

By Representative Gelber

1 A bill to be entitled
2 An act relating to nursing homes; creating s.
3 400.0226, F.S.; providing a safe harbor
4 provision for certain nursing homes;
5 prohibiting claims for punitive damages against
6 nursing home licensees, facilities, or facility
7 owners under certain circumstances; providing
8 requirements; authorizing trial judges to
9 consider certain information; providing a
10 rebuttable presumption; providing an effective
11 date.

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

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15 Section 1. Section 400.0226, Florida Statutes, is
16 created to read:

17 400.0226 Safe harbor provision for nursing homes.--

18 (1) In a civil action against any licensee, facility,
19 or facility owner for a violation of this chapter, no claim
20 for punitive damages may be brought if the following is found
21 prior to the trial of the case by the trial judge based upon a
22 preponderance of the evidence:

23 (a) That the particular nursing home facility from
24 which the alleged violation occurred has provided a uniformly
25 high quality of care and management based upon ratings,
26 reviews, and surveys conducted by the Agency for Health Care
27 Administration during the plaintiff's stay and for a 2-year
28 period prior to the date of the incident giving rise to the
29 cause of action; and

30 (b) That the particular nursing home facility from
31 which the violation occurred complied with all minimum

1 staffing requirements pursuant to all applicable federal and
2 state laws and regulations during the 2-year period prior to
3 the date of the incident giving rise to the cause of action.

4 (2) In reaching its findings, the trial judge may
5 consider:

6 (a) Whether the nursing home facility or any of its
7 staff have been the subject of a report of abuse or neglect
8 pursuant to chapter 415 which resulted in a referral to the
9 office of the state attorney for prosecution during the 2-year
10 period prior to the date of the incident giving rise to the
11 cause of action.

12 (b) To what extent the nursing home facility has
13 complied with the National Citizens' Coalition for Nursing
14 Home Reform Minimum Standards for Nursing Homes or other
15 recognized quality standards.

16 (c) Whether prior to the date of the incident giving
17 rise to the cause of action the nursing home facility
18 implemented internal quality of care measures beyond those
19 required by statute and regulation.

20 (3) Any nursing home facility that has been designated
21 a Gold Seal facility pursuant to s. 400.235 at the time of the
22 alleged violation that is the subject of a civil action shall
23 be entitled to a rebuttable presumption that it has complied
24 with the factors set forth in subsections (1) and (2).

25 Section 2. This act shall take effect July 1, 2001.
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HOUSE SUMMARY

Creates a safe harbor provision for nursing homes to provide that in a civil action against any nursing home licensee, facility, or facility owner for a violation of chapter 400, F.S., no punitive damage claim may be brought under described circumstances. See bill for details.