

By Senator Stargel

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1                                   A bill to be entitled  
2           An act relating to nursing homes and assisted living  
3           facilities; creating s. 366.042, F.S.; requiring the  
4           Public Service Commission to ensure that public  
5           utilities effectively prioritize the restoration of  
6           services to certain health care facilities in the  
7           event of emergencies; amending s. 400.0238, F.S.;  
8           requiring that a claimant's attorney fees be  
9           calculated based on the claimant's share of punitive  
10          damages; revising provisions related to punitive  
11          damages to include provisions for cases that are  
12          settled; amending s. 400.0239, F.S.; authorizing the  
13          Quality of Long-Term Care Facility Improvement Trust  
14          Fund to expend certain funds on a grant program  
15          administered by the Agency for Health Care  
16          Administration to provide funding for nursing home  
17          facilities to acquire emergency power sources;  
18          amending s. 400.19, F.S.; requiring the agency to  
19          determine compliance with statutes and rules relating  
20          to emergency power sources in the unannounced  
21          inspections of a nursing home facility; amending s.  
22          400.23, F.S.; requiring the agency, in consultation  
23          with the Department of Health and the Department of  
24          Elderly Affairs, to adopt and enforce rules requiring  
25          each facility to have an emergency power source and a  
26          supply of fuel which meet certain criteria; providing  
27          an exception; requiring the agency to adopt rules  
28          establishing minimum criteria for a comprehensive  
29          emergency management plan that includes a plan to

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30 monitor residents and transport them in certain  
31 situations to avoid complications from heat exposure;  
32 requiring the local emergency management agency to  
33 publish a list of facilities whose emergency plans  
34 have been approved; amending s. 429.41, F.S.;

35 requiring the Department of Elderly Affairs, in  
36 consultation with the agency, the Department of  
37 Children and Families, and the Department of Health,  
38 to adopt and enforce rules requiring each facility  
39 maintain an emergency power source and a supply of  
40 fuel which meet certain criteria; providing an  
41 exception; providing an effective date.

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

44  
45 Section 1. Section 366.042, Florida Statutes, is created to  
46 read:

47 366.042 Power restoration priority.—The commission shall  
48 ensure that public utilities have effectively prioritized, in  
49 the event of an emergency, the restoration of services to  
50 critical medical facilities with at least 50 residents,  
51 including nursing homes licensed under part II of chapter 400  
52 and assisted living facilities licensed under part I of chapter  
53 429.

54 Section 2. Subsections (2) and (4) of section 400.0238,  
55 Florida Statutes, are amended to read:

56 400.0238 Punitive damages; limitation.—

57 (2) The claimant's attorney ~~attorney's~~ fees, if payable  
58 from the judgment, are, to the extent that the fees are based on

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59 the punitive damages, calculated based on the claimant's share  
60 of final judgment for punitive damages. This subsection does not  
61 limit the payment of attorney ~~attorney's~~ fees based upon an  
62 award of damages other than punitive damages.

63 (4) Notwithstanding any other law to the contrary, if the  
64 claimant has received a final judgment for the amount of  
65 punitive damages or there is a settlement of a case in which the  
66 claimant was granted leave to amend his or her complaint to add  
67 a claim for punitive damages, the punitive damages awarded  
68 pursuant to this section shall be equally divided before any  
69 distribution to the claimant's counsel for fees or costs between  
70 the claimant and the Quality of Long-Term Care Facility  
71 Improvement Trust Fund, in accordance with the following  
72 provisions:

73 (a) In the event of a judgment, the clerk of the court  
74 shall transmit a copy of the jury verdict to the Chief Financial  
75 Officer by certified mail. In the final judgment, the court  
76 shall order the percentages of the award, payable as provided  
77 herein. In the event of a settlement, the parties shall transmit  
78 by certified mail to the Chief Financial Officer a statement of  
79 the proportionate share due to the Quality of Long-Term Care  
80 Facility Improvement Trust Fund.

81 (b) A settlement agreement entered into between the  
82 original parties to the action after a verdict has been returned  
83 must provide a proportionate share payable to the Quality of  
84 Long-Term Care Facility Improvement Trust Fund specified herein.  
85 For purposes of this paragraph, a proportionate share is a 50-  
86 percent share of that percentage of the settlement amount which  
87 the punitive damages portion of the verdict bore to the total of

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88 the compensatory and punitive damages in the verdict.

89 (c) The Department of Financial Services shall collect or  
90 cause to be collected all payments due the state under this  
91 section. Such payments are made to the Chief Financial Officer  
92 and deposited in the appropriate fund specified in this  
93 subsection.

94 (d) If the full amount of punitive damages awarded cannot  
95 be collected, the claimant and the other recipient designated  
96 pursuant to this subsection are each entitled to a proportionate  
97 share of the punitive damages collected.

98 Section 3. Paragraph (h) is added to subsection (2) of  
99 section 400.0239, Florida Statutes, to read:

100 400.0239 Quality of Long-Term Care Facility Improvement  
101 Trust Fund.—

102 (2) Expenditures from the trust fund shall be allowable for  
103 direct support of the following:

104 (h) From proceeds generated pursuant to s. 400.0238, a  
105 grant program administered by the agency to provide funding for  
106 nursing home facilities to acquire emergency power sources.

107 Section 4. Subsection (3) of section 400.19, Florida  
108 Statutes, is amended to read:

109 400.19 Right of entry and inspection.—

110 (3) The agency shall every 15 months conduct at least one  
111 unannounced inspection to determine compliance by the licensee  
112 with statutes, and with rules adopted ~~promulgated~~ under the  
113 ~~provisions of~~ those statutes, governing minimum standards of  
114 construction, emergency power sources, quality and adequacy of  
115 care, and rights of residents. The survey shall be conducted  
116 every 6 months for the next 2-year period if the facility has

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117 been cited for a class I deficiency, has been cited for two or  
118 more class II deficiencies arising from separate surveys or  
119 investigations within a 60-day period, or has had three or more  
120 substantiated complaints within a 6-month period, each resulting  
121 in at least one class I or class II deficiency. In addition to  
122 any other fees or fines in this part, the agency shall assess a  
123 fine for each facility that is subject to the 6-month survey  
124 cycle. The fine for the 2-year period shall be \$6,000, one-half  
125 to be paid at the completion of each survey. The agency may  
126 adjust this fine by the change in the Consumer Price Index,  
127 based on the 12 months immediately preceding the increase, to  
128 cover the cost of the additional surveys. The agency shall  
129 verify through subsequent inspection that any deficiency  
130 identified during inspection is corrected. However, the agency  
131 may verify the correction of a class III or class IV deficiency  
132 unrelated to resident rights or resident care without  
133 reinspecting the facility if adequate written documentation has  
134 been received from the facility, which provides assurance that  
135 the deficiency has been corrected. The giving or causing to be  
136 given of advance notice of such unannounced inspections by an  
137 employee of the agency to any unauthorized person shall  
138 constitute cause for suspension of not fewer than 5 working days  
139 according to the provisions of chapter 110.

140 Section 5. Paragraphs (d) and (g) of subsection (2) of  
141 section 400.23, Florida Statutes, are amended to read:

142 400.23 Rules; evaluation and deficiencies; licensure  
143 status.—

144 (2) Pursuant to the intention of the Legislature, the  
145 agency, in consultation with the Department of Health and the

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146 Department of Elderly Affairs, shall adopt and enforce rules to  
147 implement this part and part II of chapter 408, which shall  
148 include reasonable and fair criteria in relation to:

149 (d) The equipment essential to the health and welfare of  
150 ~~the residents,~~ including an operational emergency power source  
151 and a supply of fuel sufficient to sustain the emergency power  
152 source for at least 4 days during a power outage. A facility may  
153 contract with a company that is able to timely supply an  
154 emergency power source or supply of fuel when requested by the  
155 facility, or may store an emergency power source or supply of  
156 fuel on site. The emergency power source must provide enough  
157 electricity to:

158 1. Consistently maintain an ambient air temperature of 81°  
159 F. or less within one or more areas of the facility having  
160 enough space to safely hold all of the facility's residents; and

161 2. Allow for the refrigeration and standard preparation of  
162 food and beverages served by the facility to its residents and  
163 for the storage of ice.

164  
165 A facility located in an area that must be evacuated in a  
166 hurricane or which does not plan to house residents in an  
167 emergency may be exempted from the emergency power requirements  
168 of this paragraph upon request to and with authorization from  
169 the agency.

170 (g) The preparation and annual update of a comprehensive  
171 emergency management plan. The agency shall adopt rules  
172 establishing minimum criteria for the plan after consultation  
173 with the Division of Emergency Management. At a minimum, the  
174 rules must provide for plan components that address emergency

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175 evacuation transportation; adequate sheltering arrangements;  
176 postdisaster activities, including emergency power, food, and  
177 water; postdisaster transportation; supplies; staffing;  
178 emergency equipment; individual identification of residents and  
179 transfer of records; a plan to monitor residents to ensure they  
180 do not experience complications from heat exposure and to make  
181 certain all residents have sufficient access to areas of the  
182 facility with an ambient air temperature of 81° F. or less; a  
183 plan to safely transport residents to an appropriate facility if  
184 a facility's management knows it will be unable to maintain the  
185 residents in a safe temperature range; and responding to family  
186 inquiries. The comprehensive emergency management plan is  
187 subject to review and approval by the local emergency management  
188 agency. During its review, the local emergency management agency  
189 shall ensure that the following agencies, at a minimum, are  
190 given the opportunity to review the plan: the Department of  
191 Elderly Affairs, the Department of Health, the Agency for Health  
192 Care Administration, and the Division of Emergency Management.  
193 Also, appropriate volunteer organizations must be given the  
194 opportunity to review the plan. The local emergency management  
195 agency shall complete its review within 60 days and either  
196 approve the plan or advise the facility of necessary revisions.  
197 The local emergency management agency shall publish a list of  
198 facilities whose emergency plans have been approved.

199 Section 6. Paragraph (a) of subsection (1) of section  
200 429.41, Florida Statutes, is amended to read:

201 429.41 Rules establishing standards.—

202 (1) It is the intent of the Legislature that rules  
203 published and enforced pursuant to this section shall include

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204 criteria by which a reasonable and consistent quality of  
205 resident care and quality of life may be ensured and the results  
206 of such resident care may be demonstrated. Such rules shall also  
207 ensure a safe and sanitary environment that is residential and  
208 noninstitutional in design or nature. It is further intended  
209 that reasonable efforts be made to accommodate the needs and  
210 preferences of residents to enhance the quality of life in a  
211 facility. Uniform firesafety standards for assisted living  
212 facilities shall be established by the State Fire Marshal  
213 pursuant to s. 633.206. The agency, in consultation with the  
214 department, may adopt rules to administer the requirements of  
215 part II of chapter 408. In order to provide safe and sanitary  
216 facilities and the highest quality of resident care  
217 accommodating the needs and preferences of residents, the  
218 department, in consultation with the agency, the Department of  
219 Children and Families, and the Department of Health, shall adopt  
220 rules, policies, and procedures to administer this part, which  
221 must include reasonable and fair minimum standards in relation  
222 to:

223 (a) The requirements for and maintenance of facilities, not  
224 in conflict with chapter 553, relating to plumbing, heating,  
225 cooling, lighting, ventilation, living space, and other housing  
226 conditions, which will ensure the health, safety, and comfort of  
227 residents suitable to the size of the structure.

228 1. Firesafety evacuation capability determination.—An  
229 evacuation capability evaluation for initial licensure shall be  
230 conducted within 6 months after the date of licensure.

231 2. Firesafety requirements.—

232 a. The National Fire Protection Association, Life Safety



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233 Code, NFPA 101 and 101A, current editions, shall be used in  
234 determining the uniform firesafety code adopted by the State  
235 Fire Marshal for assisted living facilities, pursuant to s.  
236 633.206.

237 b. A local government or a utility may charge fees only in  
238 an amount not to exceed the actual expenses incurred by the  
239 local government or the utility relating to the installation and  
240 maintenance of an automatic fire sprinkler system in a licensed  
241 assisted living facility structure.

242 c. All licensed facilities must have an annual fire  
243 inspection conducted by the local fire marshal or authority  
244 having jurisdiction.

245 d. An assisted living facility that is issued a building  
246 permit or certificate of occupancy before July 1, 2016, may at  
247 its option and after notifying the authority having  
248 jurisdiction, remain under the provisions of the 1994 and 1995  
249 editions of the National Fire Protection Association, Life  
250 Safety Code, NFPA 101, and NFPA 101A. The facility opting to  
251 remain under such provisions may make repairs, modernizations,  
252 renovations, or additions to, or rehabilitate, the facility in  
253 compliance with NFPA 101, 1994 edition, and may use ~~utilize~~ the  
254 alternative approaches to life safety in compliance with NFPA  
255 101A, 1995 edition. However, a facility for which a building  
256 permit or certificate of occupancy is issued before July 1,  
257 2016, that undergoes Level III building alteration or  
258 rehabilitation, as defined in the Florida Building Code, or  
259 seeks to use ~~utilize~~ features not authorized under the 1994 or  
260 1995 editions of the Life Safety Code must thereafter comply  
261 with all aspects of the uniform firesafety standards established

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262 under s. 633.206, and the Florida Fire Prevention Code, in  
263 effect for assisted living facilities as adopted by the State  
264 Fire Marshal.

265 3. Resident elopement requirements.—Facilities are required  
266 to conduct a minimum of two resident elopement prevention and  
267 response drills per year. All administrators and direct care  
268 staff must participate in the drills which shall include a  
269 review of procedures to address resident elopement. Facilities  
270 must document the implementation of the drills and ensure that  
271 the drills are conducted in a manner consistent with the  
272 facility's resident elopement policies and procedures.

273 4. Emergency power sources for use during power outages.—  
274 Facilities are required to maintain an operational emergency  
275 power source and a supply of fuel sufficient to sustain the  
276 emergency power source for at least 4 days during a power  
277 outage. A facility may contract with a company that is able to  
278 timely supply an emergency power source or supply of fuel when  
279 requested by the facility, or may store an emergency power  
280 source or supply of fuel on site. The emergency power source  
281 must provide enough electricity to:

282 a. Consistently maintain an ambient air temperature of 81°  
283 F. or less within one or more areas of the facility having  
284 enough space to safely hold all of the facility's residents; and

285 b. Allow for the refrigeration and standard preparation of  
286 food and beverages served by the facility to its residents and  
287 for the storage of ice.

288  
289 A facility located in an area that must be evacuated in a  
290 hurricane or which does not plan to house residents in an

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291 emergency may be exempted from the emergency power requirements  
292 of this subparagraph upon request to and with authorization from  
293 the agency.

294 Section 7. This act shall take effect July 1, 2018.