

By Senator Torres

15-01817-21

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1                   A bill to be entitled  
2           An act relating to claims for medical negligence;  
3           amending ss. 400.023, 400.0235, and 429.295, F.S.;  
4           conforming provisions to changes made by the act;  
5           amending s. 768.21, F.S.; authorizing an adult child  
6           who was under the care of a legal parental guardian at  
7           the time of a parent's death or the adult child's  
8           personal representative to file a claim for medical  
9           negligence under certain circumstances; authorizing  
10          the legal parental guardian of an adult child or the  
11          parental guardian's personal representative to file a  
12          claim for medical negligence under certain  
13          circumstances; providing an effective date.

14  
15 Be It Enacted by the Legislature of the State of Florida:

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

19           400.023 Civil enforcement.—

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

24           Section 2. Section 400.0235, Florida Statutes, is amended  
25 to read:

26           400.0235 Certain provisions not applicable to actions under  
27 this part.—An action under this part for a violation of rights  
28 or negligence recognized under this part is not a claim for  
29 medical malpractice, and ~~the provisions of~~ s. 768.21(8) and (9)

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30 do not apply to a claim alleging death of the resident.

31 Section 3. Section 429.295, Florida Statutes, is amended to  
32 read:

33 429.295 Certain provisions not applicable to actions under  
34 this part.—An action under this part for a violation of rights  
35 or negligence recognized herein is not a claim for medical  
36 malpractice, and ~~the provisions of s. 768.21(8) and (9)~~ do not  
37 apply to a claim alleging death of the resident.

38 Section 4. Subsection (8) of section 768.21, Florida  
39 Statutes, is amended, and subsection (9) is added to that  
40 section, to read:

41 768.21 Damages.—All potential beneficiaries of a recovery  
42 for wrongful death, including the decedent's estate, shall be  
43 identified in the complaint, and their relationships to the  
44 decedent shall be alleged. Damages may be awarded as follows:

45 (8) The damages specified in subsection (3) are ~~shall~~ not  
46 ~~be~~ recoverable by adult children with respect to a claim for  
47 medical negligence as defined in s. 766.106(1) unless the  
48 decedent had previously been appointed a guardian as defined in  
49 s. 744.102 over the adult child. A personal representative as  
50 defined in s. 198.01(2) may file the suit on behalf of the adult  
51 child. ~~and~~

52 (9) The damages specified in subsection (4) are ~~shall~~ not  
53 ~~be~~ recoverable by parents of an adult child with respect to  
54 claims for medical negligence as defined in ~~by~~ s. 766.106(1)  
55 unless the parent had previously been appointed a guardian as  
56 defined in s. 744.102 over the adult child. A personal  
57 representative as defined in s. 198.01(2) may file the suit on  
58 behalf of the parent of the adult child.

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Section 5. This act shall take effect July 1, 2021.