective  
467 defendant;

468 3. A quality assurance committee authorized under any  
469 applicable state or federal statutes or regulations; or

470 4. Any other similar procedure that fairly and promptly  
471 evaluates the claims.

472

473 Each defendant or insurer of the defendant shall evaluate the  
474 claim in good faith.

475 (5) A ~~No~~ statement, discussion, written document, report,

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476 or other work product generated by presuit claims evaluation  
477 procedures under this section is not discoverable or admissible  
478 in any civil action for any purpose by the opposing party. All  
479 participants, including, but not limited to, physicians,  
480 investigators, witnesses, and employees or associates of the  
481 defendant, are immune from civil liability arising from  
482 participation in the presuit claims evaluation procedure. ~~Any~~  
483 ~~licensed physician or registered nurse may be retained by either~~  
484 ~~party to provide an opinion regarding the reasonable basis of~~  
485 ~~the claim.~~ The presuit opinions of the expert are not  
486 discoverable or admissible in any civil action for any purpose  
487 by the opposing party.

488 Section 7. Section 429.294, Florida Statutes, is amended  
489 to read:

490 429.294 Availability of facility records for investigation  
491 of residents' ~~resident's~~ rights violations and defenses;  
492 penalty.—

493 (1) Failure to provide complete copies of a resident's  
494 records, including, but not limited to, all medical records and  
495 the resident's chart, within the control or possession of the  
496 facility in accordance with s. 400.145, shall constitute  
497 evidence of failure of that party to comply with good faith  
498 discovery requirements and shall waive the good faith  
499 certificate and presuit notice requirements under this part by  
500 the requesting party.

501           (2) A ~~No~~ facility may not shall be held liable for any  
 502 civil damages as a result of complying with this section.

503           (3) Upon receipt of a written request that complies with  
 504 the federal Health Insurance Portability and Accountability Act  
 505 of 1996 (HIPAA) and this section, a facility shall furnish to a  
 506 competent resident, or to a representative of that resident who  
 507 is authorized to make requests for the resident's records under  
 508 HIPAA or subsection (4), copies of the resident's paper and  
 509 electronic records in the facility's possession. Such records  
 510 must include any medical records and records concerning the care  
 511 and treatment of the resident performed by the facility, except  
 512 for progress notes and consultation report sections of a  
 513 psychiatric nature. The facility shall provide the requested  
 514 records within 14 working days after receipt of a request  
 515 relating to a current resident or within 30 working days after  
 516 receipt of a request relating to a former resident.

517           (4) Requests for a deceased resident's medical records  
 518 under this section may be made by:

519           (a) An individual appointed by a court to act as the  
 520 personal representative, executor, administrator, curator, or  
 521 temporary administrator of the deceased resident's estate;

522           (b) If a judicial appointment has not been made as  
 523 provided in paragraph (a), an individual designated by the  
 524 resident to act as his or her personal representative in a last  
 525 will that is self-proved under s. 732.503; or

526        (c) If a judicial appointment has not been made as  
527 provided in paragraph (a) or an individual has not been  
528 designated by the resident in a last will as provided in  
529 paragraph (b), only the following individuals:

530            1. A surviving spouse of the resident.  
531            2. If there is no surviving spouse, a surviving child of  
532 the resident.  
533            3. If there is no surviving spouse or surviving child, a  
534 parent of the resident.

535        (5) All requests for a deceased resident's records made by  
536 an individual authorized under:

537            (a) Paragraph (4) (a) must include a copy of the letter of  
538 administration and a copy of the court order appointing such  
539 individual as the personal representative of the deceased  
540 resident's estate.

541            (b) Paragraph (4) (b) must include a copy of the self-  
542 proved last will designating such individual as the personal  
543 representative of the deceased resident's estate.

544            (c) Paragraph (4) (c) must be accompanied by a letter from  
545 such individual's attorney verifying such individual's  
546 relationship to the resident and the absence of a court-  
547 appointed representative and self-proved last will.

548        (6) A facility may charge a reasonable fee for the copying  
549 of resident records. Such fee may not exceed \$1 per page for the  
550 first 25 pages and 25 cents per page for each additional page.

551 The facility shall allow an individual who is authorized to act  
552 on behalf of the resident to examine the original records,  
553 microfilms, or other suitable reproductions of the records in  
554 its possession upon any reasonable terms imposed by the facility  
555 to ensure that the records are not damaged, destroyed, or  
556 altered.

557 (7) If a facility determines that disclosure of the  
558 records to the resident would be detrimental to the physical or  
559 mental health of the resident, the facility may refuse to  
560 furnish the records directly to the resident; however, upon such  
561 refusal, the resident's records shall, upon written request by  
562 the resident, be furnished to any other medical provider  
563 designated by the resident.

564 (8) A facility that in good faith and in reliance upon  
565 this section releases copies of records shall be indemnified by  
566 the party who requested the records pursuant to subsection (2)  
567 for any damages resulting from such release, may not be found to  
568 have violated any criminal or civil laws, and is not civilly  
569 liable to the resident, the resident's estate, or any other  
570 individual for any damages resulting from such release.

571 (9) A facility is not required to provide copies of a  
572 resident's records requested pursuant to this section more than  
573 once per month, except that copies of physician reports in the  
574 resident's records must be provided as often as necessary to  
575 allow the effective monitoring of the resident's condition.

576        (10) A facility may not be cited by the agency through the  
 577 survey process for any alleged or actual noncompliance with any  
 578 of the requirements of this section.

579        (11) This section does not limit any right to obtain  
 580 records by subpoena or other court process.

581        Section 8. Section 429.295, Florida Statutes, is repealed.

582        Section 9. Subsection (3) of section 429.296, Florida  
 583 Statutes, is amended to read:

584        429.296 Statute of limitations.—

585        ~~(3) This section shall apply to causes of action that have~~  
 586 ~~accrued prior to the effective date of this section; however,~~  
 587 ~~any such cause of action that would not have been barred under~~  
 588 ~~prior law may be brought within the time allowed by prior law or~~  
 589 ~~within 2 years after the effective date of this section,~~  
 590 ~~whichever is earlier, and will be barred thereafter. In actions~~  
 591 ~~where it can be shown that fraudulent concealment or intentional~~  
 592 ~~misrepresentation of fact prevented the discovery of the injury,~~  
 593 ~~the period of limitations is extended forward 2 years from the~~  
 594 ~~time that the injury is discovered with the exercise of due~~  
 595 ~~diligence, but in no event more than 4 years from the effective~~  
 596 ~~date of this section.~~

597        Section 10. Section 429.297, Florida Statutes, is amended  
 598 to read:

599        429.297 Punitive damages; pleading; burden of proof.—

600        (1) A ~~In any action for damages brought under this part,~~



601 ~~no~~ claim for punitive damages may not be brought under this part  
 602 ~~shall be permitted~~ unless there is a ~~reasonable~~ showing by  
 603 admissible evidence that has been submitted by the parties that  
 604 provides in the record or proffered by the claimant which would  
 605 ~~provide~~ a reasonable basis for recovery of such damages pursuant  
 606 to this section.

607 (a) The claimant may move to amend her or his complaint to  
 608 assert a claim for punitive damages as allowed by the rules of  
 609 civil procedure in accordance with evidentiary requirements  
 610 provided in this section.

611 (b) The court shall conduct a hearing to determine whether  
 612 there is sufficient admissible evidence submitted by the parties  
 613 to ensure that there is a reasonable basis to believe that the  
 614 claimant, at trial, will be able to demonstrate by clear and  
 615 convincing evidence that the recovery of such damages is  
 616 warranted under a claim for direct liability as specified in  
 617 subsection (2) or under a claim for vicarious liability as  
 618 specified in subsection (3).

619 (c) The rules of civil procedure shall be liberally  
 620 construed so as to allow the claimant discovery of evidence  
 621 which appears reasonably calculated to lead to admissible  
 622 evidence on the issue of punitive damages. ~~No~~ Discovery of  
 623 financial worth may not shall proceed until ~~after~~ the pleading  
 624 concerning punitive damages is approved by the court permitted.

625 (2) A defendant may be held liable for punitive damages

626 only if the trier of fact, by ~~based on~~ clear and convincing  
627 evidence, finds that a specific individual or corporate  
628 defendant actively and knowingly participated in intentional  
629 misconduct or actively and knowingly engaged in conduct that  
630 constitutes gross negligence and contributed to the loss,  
631 damages, or injury suffered by the claimant ~~the defendant was~~  
632 ~~personally guilty of intentional misconduct or gross negligence.~~  
633 As used in this section, the term:

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

638 (b) ~~(a)~~ "Intentional misconduct" means that the defendant  
639 against whom punitive damages are sought had actual knowledge of  
640 the wrongfulness of the conduct and the high probability that  
641 injury or damage to the claimant would result and, despite that  
642 knowledge, intentionally pursued that course of conduct,  
643 resulting in injury or damage.

644 (3) In the case of vicarious liability of an individual,  
645 employer, principal, corporation, or other legal entity,  
646 punitive damages may not be imposed for the conduct of an  
647 employee or agent unless ~~only if~~ the conduct of the employee or  
648 agent meets the criteria specified in subsection (2) and an  
649 officer, director, or manager of the actual employer,  
650 corporation, or legal entity actively and knowingly participated

651 in or engaged in the specific conduct as provided in subsection  
 652 (2)÷

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

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

658 ~~(c) The employer, principal, corporation, or other legal~~  
 659 ~~entity engaged in conduct that constituted gross negligence and~~  
 660 ~~that contributed to the loss, damages, or injury suffered by the~~  
 661 ~~claimant.~~

662 (4) The plaintiff shall ~~must~~ establish at trial, by clear  
 663 and convincing evidence, its entitlement to an award of punitive  
 664 damages. The "greater weight of the evidence" burden of proof  
 665 applies to a determination of the amount of damages.

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

668 Section 11. Section 429.299, Florida Statutes, is created  
 669 to read:

670 429.299 Failure to satisfy a judgment or settlement  
 671 agreement.-

672 (1) Upon the entry by a Florida court of an adverse final  
 673 judgment against a licensee as defined in s. 429.29(2), which  
 674 arises from an award pursuant to s. 429.29, including an  
 675 arbitration award, for a claim for residents' rights violation

676 or negligence, in contract or tort, or from noncompliance with  
677 the terms of a settlement agreement as determined by a court or  
678 arbitration panel which arises from a claim pursuant to s.  
679 429.29, the licensee shall pay the judgment creditor the entire  
680 amount of the judgment, award, or settlement and all accrued  
681 interest within 60 days after the date such judgment, award, or  
682 settlement becomes final and subject to execution unless  
683 otherwise mutually agreed to in writing by the parties. Failure  
684 to make such payment shall result in additional grounds that may  
685 be used by the agency for revoking a license or for denying a  
686 renewal application or a related party change of ownership  
687 application as provided in this section.

688 (2) The agency is deemed notified of an unsatisfied  
689 judgment or settlement under subsection (1) when a certified  
690 copy of the judgment and a certified copy of a valid judgment  
691 lien certificate, filed in accordance with ss. 55.202 and  
692 55.203, are served to the agency by process server or received  
693 by certified mail, return receipt requested. Within 60 days  
694 after receiving such documents, the agency shall notify the  
695 licensee by certified mail, return receipt requested, that it is  
696 subject to disciplinary action unless, within 30 days after the  
697 date of mailing the notice, the licensee:

698 (a) Shows proof that the unsatisfied judgment or  
699 settlement has been paid in the amount specified;

700 (b) Shows proof of the existence of a payment plan

701 mutually agreed upon by the parties in writing;

702 (c) Furnishes the agency with a copy of a timely filed  
703 notice of appeal;

704 (d) Furnishes the agency with a copy of a court order  
705 staying execution of the final judgment; or

706 (e) Shows proof by submitting an order from a court or  
707 arbitration panel that is overseeing any action seeking  
708 indemnification from an insurance carrier or other party that  
709 the licensee believes is required to pay the award.

710 (3) If the agency is placed on notice pursuant to  
711 subsection (2) and proof pursuant to subsection (2) is not  
712 provided by the licensee, the agency shall issue an emergency  
713 order pursuant to s. 120.60 declaring that the facility lacks  
714 the financial ability to operate and a notice of intent to  
715 revoke or deny a license.

716 (4) After the agency is placed on notice pursuant to  
717 subsection (2), the following applies:

718 (a) If the license is subject to renewal, the agency may  
719 deny the license renewal unless compliance with this section is  
720 achieved; and

721 (b) If a change of ownership application for the facility  
722 at issue is submitted by the licensee, by an individual or  
723 entity identified as having a controlling interest in the  
724 licensee, or by a related party, the agency shall deny the  
725 change of ownership application unless compliance with this

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726 section is achieved.

727 Section 12. The amendments to all sections made by this  
728 act shall apply to causes of action that accrue on or after July  
729 1, 2023.

730 Section 13. This act shall take effect July 1, 2023.