

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Yarborough, Chair
Senator Burton, Vice Chair

MEETING DATE: Tuesday, March 4, 2025
TIME: 4:00—6:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Building

MEMBERS: Senator Yarborough, Chair; Senator Burton, Vice Chair; Senators DiCeglie, Gaetz, Hooper, Leek, Osgood, Passidomo, Polsky, and Trumbull

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 514 Harrell (Identical H 463)	Medical Malpractice Review Committees; Revising the definition of the term “medical review committee”; revising provisions related to discovery and evidence in civil and administrative actions to conform to changes made by the act, etc.	JU 03/04/2025 CF RC
2	SB 538 Bradley (Similar H 813)	State Courts System; Revising the availability of judges to require at least one circuit judge in each circuit to be available for hearings with limited notice; deleting the per diem cap for arbitrators who participate in court-ordered, nonbinding arbitration; authorizing judges to authenticate a jurat, or certificate of proof or acknowledgment, by affixing their signature and printing their name, title, and court, etc.	JU 03/04/2025 ACJ RC
3	SB 734 Yarborough (Similar H 25, H 6017, S 616)	Actions for Recovery of Damages for Wrongful Death; Deleting a provision prohibiting the recovery of certain damages by specified parties related to the decedent in wrongful death proceedings, etc.	JU 03/04/2025 AHS RC

Other Related Meeting Documents

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: SB 514

INTRODUCER: Senator Harrell

SUBJECT: Medical Malpractice Review Committees

DATE: March 3, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	Pre-meeting
2.			CF	
3.			RC	

I. Summary:

SB 514 adds managing entities and employees of a managing entity to the list of state agencies, health care providers, and health care professionals that are authorized to participate in a medical review committee. A managing entity is a corporation under contract with the Department of Children and Families to manage the daily operational delivery of behavioral health services, which include mental health services and substance abuse services.

Participants in medical review committees are generally immune from liability for their actions in evaluating the quality and costs of previously provided health care services. Likewise, information relating to the proceedings, including witness testimony before a committee, is not discoverable or admissible in civil or administrative actions.

Accordingly, by allowing managing entities and their employees to participate in medical review committees, the bill grants them the same confidentiality protections and liability protections that apply to other medical review committees authorized by existing law.

The bill takes effect July 1, 2025.

II. Present Situation:

Medical Review Committees

Generally

A “medical review committee” is a committee of certain health care providers, organizations, or institutions that is formed to evaluate and improve the quality of health care rendered by providers of health service. A medical review committee determines whether:

- Health services rendered were professionally indicated or were performed in compliance with the applicable standard of care; or

- The cost of the health care rendered was considered reasonable by the providers of professional health services in the area.¹

Any of the following entities may establish a medical review committee:

- A hospital, an ambulatory surgical center, or a health maintenance organization.
- A physician-hospital organization, a provider-sponsored organization, or an integrated delivery system.
- A state or local professional society of health care providers.
- The medical staff of a licensed hospital or nursing home, provided the medical staff operates pursuant to written bylaws that have been approved by the governing board of the hospital or nursing home.
- The Department of Corrections or the Correctional Medical Authority or its employees, agents, or consultants.
- A professional service corporation or a corporation formed and operated for the practice of medicine, which has at least 25 health care providers who routinely provide health care services directly to patients.
- The Department of Children and Families, which includes employees, agents, or consultants to the department as deemed necessary to provide peer review, utilization review, and mortality review of treatment services.
- A mental health treatment facility or community mental health center, provided the quality assurance program operates pursuant to guidelines approved by the governing board of the agency.
- A substance abuse treatment and education prevention program, provided the quality assurance program operates pursuant to guidelines approved by the governing board of the agency.
- A peer review or utilization review committee.
- The Department of Health, a county health department, a healthy start coalition, or a certified rural health network, when reviewing quality of care, or employees of these entities when reviewing mortality records.
- A continuous quality improvement committee of a licensed pharmacy.²

Immunity from Liability

There is no monetary liability on the part of, and no cause of action for damages arising against, any of the following for any act or proceeding undertaken or performed within the scope of the functions of any medical review committee (provided the committee member or health care provider acts without intentional fraud):

- Any member of a duly appointed medical review committee.
- Any health care provider furnishing any information³ to such committee.

¹ Section 766.101(1)(a)1.a.-l., F.S. It also includes a committee of an insurer, self-insurer, or joint underwriting association of medical malpractice insurance, or other persons conducting review under s. 706.106, F.S. Section 766.101(1)(a)2., F.S.

² Section 766.101(1)(a)1.a.-l., F.S.

³ Information concerning the prescribing of Schedule II substances is included. See s. 766.101(3)(a), F.S. (referencing s. 893.03(2), F.S., which lists Schedule II substances).

- Any person, including any person acting as a witness, incident reporter to, or investigator for, a medical review committee.⁴

The medical review committee statute does not confer immunity from liability upon any professional society, hospital, or health professional while performing services other than as a member of a medical review committee; or upon any person, including any person acting as a witness, incident reporter to, or investigator for a medical review committee, for any act or proceeding undertaken or performed outside the scope of the functions of such committee.⁵

Each member of, or health care professional consultant to, any committee, board, group, commission, or other entity is immune from civil liability for any act, decision, omission, or statement done or made in performance of his or her duties while serving as a member of, or consultant to, such entity. To qualify, the entity must be established and operated for purposes of quality improvement review, evaluation, and planning in a state-licensed health care facility;⁶ it must function primarily to review, evaluate, or make recommendations relating to any of the following:

- The duration of patient stays in health care facilities.
- The professional services furnished with respect to the medical, dental, psychological, podiatric, chiropractic, or optometric necessity for such services.
- The purpose of promoting the most efficient use of available health care facilities and services.
- The adequacy or quality of professional services.
- The competency and qualifications for professional staff privileges.
- The reasonableness or appropriateness of charges made by, or on behalf of, health care facilities.
- Patient safety, including entering into contracts with patient safety organizations.⁷

The entity must also be:

- Established in accordance with state law;
- Established in accordance with the requirements of an applicable accrediting organization whose standards incorporate regulations that are comparable to those required by this state;
- Established and duly constituted by one or more public or licensed private hospitals or behavioral health agencies; or
- Established by a governmental agency.⁸

Moreover, to qualify for the statute's immunity protections, the act, decision, omission, or statement may not be made or done in bad faith or with malicious intent.⁹

⁴ Section 766.101(3)(a), F.S.

⁵ Section 766.101(4), F.S.

⁶ Section 766.1015(1), F.S.

⁷ *Id.*

⁸ Section 766.1015(2), F.S.

⁹ *Id.*

III. Effect of Proposed Changes:

The bill expands the definition of “medical review committee” to permit not only the establishment of such committees by the Department of Children and Families, as is already permitted under existing law,¹⁰ but also the establishment of medical review committees by a “managing entity.”

A “managing entity” is a corporation selected by and under contract with the department to manage the daily operational delivery of behavioral health services through a coordinated system of care.¹¹

The bill also provides that the committee created by the managing entity may include employees or agents of, or consultants to, the department or the managing entity and any other persons the department or the managing entity deems necessary to provide peer review, utilization review, or mortality review of treatment services provided pursuant to state law.¹²

By expanding the definition of “medical review committee” in this way, the bill extends the immunity protections that currently apply to medical review committees to committees established by managing entities as well.

Likewise, the restrictions on discovery and the admissibility of evidence relating to the other medical review committees authorized by existing law apply to the medical review committees authorized by the bill. Under these specific restrictions, the investigations, proceedings, and records of a medical review committee, arising out of the matters which are the subject of evaluation and review by such committee, are not subject to discovery or introduction into evidence in any civil or administrative action against a managing entity.

The bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰ Section 766.101(1)(a)1.g., F.S.

¹¹ Section 394.9082(2), F.S.

¹² Specifically, chs. 394 (mental health), 397 (substance abuse services), and 916 (mentally ill and intellectually disabled defendants), F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Any managing entity under contract with the Department of Children and Families may incur increased costs associated with the appointing and funding of a medical review committee, if the department does not assume those costs directly.

C. Government Sector Impact:

The Department of Children and Families may save costs associated with the appointing and funding of a medical review committee, if a managing entity under contract with the department assumes those costs instead.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 766.101 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Harrell) recommended the following:

Senate Amendment

In title, delete line 2
and insert:
An act relating to medical review

By Senator Harrell

31-00468-25

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1 A bill to be entitled
 2 An act relating to medical malpractice review
 3 committees; amending s. 766.101, F.S.; revising the
 4 definition of the term "medical review committee";
 5 revising provisions related to discovery and evidence
 6 in civil and administrative actions to conform to
 7 changes made by the act; providing an effective date.
 8
 9 Be It Enacted by the Legislature of the State of Florida:
 10
 11 Section 1. Paragraph (a) of subsection (1) and subsection
 12 (5) of section 766.101, Florida Statutes, are amended to read:
 13 766.101 Medical review committee, immunity from liability.—
 14 (1) As used in this section:
 15 (a) The term "medical review committee" or "committee"
 16 means:
 17 1.a. A committee of a hospital or ambulatory surgical
 18 center licensed under chapter 395 or a health maintenance
 19 organization certificated under part I of chapter 641;
 20 b. A committee of a physician-hospital organization, a
 21 provider-sponsored organization, or an integrated delivery
 22 system;
 23 c. A committee of a state or local professional society of
 24 health care providers;
 25 d. A committee of a medical staff of a licensed hospital or
 26 nursing home, provided the medical staff operates pursuant to
 27 written bylaws ~~that have been~~ approved by the governing board of
 28 the hospital or nursing home;
 29 e. A committee of the Department of Corrections or the

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30 Correctional Medical Authority as created under s. 945.602, or
 31 employees, agents, or consultants of either the department or
 32 the authority or both;
 33 f. A committee of a professional service corporation formed
 34 under chapter 621 or a corporation organized under part I of
 35 chapter 607 or chapter 617, which is formed and operated for the
 36 practice of medicine as defined in s. 458.305(3), and which has
 37 at least 25 health care providers who routinely provide health
 38 care services directly to patients;
 39 g. A committee of the Department of Children and Families
 40 or a managing entity as defined in s. 394.9082(2), which may
 41 include ~~includes~~ employees or ~~or~~ agents of ~~or~~ consultants to the
 42 department or managing entity and any other persons the
 43 department or managing entity deems ~~as deemed~~ necessary to
 44 provide peer review, utilization review, or ~~and~~ mortality review
 45 of treatment services provided pursuant to chapters 394, 397,
 46 and 916;
 47 h. A committee of a mental health treatment facility
 48 licensed under chapter 394 or a community mental health center
 49 as defined in s. 394.907, provided the quality assurance program
 50 operates pursuant to the guidelines ~~that have been~~ approved by
 51 the governing board of the agency;
 52 i. A committee of a substance abuse treatment and education
 53 prevention program licensed under chapter 397 provided the
 54 quality assurance program operates pursuant to the guidelines
 55 ~~that have been~~ approved by the governing board of the agency;
 56 j. A peer review or utilization review committee organized
 57 under chapter 440;
 58 k. A committee of the Department of Health, a county health

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59 department, healthy start coalition, or certified rural health
 60 network, when reviewing quality of care, or employees of these
 61 entities when reviewing mortality records; or
 62 1. A continuous quality improvement committee of a pharmacy
 63 licensed pursuant to chapter 465,
 64
 65 which committee is formed to evaluate and improve the quality of
 66 health care rendered by providers of health service, to
 67 determine whether ~~that~~ health services rendered were
 68 professionally indicated or were performed in compliance with
 69 the applicable standard of care, or whether ~~that~~ the cost of
 70 health care rendered was considered reasonable by the providers
 71 of professional health services in the area; or
 72 2. A committee of an insurer, self-insurer, or joint
 73 underwriting association of medical malpractice insurance, or
 74 other persons conducting review under s. 766.106.
 75 (5) The investigations, proceedings, and records of a
 76 committee as described in the preceding subsections are ~~shall~~
 77 not ~~be~~ subject to discovery or introduction into evidence in any
 78 civil or administrative action against a provider of
 79 professional health services or a managing entity arising out of
 80 the matters which are the subject of evaluation and review by
 81 such committee, and any ~~no~~ person who was in attendance at a
 82 meeting of such committee is not ~~shall be~~ permitted or required
 83 to testify in any such civil action as to any evidence or other
 84 matters produced or presented during the proceedings of such
 85 committee or as to any findings, recommendations, evaluations,
 86 opinions, or other actions of such committee or any members
 87 thereof. However, information, documents, or records otherwise

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88 available from original sources are not to be construed as
 89 immune from discovery or use in any such civil action merely
 90 because they were presented during proceedings of such
 91 committee, nor should any person who testifies before such
 92 committee or who is a member of such committee be prevented from
 93 testifying as to matters within his or her knowledge, but the
 94 said witness cannot be asked about his or her testimony before
 95 such a committee or opinions formed by him or her as a result of
 96 said committee hearings.
 97 Section 2. This act shall take effect July 1, 2025.

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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: SB 538

INTRODUCER: Senator Bradley

SUBJECT: State Courts System

DATE: March 3, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Pre-meeting
2.			ACJ	
3.			RC	

I. Summary:

SB 538 allows a circuit court duty judge, which is a judge who is responsible for handling urgent matters outside of regular court hours, to hold and conduct hearings in places other than his or her chambers, repeals the \$1,500 per day limit on fees paid to a court-appointed arbitrator, and allows a judge to authenticate documents containing written statements under oath made by others without using a personal or court seal.

The bill is effective July 1, 2025.

II. Present Situation:

Circuit Judges

In 1935, the Legislature enacted a requirement that judicial circuits having more than one circuit judge if possible, have at least one circuit judge available at all times to hold and conduct hearings in chambers.¹ This judge is commonly referred to as a “duty judge.” The statutory requirement to designate a duty judge in judicial circuits supports the prompt and efficient administration of justice by having a judge available during work hours, after hours, weekends, and holidays to handle emergency judicial matters. These emergency matters may include applications for search or arrest warrants, pen registers, petitions for *ex parte* injunctive relief to prevent domestic and repeat violence, communications intercepts, and medical consents. Over time, the number of circuit judges has grown, and presently all judicial circuits have more than one circuit judge.² Accordingly, each circuit maintains a duty judge schedule.

¹ Ch. 17085, §4, at 699, Laws of Fla. (1935), codified in s. 26.20, F.S.

² The current number of circuit judges in each judicial circuit ranges from 4 in the 16th Judicial Circuit (Monroe County) to 80 in the 11th Judicial Circuit (Miami-Dade County). Section 26.031, F.S.

Along with growth in the number of circuit judges since 1935, technological innovations have transformed the way judges carry out judicial activities and conduct court proceedings. Judges routinely access case files, issue orders, and conduct hearings from locations other than a physical courthouse or their chambers using case management and communication technologies. The adoption of these technologies has led to greater efficiency for judges and court users and better access to the courts. The language of s. 26.20, F.S., implies that a duty judge must work at the courthouse or in a judge's chambers appears outdated.

Arbitration Fees

Section 44.103(2), F.S., authorizes a trial court to refer a contested civil action to nonbinding arbitration. Arbitrators in these proceedings are compensated by the parties or, if a party is indigent, by the court. The fee for arbitration services is set by the chief judge in each circuit but is subject to a statutory cap of \$1,500 per diem unless the parties agree otherwise.³ The statutory cap has not been adjusted since 2005.⁴

Oaths, Affidavits and Acknowledgements before a Judge

Except as otherwise provided under law, oaths, affidavits, and acknowledgments may be taken or administered by or before any judge, clerk, or deputy clerk of any court in this state, including the federal courts, or by or before any United States commissioner or any notary public.⁵ The jurat, or certificate of proof or acknowledgement, for the oath, affidavit, or acknowledgement must be authenticated by the signature and official seal of the person authenticating the document. A judge, clerk, or deputy clerk may also satisfy the seal requirement by using the seal of his or her court of record.

It is not uncommon for a judge to administer oaths at locations other than a courthouse where a personal or court seal is unavailable. Typically, in such circumstances, the judge provides his or her signature and prints his or her name, title, and court on the jurat or certificate of proof or acknowledgement. However, an oath recently authenticated by a District Court of Appeal judge in such a manner was rejected by the Department of State because it did not include the seal of the District Court of Appeal as required by s. 92.50, F.S.

III. Effect of Proposed Changes:

The bill amends s. 26.20, F.S., to repeal outdated language and to allow a duty judge to hold and conduct hearings in places other than his or her chambers.

The bill amends s. 44.103, F.S., to repeal the statutory cap on the fees that a court-ordered arbitrator may charge. The current cap limits the fees that court-appointed arbitrators may charge to \$1,500 per day unless agreed otherwise by the parties. The repeal of the fee cap, however, does not affect the ability of the chief judge of a judicial circuit to limit such fees.

³ Florida Rule of Civil Procedure 1.810(b) provides: "The chief judge of each judicial circuit shall establish the compensation of arbitrators subject to the limitations in section 44.103(3), Florida Statutes."

⁴ Section 32, ch. 2005-236, Laws of Fla.

⁵ Section 92.50(1), F.S.

The bill amends s. 92.50, F.S., to authorize a state or federal judge in this state to authenticate oaths, affidavits, and acknowledgements by simply providing a signature and printing the judge's name, title, and court on the jurat or certificate of proof or acknowledgment. The use of a personal or court seal is no longer required when a judge authenticates those documents.

The bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None apparent.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 26.20, 44.103, and 92.50.

This bill reenacts the following sections of the Florida Statutes: 28.2221, 92.525, 110.12301, and 112.181.

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

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

None.

B. Amendments:

None.

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

By Senator Bradley

6-00636-25

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1 A bill to be entitled
 2 An act relating to the state courts system; amending
 3 s. 26.20, F.S.; revising the availability of judges to
 4 require at least one circuit judge in each circuit to
 5 be available for hearings with limited notice;
 6 amending s. 44.103, F.S.; deleting the per diem cap
 7 for arbitrators who participate in court-ordered,
 8 nonbinding arbitration; amending s. 92.50, F.S.;
 9 authorizing judges to authenticate a jurat, or
 10 certificate of proof or acknowledgment, by affixing
 11 their signature and printing their name, title, and
 12 court; reenacting ss. 28.2221(6)(b), 92.525(1),
 13 110.12301(2)(a) and (d), and 112.181(2), F.S.,
 14 relating to electronic access to official records
 15 restricted from public display, inspection, or
 16 copying; verification of documents; spouse and
 17 dependent eligibility verification by affidavit; and
 18 affidavits from firefighters, paramedics, emergency
 19 medical technicians, law enforcement officers, and
 20 correctional officers to be entitled to a certain
 21 presumption, respectively, to incorporate the
 22 amendment made to s. 92.50, F.S., in references
 23 thereto; providing an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Section 26.20, Florida Statutes, is amended to
 28 read:
 29 26.20 Availability of judge for hearings ~~in chambers.~~ In

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30 ~~circuits having more than one circuit judge.~~ At least one
 31 ~~circuit judge in each circuit must of said judges shall be~~
 32 ~~available as nearly as possible~~ at all times to hold and conduct
 33 ~~hearings with limited notice in chambers.~~ In each circuit, there
 34 must be at least one judge available on Saturdays, Sundays,
 35 holidays, and after hours on weekdays to hear motions for a
 36 temporary injunction ex parte in domestic violence cases. The
 37 chief judge may assign a judge for this purpose.

38 Section 2. Subsection (3) of section 44.103, Florida
 39 Statutes, is amended to read:

40 44.103 Court-ordered, nonbinding arbitration.—

41 (3) Arbitrators shall be selected and compensated in
 42 accordance with rules adopted by the Supreme Court. Arbitrators
 43 shall be compensated by the parties, or, upon a finding by the
 44 court that a party is indigent, an arbitrator may be partially
 45 or fully compensated from state funds according to the party's
 46 present ability to pay. ~~At no time may an arbitrator charge more~~
 47 ~~than \$1,500 per diem, unless the parties agree otherwise.~~ Prior
 48 to approving the use of state funds to reimburse an arbitrator,
 49 the court must ensure that the party reimburses the portion of
 50 the total cost that the party is immediately able to pay and
 51 that the party has agreed to a payment plan established by the
 52 clerk of the court that will fully reimburse the state for the
 53 balance of all state costs for both the arbitrator and any costs
 54 of administering the payment plan and any collection efforts
 55 that may be necessary in the future. Whenever possible,
 56 qualified individuals who have volunteered their time to serve
 57 as arbitrators shall be appointed. If an arbitration program is
 58 funded pursuant to s. 44.108, volunteer arbitrators shall be

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59 entitled to be reimbursed pursuant to s. 112.061 for all actual
60 expenses necessitated by service as an arbitrator.

61 Section 3. Subsection (1) of section 92.50, Florida
62 Statutes, is amended to read:

63 92.50 Oaths, affidavits, and acknowledgments; who may take
64 or administer; requirements.—

65 (1) IN THIS STATE.—Oaths, affidavits, and acknowledgments
66 required or authorized under the laws of this state (except
67 oaths to jurors and witnesses in court and such other oaths,
68 affidavits and acknowledgments as are required by law to be
69 taken or administered by or before particular officers) may be
70 taken or administered by or before any judge, clerk, or deputy
71 clerk of any court of record within this state, including
72 federal courts, or by or before any United States commissioner
73 or any notary public within this state. The jurat, or
74 certificate of proof or acknowledgment, shall be authenticated
75 by the signature and official seal of such officer or person
76 taking or administering the same; however, when taken or
77 administered by or before any judge, clerk, or deputy clerk of a
78 court of record, the seal of such court may be affixed as the
79 seal of such officer or person. The jurat, or certificate of
80 proof or acknowledgment, may also be authenticated by a judge by
81 affixing his or her signature and printing his or her name,
82 title, and court.

83 Section 4. For the purpose of incorporating the amendment
84 made by this act to section 92.50, Florida Statutes, in a
85 reference thereto, paragraph (b) of subsection (6) of section
86 28.2221, Florida Statutes, is reenacted to read:

87 28.2221 Electronic access to official records.—

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88 (6)

89 (b)1. For the purpose of conducting a title search, as
90 defined in s. 627.7711(4), of the Official Records, as described
91 in s. 28.222(2), and upon presentation of photo identification
92 and affirmation by sworn affidavit consistent with s. 92.50 to
93 the county recorder, information restricted from public display,
94 inspection, or copying under paragraph (5) (a) pursuant to a
95 request for removal made under s. 119.071(4) (d) may be disclosed
96 to:

- 97 a. A title insurer authorized pursuant to s. 624.401 and
98 its affiliates as defined in s. 624.10;
- 99 b. A title insurance agent or title insurance agency as
100 defined in s. 626.841(1) and (2), respectively; or
- 101 c. An attorney duly admitted to practice law in this state
102 and in good standing with The Florida Bar.

103 2. The photo identification and affirmation by sworn
104 affidavit may be delivered in person, by mail, or by electronic
105 transmission to the county recorder.

106 3. The affiant requestor must attest to his or her
107 authority and the authorized purpose to access exempt
108 information pursuant to this section for the property specified
109 within the sworn affidavit.

110 4. The affiant requestor must identify the Official Records
111 book and page number, instrument number, or the clerk's file
112 number for each document requested within the sworn affidavit
113 and must include a description of the lawful purpose and
114 identify the individual or property that is the subject of the
115 search within the sworn affidavit.

116 5. Affidavits submitted by a title insurer, title insurance

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117 agent, or title insurance agency must include the Florida
 118 Company Code or the license number, as applicable, and an
 119 attestation to the affiant requestor's authorization to transact
 120 business in this state. Affidavits submitted by an attorney
 121 authorized under this section must include the affiant
 122 requestor's Florida Bar number and a statement that the affiant
 123 requestor has an agency agreement with a title insurer directly
 124 or through his or her law firm.

125 6. The county recorder must record such affidavit in the
 126 Official Records, as described in s. 28.222(2), but may not
 127 place the image or copy of the affidavit on a publicly available
 128 Internet website for general public display.

129 7. Upon providing a document disclosing redacted
 130 information to an affiant requestor under this section, the
 131 county recorder must provide a copy of the affidavit requesting
 132 disclosure of the redacted information to each affected party at
 133 the address listed on the document or on the request for removal
 134 made by the affected party under s. 119.071. The county recorder
 135 must prepare a certificate of mailing to be affixed to the
 136 affidavit and must receive the statutory service charges as
 137 prescribed by s. 28.24 from the affiant requestor.

138 8. Any party making a false attestation under this section
 139 is subject to the penalty of perjury under s. 837.012.

140 Section 5. For the purpose of incorporating the amendment
 141 made by this act to section 92.50, Florida Statutes, in a
 142 reference thereto, subsection (1) of section 92.525, Florida
 143 Statutes, is reenacted to read:

144 92.525 Verification of documents; perjury by false written
 145 declaration, penalty.-

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146 (1) If authorized or required by law, by rule of an
 147 administrative agency, or by rule or order of court that a
 148 document be verified by a person, the verification may be
 149 accomplished in the following manner:

150 (a) Under oath or affirmation taken or administered before
 151 an officer authorized under s. 92.50 to administer oaths;

152 (b) Under oath or affirmation taken or administered by an
 153 officer authorized under s. 117.10 to administer oaths; or

154 (c) By the signing of the written declaration prescribed in
 155 subsection (2).

156 Section 6. For the purpose of incorporating the amendment
 157 made by this act to section 92.50, Florida Statutes, in
 158 references thereto, paragraphs (a) and (d) of subsection (2) of
 159 section 110.12301, Florida Statutes, are reenacted to read:

160 110.12301 Competitive procurement of postpayment claims
 161 review services and dependent eligibility verification services;
 162 public records exemption.-

163 (2) The department is directed to contract for dependent
 164 eligibility verification services for the state group insurance
 165 program.

166 (a) The department or the contractor providing dependent
 167 eligibility verification services may require the following
 168 information from subscribers:

169 1. To prove a spouse's eligibility:

170 a. If married less than 12 months and the subscriber and
 171 his or her spouse have not filed a joint federal income tax
 172 return, a government-issued marriage certificate;

173 b. If married for 12 or more months, a transcript of the
 174 most recently filed federal income tax return; or

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175 c. If the documentation specified in sub-subparagraph a. or
 176 sub-subparagraph b. cannot be produced, an attestation of the
 177 marriage by sworn affidavit consistent with s. 92.50.

178 2. To prove a biological child's or a newborn grandchild's
 179 eligibility:

180 a. A government-issued birth certificate; or
 181 b. If a birth certificate cannot be produced, an
 182 attestation of the subscriber-dependent relationship by sworn
 183 affidavit consistent with s. 92.50.

184 3. To prove an adopted child's eligibility:

185 a. An adoption certificate;
 186 b. An adoption placement agreement and a petition for
 187 adoption; or

188 c. If the documentation specified in sub-subparagraph a. or
 189 sub-subparagraph b. cannot be produced, an attestation of the
 190 subscriber-dependent relationship by sworn affidavit consistent
 191 with s. 92.50.

192 4. To prove a stepchild's eligibility:

193 a. A government-issued birth certificate for the stepchild;
 194 and

195 b. The transcript of the subscriber's most recently filed
 196 federal income tax return.

197 5. To prove a child's eligibility under a guardianship, a
 198 copy of the court order naming the subscriber or the
 199 subscriber's spouse as the child's legal guardian or custodian.

200 6. To prove a foster child's eligibility, a copy of the
 201 records showing the subscriber or the subscriber's spouse as the
 202 dependent's foster parent.

203 7. To prove eligibility of an unmarried child age 26 to 30:

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204 a. A copy of the child's government-issued birth
 205 certificate or adoption certificate naming the subscriber or the
 206 subscriber's spouse as the child's parent, or a copy of the
 207 court order naming the subscriber or the subscriber's spouse as
 208 the child's legal guardian or custodian;

209 b. A copy of the Certification of Over-Age Dependent
 210 Eligibility Form; and

211 c. A document confirming the child's current enrollment as
 212 a student, including the name of the child, the name of the
 213 school, and the school term; or a bill or statement in the
 214 child's name which is dated within the past 60 days and is
 215 mailed to the child at a Florida address.

216 8. To prove eligibility for a disabled child age 26 or
 217 older:

218 a. A copy of the child's government-issued birth
 219 certificate or adoption certificate naming the subscriber or the
 220 subscriber's spouse as the child's parent, or a copy of the
 221 court order naming the subscriber or the subscriber's spouse as
 222 the child's legal guardian or custodian; and

223 b. A copy of the transcript of the subscriber's most
 224 recently filed federal income tax return listing the child's
 225 name and the last four digits of the child's social security
 226 number and identifying the child as the subscriber's dependent
 227 for tax purposes.

228 (d) Foreign-born subscribers unable to obtain the necessary
 229 documentation within the specified time period of producing
 230 verification documentation may provide a sworn affidavit
 231 consistent with s. 92.50 attesting to eligibility requirements.

232 Section 7. For the purpose of incorporating the amendment

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233 made by this act to section 92.50, Florida Statutes, in a
234 reference thereto, subsection (2) of section 112.181, Florida
235 Statutes, is reenacted to read:

236 112.181 Firefighters, paramedics, emergency medical
237 technicians, law enforcement officers, correctional officers;
238 special provisions relative to certain communicable diseases.—

239 (2) PRESUMPTION; ELIGIBILITY CONDITIONS.—Any emergency
240 rescue or public safety worker who suffers a condition or
241 impairment of health that is caused by hepatitis, meningococcal
242 meningitis, or tuberculosis, that requires medical treatment,
243 and that results in total or partial disability or death shall
244 be presumed to have a disability suffered in the line of duty,
245 unless the contrary is shown by competent evidence; however, in
246 order to be entitled to the presumption, the emergency rescue or
247 public safety worker must, by written affidavit as provided in
248 s. 92.50, verify by written declaration that, to the best of his
249 or her knowledge and belief:

250 (a) In the case of a medical condition caused by or derived
251 from hepatitis, he or she has not:

252 1. Been exposed, through transfer of bodily fluids, to any
253 person known to have sickness or medical conditions derived from
254 hepatitis, outside the scope of his or her employment;

255 2. Had a transfusion of blood or blood components, other
256 than a transfusion arising out of an accident or injury
257 happening in connection with his or her present employment, or
258 received any blood products for the treatment of a coagulation
259 disorder since last undergoing medical tests for hepatitis,
260 which tests failed to indicate the presence of hepatitis;

261 3. Engaged in unsafe sexual practices or other high-risk

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262 behavior, as identified by the Centers for Disease Control and
263 Prevention or the Surgeon General of the United States, or had
264 sexual relations with a person known to him or her to have
265 engaged in such unsafe sexual practices or other high-risk
266 behavior; or

267 4. Used intravenous drugs not prescribed by a physician.

268 (b) In the case of meningococcal meningitis, in the 10 days
269 immediately preceding diagnosis he or she was not exposed,
270 outside the scope of his or her employment, to any person known
271 to have meningococcal meningitis or known to be an asymptomatic
272 carrier of the disease.

273 (c) In the case of tuberculosis, in the period of time
274 since the worker's last negative tuberculosis skin test, he or
275 she has not been exposed, outside the scope of his or her
276 employment, to any person known by him or her to have
277 tuberculosis.

278 Section 8. This act shall take effect July 1, 2025.

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: SB 734

INTRODUCER: Senator Yarborough

SUBJECT: Actions for Recovery of Damages for Wrongful Death

DATE: March 3, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Pre-meeting
2.			AHS	
3.			RC	

I. Summary:

SB 734 expands the application of the Florida Wrongful Death Act by repealing exceptions that prohibit certain parents and children of a deceased patient who dies due to medical negligence from recovering noneconomic damages.

The bill is effective July 1, 2025.

II. Present Situation:

History of Wrongful Death Actions

Most of the state’s tort law is derived from the common law. At common law, there was no right to recover for the negligent wrongful death of another person.¹ Over time, however, the Legislature authorized recoveries for wrongful death and expanded the types of damages recoverable and the classes of survivors entitled to recover. “Because wrongful death actions did not exist at common law, all claims for wrongful death are created and limited by Florida’s Wrongful Death Act.”²

The early versions of the state’s wrongful death laws limited the right to recover damages to a surviving spouse, to surviving children if there was no surviving spouse, and to those dependent upon the decedent for support if there was no one belonging to the prior two classes, and finally to the executor of the decedent’s estate if there was no one belonging from the prior three classes.³ To show dependence on the decedent, a claimant had to show that he or she was a minor, physically or mentally disabled, or elderly.⁴ Adults who were mentally and physically

¹ *Louisville & Nashville Railroad Co. v. Jones*, 45 Fla. 407, 416 (Fla. 1903).

² *Chinghina v. Racik*, 647 So. 2d 289, 290 (Fla. 4th DCA 1994).

³ *Duval v. Hunt*, 34 Fla. 85 (Fla. 1894) (discussing a wrongful death statute enacted in 1883).

⁴ *Id.* at 101-102.

capable of providing for themselves could not recover damages despite having been supported by the decedent.⁵ Any damages recoverable were limited to a form of economic damages.

The wrongful death law was substantially re-written in 1972.⁶ That law created the Florida Wrongful Death Act, which provides the framework for current law. One of the major changes made by this law was to consolidate or merge survival and wrongful death actions.⁷ A survival action is a legal action allowed under the survival statute to continue notwithstanding the plaintiff's death. As merged, the 1972 law allowed the statutory survivors to recover damages for their pain and suffering as a substitute for recoveries for the decedent's pain and suffering under the survival statute.⁸

The type of damages that a survivor is entitled to under the 1972 law depends upon the classification of the survivor. The 1972 law allows all survivors to recover the value of lost support and services, a type of economic damages. A surviving spouse may also recover loss of marital companionship and pain and suffering, types of noneconomic damages. Minor children, then defined as under age 21⁹ and unmarried, may also recover damages for loss of parental companionship and for their pain and suffering. The parents of a deceased minor child may also recover damage for their pain and suffering. Any survivor who pays the decedent's final medical, funeral, and burial expenses may recover those costs. The estate of the decedent may recover lost earnings from date of injury to date of death, plus net accumulations, which is essentially an estimate of the present value of the future estate that would have been available for inheritance.

A 1981 act expanded the definition of "minor children" to include all children of the decedent under age 25, regardless of whether any child is married or dependent.¹⁰ The statutes did not authorize a wrongful death action by a nondependent, adult child for the loss of a parent or an action by a parent for the loss of an adult child.¹¹

In 1990, the Legislature generally expanded the class of survivors entitled to recover damages for pain and suffering for a wrongful death.¹² As expanded, a decedent's adult children may recover damages for pain and suffering if there is no surviving spouse. The parents of an adult decedent may also recover damages for pain and suffering if there is no surviving spouse or surviving minor or adult children.¹³

However, the same law that expanded the class entitled to recover damages for pain and suffering for a wrongful death precluded the additional class members from recovering those

⁵ The Court interpreted the dependency requirement in the statute as requiring a person to have a genuine inability to support himself or herself based on the view that strong, healthy adults who are capable of earning a livelihood should not be content to "live in idleness upon the fruits of [another's] labor." *Id.* at 101.

⁶ Chapter 72-35, Laws of Fla.

⁷ *Sheffield v. R.J. Reynolds Tobacco Co.*, 329 So. 3d 114, 121 (Fla. 2021).

⁸ *Martin v. United Sec. Services, Inc.*, 314 So. 2d 765, 767 (Fla. 1975).

⁹ Florida changed the age of majority from 21 to 18 in the following year, but that act did not change the reference to age 21 in the wrongful death law. Section 743.07, F.S.; chapter 73-21, Laws of Fla.

¹⁰ Chapter 81-183, Laws of Fla.

¹¹ *Mizrabi v. North Miami Medical Center, Ltd.*, 761 So. 2d 1040, 1042 (Fla. 2000).

¹² Chapter 90-14, Laws of Fla.

¹³ *Id.* (amending s. 768.18(3) and (4), F.S.). The adult children were also authorized by the 1990 law to recover noneconomic damages for lost parental companionship, instruction, and guidance.

damages for a wrongful death based on medical malpractice.¹⁴ Thus, a narrower group of survivors may recover damages for pain and suffering for a wrongful death that is caused by medical malpractice, and a broader group may recover damages for pain and suffering for a death that is caused by all other forms of negligence.

In a 2000 opinion, the Florida Supreme Court found the medical negligence exception constitutional.¹⁵ The Court found that the exception was rationally related to the need to control the costs of health care and medical malpractice insurance due to a medical malpractice insurance crisis. However, Justice Pariente, in her dissenting opinion, argued that the exception should be found to be unconstitutional because of her belief that the medical malpractice insurance crisis, which initially justified the exception, no longer existed.¹⁶ The Florida Supreme Court later found that the malpractice crisis was over,¹⁷ but that finding did not overrule the ruling that the medical negligence exceptions are constitutional.¹⁸

Current Effect of the Medical Negligence Exceptions to the Wrongful Death Law

Currently, neither an adult child (25+) of an unmarried person who dies due to medical negligence, nor the parents of an adult child (25+) who dies due to medical negligence, may recover noneconomic damages (commonly referred to as “pain and suffering damages”). They may, however, recover through the estate economic damages such as net accumulations, final medical bills, and funeral and burial expenses. Plaintiff’s attorneys report that these other damages are often insufficient to warrant the cost and time required to prosecute a medical negligence case.¹⁹

Medical Negligence Actions

Procedures for a Medical Negligence Action

Medical negligence claims are subject to statutory presuit screening and investigation requirements.²⁰ A claimant may, and typically does, request the relevant medical records, which must be furnished by the medical providers at a reasonable charge.²¹ The claimant must then conduct a reasonable investigation of the claim and obtain a written opinion from a medical expert that malpractice occurred.²² The claimant may then serve a notice of intent to initiate litigation on every prospective defendant. The suit may not be filed until at least 90 days after service of the notice.²³ During the 90 days, the parties must engage in pretrial discovery²⁴ and the

¹⁴ *Id.* (amending s. 768.18(8), F.S.).

¹⁵ *Mizrahi v. North Miami Medical Center, Ltd.*, 761 So. 2d 1040, 1042 (Fla. 2000).

¹⁶ *Id.*

¹⁷ *Estate of McCall v. United States*, 134 So. 3d 894 (Fla. 2014). *North Broward Hospital District v. Kalitan*, 219 So. 3d 49 (Fla. 2017).

¹⁸ *Santiago v. Rodriguez*, 281 So. 3d 603 (Fla. 2nd DCA 2019), *rev. dismissed*, 2020 WL 927717 (Fla. 2020).

¹⁹ Fasig Brooks Law Offices, *Unfair and Illogical: Florida’s Wrongful Death Medical Malpractice Law*, <https://www.fasigbrooks.com/2019/02/unfair-and-illogical-floridas-wrongful-death-med/>, last visited Feb. 27, 2025, (stating that “such limited recovery would not make a malpractice lawsuit financially feasible”).

²⁰ Sections 766.104, 766.106 and 766.203, F.S.

²¹ Sections 766.104(3) and 766.204, F.S.

²² Sections 766.104(1) and 766.203(2), F.S.

²³ Section 766.106(4), F.S.

²⁴ Section 766.106(6) and 766.205, F.S.

prospective defendant must conduct an investigation.²⁵ If not resolved in the 90 days, the claimant may file suit. When filing the suit, the attorney must file a certificate that he or she has reviewed the evidence and has a good faith belief that a medical negligence case is warranted.²⁶ Failure of the claimant to pursue the pretrial process constitutes grounds for a dismissal of the claim. A failure of any party to the action to cooperate with the presuit process may be grounds to strike any claim or defense raised by the non-cooperative party.²⁷ After the presuit requirements are met, a claim of medical negligence generally proceeds through the court system like any other tort action.

III. Effect of Proposed Changes:

The bill expands the application of the Florida Wrongful Death Act by repealing exceptions that prohibit certain parents and children of a deceased patient who dies due to medical negligence from recovering noneconomic damages. The bill provides that, where a wrongful death occurs as a result of medical negligence, a decedent's adult children may recover noneconomic damages if there is no surviving spouse and provides that the parents of an adult decedent may recover noneconomic damages if there is no surviving spouse or surviving minor or adult children.

The bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

²⁵ Section 766.203(3), F.S.

²⁶ Section 766.104(1), F.S.

²⁷ Section 766.106(7), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may provide for wrongful death recoveries by parties who are barred by current law, and thus may correspondingly increase medical malpractice insurance premiums or medical malpractice self-insurance costs of medical providers. Similarly, the availability of damages for mental pain and suffering may provide a sufficient incentive for plaintiff attorneys who work on a contingency-fee-basis to pursue more medical negligence lawsuits.

C. Government Sector Impact:

The bill may create an indeterminate negative fiscal impact on the state and local governments to the extent that the state or a local government operates or controls a medical care facility. Any such claims, however, would be limited by the state's sovereign immunity limits.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 768.21, 400.023, and 400.0235.

This bill reenacts the following sections of the Florida Statutes: 95.11 and 429.29.

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

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

None.

B. Amendments:

None.

²⁸ Section 768.28, F.S.

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

By Senator Yarborough

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A bill to be entitled

An act relating to actions for recovery of damages for wrongful death; amending s. 768.21, F.S.; deleting a provision prohibiting the recovery of certain damages by specified parties related to the decedent in wrongful death proceedings; amending ss. 400.023, 400.0235, and 429.295, F.S.; conforming provisions to changes made by the act; reenacting ss. 95.11(11) and 429.29(1), F.S., relating to limitations other than for recovery of real property and civil actions to enforce rights, respectively, to incorporate the amendment made to s. 768.21, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (8) of section 768.21, Florida Statutes, is amended to read:

768.21 Damages.—All potential beneficiaries of a recovery for wrongful death, including the decedent's estate, shall be identified in the complaint, and their relationships to the decedent shall be alleged. Damages may be awarded as follows:

~~(8) The damages specified in subsection (3) shall not be recoverable by adult children and the damages specified in subsection (4) shall not be recoverable by parents of an adult child with respect to claims for medical negligence as defined by s. 766.106(1).~~

Section 2. Subsection (9) of section 400.023, Florida Statutes, is amended, and paragraph (b) of subsection (1) of

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that section is republished, to read:

400.023 Civil enforcement.—

(1) An exclusive cause of action for negligence or a violation of residents' rights as specified under this part which alleges direct or vicarious liability for the personal injury or death of a nursing home resident arising from such negligence or violation of rights and which seeks damages for such injury or death may be brought only against the licensee, the licensee's management or consulting company, the licensee's managing employees, and any direct caregivers, whether employees or contractors. A passive investor is not liable under this section. An action against any other individual or entity may be brought only pursuant to subsection (3).

(b) If the action alleges a claim for the resident's rights or for negligence that caused the death of the resident, the claimant shall, after the verdict, but before the judgment is entered, elect survival damages pursuant to s. 46.021 or wrongful death damages pursuant to s. 768.21. If the action alleges a claim for the resident's rights or for negligence that did not cause the death of the resident, the personal representative of the estate may recover damages for the negligence that caused injury to the resident.

(9) An action under this part for a violation of rights or negligence recognized herein is not a claim for medical malpractice, and s. 768.21(8) does not apply to a claim alleging death of the resident.

Section 3. Section 400.0235, Florida Statutes, is amended to read:

400.0235 Certain provisions not applicable to actions under

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59 this part.—An action under this part for a violation of rights
60 or negligence recognized under this part is not a claim for
61 medical malpractice, ~~and the provisions of s. 768.21(8) do not~~
62 ~~apply to a claim alleging death of the resident.~~

63 Section 4. Section 429.295, Florida Statutes, is amended to
64 read:

65 429.295 Certain provisions not applicable to actions under
66 this part.—An action under this part for a violation of rights
67 or negligence recognized herein is not a claim for medical
68 malpractice, ~~and the provisions of s. 768.21(8) do not apply to~~
69 ~~a claim alleging death of the resident.~~

70 Section 5. For the purpose of incorporating the amendment
71 made by this act to section 768.21, Florida Statutes, in a
72 reference thereto, subsection (11) of section 95.11, Florida
73 Statutes, is reenacted to read:

74 95.11 Limitations other than for the recovery of real
75 property.—Actions other than for recovery of real property shall
76 be commenced as follows:

77 (11) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS
78 DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph
79 (5) (e), an action for wrongful death seeking damages authorized
80 under s. 768.21 brought against a natural person for an
81 intentional tort resulting in death from acts described in s.
82 782.04 or s. 782.07 may be commenced at any time. This
83 subsection shall not be construed to require an arrest, the
84 filing of formal criminal charges, or a conviction for a
85 violation of s. 782.04 or s. 782.07 as a condition for filing a
86 civil action.

87 Section 6. For the purpose of incorporating the amendment

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88 made by this act to section 768.21, Florida Statutes, in a
89 reference thereto, subsection (1) of section 429.29, Florida
90 Statutes, is reenacted to read:

91 429.29 Civil actions to enforce rights.—

92 (1) Any person or resident whose rights as specified in
93 this part are violated shall have a cause of action. The action
94 may be brought by the resident or his or her guardian, or by a
95 person or organization acting on behalf of a resident with the
96 consent of the resident or his or her guardian, or by the
97 personal representative of the estate of a deceased resident
98 regardless of the cause of death. If the action alleges a claim
99 for the resident's rights or for negligence that caused the
100 death of the resident, the claimant shall be required to elect
101 either survival damages pursuant to s. 46.021 or wrongful death
102 damages pursuant to s. 768.21. If the action alleges a claim for
103 the resident's rights or for negligence that did not cause the
104 death of the resident, the personal representative of the estate
105 may recover damages for the negligence that caused injury to the
106 resident. The action may be brought in any court of competent
107 jurisdiction to enforce such rights and to recover actual
108 damages, and punitive damages for violation of the rights of a
109 resident or negligence. Any resident who prevails in seeking
110 injunctive relief or a claim for an administrative remedy is
111 entitled to recover the costs of the action and a reasonable
112 attorney's fee assessed against the defendant not to exceed
113 \$25,000. Fees shall be awarded solely for the injunctive or
114 administrative relief and not for any claim or action for
115 damages whether such claim or action is brought together with a
116 request for an injunction or administrative relief or as a

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117 separate action, except as provided under s. 768.79 or the
118 Florida Rules of Civil Procedure. Sections 429.29-429.298
119 provide the exclusive remedy for a cause of action for recovery
120 of damages for the personal injury or death of a resident
121 arising out of negligence or a violation of rights specified in
122 s. 429.28. This section does not preclude theories of recovery
123 not arising out of negligence or s. 429.28 which are available
124 to a resident or to the agency. The provisions of chapter 766 do
125 not apply to any cause of action brought under ss. 429.29-
126 429.298.

127 Section 7. This act shall take effect July 1, 2025.