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1 A bill to be entitled
2 An act relating to licensure of nursing homes and related
3 health care facilities; amending s. 400.021, F.S.;
4 providing a definition; amending s. 400.023, F.S.;
5 providing a condition for actions brought on behalf of
6 nursing home residents under a certain alternative theory
7 of recovery; creating s. 400.0232, F.S.; prohibiting
8 certain actions or admissions from being admitted as
9 evidence in liability actions under certain circumstances;
10 amending s. 400.0237, F.S.; requiring an evidentiary
11 hearing to determine the basis for punitive damages;
12 amending s. 400.23, F.S.; providing conditions under which
13 a facility is not liable for failure to provide adequate
14 staffing; prohibiting records relating to state licensure
15 inspection reports from introduction in a civil proceeding
16 against a facility; permitting a person who provides
17 certain information to a state licensure inspector to
18 provide certain testimony; providing for construction;
19 amending s. 415.102, F.S.; providing a definition;
20 providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:
23

24 Section 1. Subsections (4) through (18) of section
25 400.021, Florida Statutes, are renumbered as subsections (5)
26 through (19), respectively, and a new subsection (4) is added to
27 that section to read:

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28 400.021 Definitions.--When used in this part, unless the
29 context otherwise requires, the term:

30 (4) "Benevolent gesture" means any action, conduct,
31 statement, or gesture that conveys a sense of apology,
32 condolence, explanation, compassion, or commiseration emanating
33 from humane impulses.

34 Section 2. Subsection (1) of section 400.023, Florida
35 Statutes, is amended to read:

36 400.023 Civil enforcement.--

37 (1) Any resident whose rights as specified in this part
38 are violated shall have a cause of action. The action may be
39 brought by the resident or his or her guardian, by a person or
40 organization acting on behalf of a resident with the consent of
41 the resident or his or her guardian, or by the personal
42 representative of the estate of a deceased resident regardless
43 of the cause of death. If the action alleges a claim for the
44 resident's rights or for negligence that caused the death of the
45 resident, the claimant shall be required to elect either
46 survival damages pursuant to s. 46.021 or wrongful death damages
47 pursuant to s. 768.21. If the action alleges a claim for the
48 resident's rights or for negligence that did not cause the death
49 of the resident, the personal representative of the estate may
50 recover damages for the negligence that caused injury to the
51 resident. The action may be brought in any court of competent
52 jurisdiction to enforce such rights and to recover actual and
53 punitive damages for any violation of the rights of a resident
54 or for negligence. Any resident who prevails in seeking
55 injunctive relief or a claim for an administrative remedy is

56 | entitled to recover the costs of the action, and a reasonable
 57 | attorney's fee assessed against the defendant not to exceed
 58 | \$25,000. Fees shall be awarded solely for the injunctive or
 59 | administrative relief and not for any claim or action for
 60 | damages whether such claim or action is brought together with a
 61 | request for an injunction or administrative relief or as a
 62 | separate action, except as provided under s. 768.79 or the
 63 | Florida Rules of Civil Procedure. Sections 400.023-400.0238
 64 | provide the exclusive remedy for a cause of action for recovery
 65 | of damages for the personal injury or death of a nursing home
 66 | resident arising out of negligence or a violation of rights
 67 | specified in s. 400.022. This section does not preclude theories
 68 | of recovery not arising out of negligence or s. 400.022 which
 69 | are available to a resident or to the agency. The provisions of
 70 | chapter 766 do not apply to any cause of action brought under
 71 | ss. 400.023-400.0238. This section precludes a cause of action
 72 | under s. 415.1111 as an alternative theory of recovery against
 73 | any person unless he or she is a perpetrator as defined in s.
 74 | 415.102.

75 | Section 3. Section 400.0232, Florida Statutes, is created
 76 | to read:

77 | 400.0232 Benevolent gesture or admission of fault.--Any
 78 | benevolent gesture or admission of fault made prior to the
 79 | commencement of a liability action or mediation brought under
 80 | this part by an officer, employee, health care provider, or
 81 | agent of a nursing home to a resident, or a relative or
 82 | representative of a resident, regarding the resident's
 83 | discomfort, pain, suffering, injury, or death, regardless of the

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84 cause, including, but not limited to, the unanticipated outcome
85 of any treatment, consultation, care, or service or omission of
86 any treatment, consultation, care, or service provided by the
87 nursing home facility or its employees, agents, or contractors,
88 is inadmissible as evidence of liability or as evidence of an
89 admission against interest.

90 Section 4. Subsections (1) and (4) of section 400.0237,
91 Florida Statutes, are amended to read:

92 400.0237 Punitive damages; pleading; burden of proof.--

93 (1) In any action for damages brought under this part, no
94 claim for punitive damages shall be permitted unless there is a
95 reasonable showing by admissible evidence in the record that has
96 been ~~or~~ proffered by the parties ~~claimant~~ which would provide a
97 reasonable basis for recovery of such damages applying the
98 standards set forth in this section. The claimant may move to
99 amend her or his complaint to assert a claim for punitive
100 damages as allowed by the rules of civil procedure. The rules of
101 civil procedure shall be liberally construed so as to allow the
102 claimant discovery of evidence which appears reasonably
103 calculated to lead to admissible evidence on the issue of
104 punitive damages. The trial judge shall conduct an evidentiary
105 hearing and weigh the admissible evidence proffered by all
106 parties to ensure that there is a reasonable basis for the
107 recovery of punitive damages. No discovery of financial worth
108 shall proceed until after the pleading concerning punitive
109 damages is permitted.

110 (4) The plaintiff must establish to the ~~at~~ trial judge, by
111 clear and convincing evidence, its entitlement to assert a claim

112 for an award of punitive damages and must establish at trial, by
 113 clear and convincing evidence, its entitlement to an award of
 114 punitive damages. The "greater weight of the evidence" burden of
 115 proof applies to a determination of the amount of damages.

116 Section 5. Subsections (11) and (12) are added to section
 117 400.23, Florida Statutes, to read:

118 400.23 Rules; evaluation and deficiencies; licensure
 119 status.--

120 (11) In any criminal, regulatory, or civil action arising
 121 under this chapter, a facility that demonstrates compliance,
 122 through its filings with the agency, with the minimum staffing
 123 requirements as set forth in this section and rules adopted by
 124 the agency pursuant to this section is not liable for failure to
 125 provide adequate staffing.

126 (12) The records generated pursuant to state licensure
 127 inspection reports are not subject to introduction in a civil
 128 proceeding against a facility. A person who participates in the
 129 state licensure inspection process may not be permitted or
 130 required to testify in any such civil proceeding as to any
 131 findings, recommendations, evaluations, opinions, or other
 132 actions pursuant to the state licensure inspection process. A
 133 person who provides information to a state licensure inspector
 134 may not be prevented from testifying as to matters within his or
 135 her knowledge, but he or she may not be asked about his or her
 136 participation in the state licensure inspection process. Nothing
 137 in this section shall be construed to mean that information,
 138 documents, or records otherwise available and obtained from
 139 original sources are immune from use in any such civil action

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140 merely because they were presented during the state licensure
141 inspection process.

142 Section 6. Subsections (17) through (27) of section
143 415.102, Florida Statutes, are renumbered as subsections (18)
144 through (28), respectively, and a new subsection (17) is added
145 to that section to read:

146 415.102 Definitions of terms used in ss. 415.101-
147 415.113.--As used in ss. 415.101-415.113, the term:

148 (17) "Perpetrator" means a person who has been found
149 guilty of abuse, neglect, or exploitation of a vulnerable adult
150 through administrative or criminal proceedings.

151 Section 7. This act shall take effect July 1, 2009.