

HB 569

2014

1 A bill to be entitled

2 An act relating to nursing home litigation reform;  
3 amending s. 400.023, F.S.; specifying conditions under  
4 which a nursing home resident has a cause of action  
5 against a licensee or management company; providing an  
6 effective date.

7  
8 Be It Enacted by the Legislature of the State of Florida:

9  
10 Section 1. Subsection (1) of section 400.023, Florida  
11 Statutes, is amended to read:

12 400.023 Civil enforcement.—

13 (1) Any resident who alleges negligence or a violation of  
14 ~~whose~~ rights as specified in this part has ~~are violated~~ ~~shall~~  
15 ~~have~~ a cause of action against the licensee or its management  
16 company, as specifically identified in the application for  
17 nursing home licensure, and its direct caregiver employees.

18 Sections 400.023-400.0238 provide the exclusive remedy against a  
19 licensee or management company for a cause of action for  
20 recovery of damages for the personal injury or death of a  
21 nursing home resident arising out of negligence or a violation  
22 of residents' rights specified in s. 400.022. The action may be  
23 brought by the resident or his or her guardian, by a person or  
24 organization acting on behalf of a resident with the consent of  
25 the resident or his or her guardian, or by the personal  
26 representative of the estate of a deceased resident regardless

27 of the cause of death. If the action alleges a claim for the  
28 resident's rights or for negligence that caused the death of the  
29 resident, the claimant shall be required to elect either  
30 survival damages pursuant to s. 46.021 or wrongful death damages  
31 pursuant to s. 768.21. If the action alleges a claim for the  
32 resident's rights or for negligence that did not cause the death  
33 of the resident, the personal representative of the estate may  
34 recover damages for the negligence that caused injury to the  
35 resident. The action may be brought in any court of competent  
36 jurisdiction to enforce such rights and to recover actual and  
37 punitive damages for any violation of the rights of a resident  
38 or for negligence. Any resident who prevails in seeking  
39 injunctive relief or a claim for an administrative remedy is  
40 entitled to recover the costs of the action, and a reasonable  
41 attorney's fee assessed against the defendant not to exceed  
42 \$25,000. Fees shall be awarded solely for the injunctive or  
43 administrative relief and not for any claim or action for  
44 damages whether such claim or action is brought together with a  
45 request for an injunction or administrative relief or as a  
46 separate action, except as provided under s. 768.79 or the  
47 Florida Rules of Civil Procedure. Sections 400.023-400.0238  
48 provide the exclusive remedy for a cause of action for recovery  
49 of damages for the personal injury or death of a nursing home  
50 resident arising out of negligence or a violation of rights  
51 specified in s. 400.022. This section does not preclude theories  
52 of recovery not arising out of negligence or s. 400.022 which

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53 | are available to a resident or to the agency. The provisions of  
54 | chapter 766 do not apply to any cause of action brought under  
55 | ss. 400.023-400.0238.

56 |       Section 2. This act shall take effect July 1, 2014.