

By Senator Burton

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1 A bill to be entitled
2 An act relating to claims against long-term care
3 facilities; amending s. 400.023, F.S.; providing
4 requirements for admissible evidence for specified
5 claims; authorizing certain individuals to provide
6 certain expert opinions relating to such claims if
7 they meet specified criteria; prohibiting an expert
8 witness from testifying on a contingency fee basis;
9 amending ss. 400.0233 and 429.293, F.S.; providing
10 requirements for corroboration of reasonable grounds
11 to initiate a claim for residents' rights violation or
12 negligence as to each prospective defendant; deleting
13 a provision authorizing a licensed physician or
14 registered nurse to be retained for specified
15 purposes; repealing ss. 400.0235 and 429.295, F.S.,
16 relating to specified actions not being applicable to
17 claims for medical malpractice; amending ss. 400.0236
18 and 429.296, F.S.; deleting provisions providing
19 applicability of certain limitations; amending s.
20 429.29, F.S.; providing requirements for an exclusive
21 cause of action for residents' rights violations or
22 negligence to be brought against specified
23 individuals; providing definitions; prohibiting such
24 action from being asserted against certain individuals
25 or entities under certain circumstances; providing
26 exceptions; providing requirements for admissible
27 evidence for specified claims; providing requirements
28 for an individual to provide expert opinions;
29 prohibiting an expert witness from testifying on a

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30 contingency fee basis; providing immunity from
31 liability for certain individuals; providing that such
32 actions are not claims for medical negligence;
33 amending s. 429.294, F.S.; providing requirements for
34 residents' records; prohibiting a facility from being
35 cited by the Agency for Health Care Administration
36 under certain circumstances; providing construction;
37 amending s. 429.297, F.S.; revising requirements for
38 recovery of certain damages and liability for such
39 damages; deleting obsolete language; creating s.
40 429.299, F.S.; providing requirements for a licensee
41 to satisfy a judgment or settlement agreement;
42 providing applicability; providing an effective date.

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

45
46 Section 1. Present subsections (5), (6), (7), (8), and (9)
47 of section 400.023, Florida Statutes, are redesignated as
48 subsections (6), (7), (8), (14), and (15), respectively, new
49 subsections (5) and (9) and subsections (10) through (13) are
50 added to that section, and subsection (4) and present subsection
51 (9) of that section are amended, to read:

52 400.023 Civil enforcement.—

53 (4) In a claim brought pursuant to this part alleging a
54 violation of residents' rights or negligence causing injury to
55 or the death of a resident, the claimant has the burden of
56 proving, by a preponderance of the evidence, that:

57 (a) The defendant owed a duty to the resident;

58 (b) The defendant breached the duty to the resident;

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59 (c) The breach of the duty is a legal cause of loss,
60 injury, death, or damage to the resident; and

61 (d) The resident sustained loss, injury, death, or damage
62 as a result of the breach.

63

64 This part does not create strict liability. A violation of the
65 rights provided ~~set forth~~ in s. 400.022, in any other standard
66 or guidelines specified in this part, or in any applicable
67 administrative standard or guidelines of this state or a federal
68 regulatory agency may be ~~is~~ evidence of negligence but is not
69 considered negligence per se.

70 (5) Notwithstanding this section, evidence of a violation
71 described in subsection (4), including licensure inspections and
72 surveys, cited deficiencies, plans of correction, or sanctions
73 imposed by the agency, is admissible as evidence in a claim
74 under this part only if the evidence relates to a material
75 violation of the standards or guidelines specified in this part
76 or an applicable administrative standard or guideline relating
77 to:

78 (a) The alleged occurrence and the particular individual
79 whose injury or death is the basis for the claim; or

80 (b) A finding by the agency which directly involves
81 substantially similar conduct that occurred at the nursing home
82 facility within a period of 12 months before the date of the
83 alleged occurrence that is the basis for the claim.

84 (9) An individual may provide an expert opinion on the
85 appropriate degree of reasonable care that a reasonably careful
86 licensee, individual, or entity would use under like
87 circumstances in operating a nursing home facility as to

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88 administrative and other nonclinical issues if the individual
89 has substantial knowledge in regard to operating a nursing home
90 facility in the state by virtue of his or her training and
91 experience during the 3 years immediately preceding the date of
92 the alleged occurrence that is the basis for the claim.

93 (10) An individual who holds an active and valid health
94 care professional license issued by the Department of Health may
95 provide an expert opinion concerning the prevailing professional
96 standard of care that a reasonably prudent similar health care
97 professional would use under the relevant surrounding
98 circumstances. The expert witness must have devoted professional
99 time during the 3 years immediately preceding the date of the
100 alleged occurrence that is the basis for the claim to:

101 (a) The active clinical practice of, or active clinical
102 consultation with respect to, the care and treatment of patients
103 residing in a nursing home facility;

104 (b) The instruction of students or active work in an
105 accredited health professional school or accredited residency or
106 clinical research program with respect to the care and treatment
107 of patients residing in a nursing home facility; or

108 (c) The active clinical practice of, or active clinical
109 consultation with respect to, the care and treatment of patients
110 who are 65 years of age or older.

111 (11) A physician licensed under chapter 458 or chapter 459
112 who qualifies to provide an expert opinion under subsection (10)
113 and who, by reason of active clinical practice or instruction of
114 students, has knowledge of the applicable standard of care for
115 physicians or other medical support staff, may give expert
116 testimony in a negligence action with respect to the

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117 professional standard of care of such physicians or other
 118 medical support staff.

119 (12) A nurse licensed to practice professional nursing
 120 under chapter 464 who qualifies to provide an expert opinion
 121 under subsection (10) and who, by reason of active clinical
 122 practice or instruction of students, has knowledge of the
 123 applicable standard of care for nurses or other medical support
 124 staff, may give expert testimony in a negligence action with
 125 respect to the professional standard of care of such nurses or
 126 other medical support staff.

127 (13) An expert witness may not testify on a contingency fee
 128 basis.

129 (15)~~(9)~~ An action under this part for a violation of the
 130 rights or negligence recognized herein is not a claim for
 131 medical negligence; however, malpractice, and s. 768.21(8)
 132 applies ~~does not apply~~ to a claim alleging death of a ~~the~~
 133 resident.

134 Section 2. Subsections (1), (2), (4), and (5) of section
 135 400.0233, Florida Statutes, are amended to read:

136 400.0233 Presuit notice; investigation; notification of
 137 violation of residents' ~~resident's~~ rights or alleged negligence;
 138 claims evaluation procedure; informal discovery; review;
 139 settlement offer; mediation.—

140 (1) As used in ss. 400.023-400.0238 ~~this section~~, the term:

141 (a) "Claim for residents' ~~resident's~~ rights violation or
 142 negligence" means a negligence claim alleging injury to or the
 143 death of a resident arising out of an asserted violation of the
 144 rights of a resident under s. 400.022 or an asserted deviation
 145 from the applicable standard of care.

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146 (b) "Insurer" means any self-insurer authorized under s.
147 627.357, liability insurance carrier, joint underwriting
148 association, or uninsured prospective defendant.

149 (2) Before ~~Prior to~~ filing a claim for residents' rights a
150 ~~violation of a resident's rights~~ or ~~a claim for~~ negligence, a
151 claimant alleging injury to or the death of a resident shall
152 notify each prospective defendant by certified mail, return
153 receipt requested, of an asserted violation of a resident's
154 rights provided in s. 400.022 or deviation from the standard of
155 care. Such notification shall include an identification of the
156 rights the prospective defendant has violated and the negligence
157 alleged to have caused the incident or incidents and a brief
158 description of the injuries sustained by the resident which are
159 reasonably identifiable at the time of notice. The notice shall
160 contain a certificate of counsel that counsel's reasonable
161 investigation gave rise to a good faith belief that grounds
162 exist for an action against each prospective defendant.

163 Corroboration of reasonable grounds to initiate a claim for
164 residents' rights violation or negligence as to each prospective
165 defendant shall be provided by the claimant's submission of a
166 written expert opinion from an individual qualified as an expert
167 pursuant to s. 400.023 at the time the notice of intent to file
168 a claim is mailed, which stated opinion must corroborate
169 reasonable grounds to support the claim.

170 (4) The notification of a violation of residents' a
171 ~~resident's~~ rights or ~~alleged~~ negligence shall be served within
172 the applicable statute of limitations period; however, during
173 the 75-day period, the statute of limitations is tolled as to
174 all prospective defendants. Upon stipulation by the parties, the

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175 75-day period may be extended and the statute of limitations is
176 tolled during any such extension. Upon receiving written notice
177 by certified mail, return receipt requested, of termination of
178 negotiations in an extended period, the claimant shall have 60
179 days or the remainder of the period of the statute of
180 limitations, whichever is greater, within which to file suit.

181 (5) A ~~No~~ statement, discussion, written document, report,
182 or other work product generated by presuit claims evaluation
183 procedures under this section is not discoverable or admissible
184 in any civil action for any purpose by the opposing party. All
185 participants, including, but not limited to, physicians,
186 investigators, witnesses, and employees or associates of the
187 defendant, are immune from civil liability arising from
188 participation in the presuit claims evaluation procedure. ~~Any~~
189 ~~licensed physician or registered nurse may be retained by either~~
190 ~~party to provide an opinion regarding the reasonable basis of~~
191 ~~the claim.~~ The presuit opinions of the expert are not
192 discoverable or admissible in any civil action for any purpose
193 by the opposing party.

194 Section 3. Section 400.0235, Florida Statutes, is repealed.

195 Section 4. Subsection (3) of section 400.0236, Florida
196 Statutes, is amended to read:

197 400.0236 Statute of limitations.-

198 ~~(3) This section shall apply to causes of action that have~~
199 ~~accrued prior to the effective date of this section; however,~~
200 ~~any such cause of action that would not have been barred under~~
201 ~~prior law may be brought within the time allowed by prior law or~~
202 ~~within 2 years after the effective date of this section,~~
203 ~~whichever is earlier, and will be barred thereafter. In actions~~

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204 ~~where it can be shown that fraudulent concealment or intentional~~
205 ~~misrepresentation of fact prevented the discovery of the injury,~~
206 ~~the period of limitations is extended forward 2 years from the~~
207 ~~time that the injury is discovered with the exercise of due~~
208 ~~diligence, but in no event more than 4 years from the effective~~
209 ~~date of this section.~~

210 Section 5. Section 429.29, Florida Statutes, is amended to
211 read:

212 429.29 Civil actions to enforce rights.-

213 (1) An exclusive cause of action for residents' ~~Any person~~
214 ~~or resident whose rights violation or negligence as specified~~
215 under in this part which alleges direct or vicarious liability
216 for the personal injury or death of a resident arising from such
217 rights violation or negligence and which seeks damages for such
218 injury or death may be brought only against the licensee, the
219 licensee's management or consulting company, the licensee's
220 managing employees, and any direct caregivers, whether employees
221 or contractors are violated shall have a cause of action.

222 (a) The action may be brought by the resident or his or her
223 guardian, or by an individual ~~a person~~ or organization acting on
224 behalf of a resident with the consent of the resident or his or
225 her guardian, or by the personal representative of the estate of
226 a deceased resident regardless of the cause of death.

227 (b) If the action alleges a claim for residents' ~~the~~
228 ~~resident's~~ rights violation or ~~for~~ negligence that caused the
229 death of the resident, the claimant shall, after the verdict,
230 but before the judgment is entered, ~~be required to~~ elect either
231 survival damages pursuant to s. 46.021 or wrongful death damages
232 pursuant to s. 768.21. If the action alleges a claim for

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233 residents' ~~the resident's~~ rights violation or ~~for~~ negligence
234 that did not cause the death of the resident, the personal
235 representative of the estate may recover damages for the
236 negligence that caused injury to the resident.

237 (c) The action may be brought in any court of competent
238 jurisdiction to enforce such rights and to recover actual
239 damages, ~~and~~ punitive damages for violation of the rights of a
240 resident or negligence.

241 (d) ~~A~~ Any resident who prevails in seeking injunctive
242 relief or ~~a claim for~~ an administrative remedy is entitled to
243 recover the costs of the action and ~~a~~ reasonable attorney fees
244 ~~attorney's fee~~ assessed against the defendant of up to not to
245 ~~exceed~~ \$25,000. Such attorney fees shall be awarded solely for
246 the injunctive or administrative relief and not for any claim or
247 action for damages whether such claim or action is brought
248 ~~together~~ with a request for an injunction or administrative
249 relief or as a separate action, except as provided under s.
250 768.79 or the Florida Rules of Civil Procedure. ~~Sections 429.29-~~
251 ~~429.298 provide the exclusive remedy for a cause of action for~~
252 ~~recovery of damages for the personal injury or death of a~~
253 ~~resident arising out of negligence or a violation of rights~~
254 ~~specified in s. 429.28.~~

255 (e) This section does not preclude theories of recovery not
256 arising out of negligence or s. 429.28 which are available to a
257 resident or to the agency. ~~The provisions of Chapter 766~~ does ~~de~~
258 not apply to any cause of action brought under ss. 429.29-
259 429.298. An action against any other individual or entity may be
260 brought only pursuant to subsection (3).

261 (2) As used in this section, the term:

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262 (a) "Licensee" means an individual, corporation,
263 partnership, firm, association, governmental entity, or other
264 entity that is issued a permit, registration, certificate, or
265 license by the agency and is legally responsible for all aspects
266 of the operation of the facility.

267 (b) "Management or consulting company" means an individual
268 or entity that contracts with, or receives a fee from, a
269 licensee to provide any of the following services for a
270 facility:

- 271 1. Hiring or firing the administrator;
272 2. Controlling or having control over the staffing levels
273 at the facility;
274 3. Having control over the budget of the facility; or
275 4. Implementing and enforcing the policies and procedures
276 of the facility.

277 (c) "Passive investor" means an individual or entity that
278 has an interest in a facility but does not participate in the
279 decisionmaking or operations of the facility.

280 (3) An exclusive cause of action for residents' rights
281 violation or negligence may not be asserted against an
282 individual or entity other than the licensee, the licensee's
283 management or consulting company, the licensee's managing
284 employees, and any direct caregivers, whether employees or
285 contractors, unless, after a motion for leave to amend hearing,
286 the court or an arbitration panel determines that there is
287 sufficient evidence in the record or proffered by the claimant
288 to establish a reasonable showing that:

289 (a) The individual or entity owed a duty of reasonable care
290 to the resident and the individual or entity breached that duty;

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291 and

292 (b) The breach of that duty is a legal cause of loss,
293 injury, death, or damage to the resident.

294
295 For purposes of this subsection, if, in a proposed amended
296 pleading, it is asserted that such cause of action arose out of
297 the conduct, transaction, or occurrence set forth or attempted
298 to be set forth in the original pleading, the proposed amendment
299 relates back to the original pleading.

300 (4)-(2) In any claim brought pursuant to this part alleging
301 a violation of residents' ~~resident's~~ rights or negligence
302 causing injury to or the death of a resident, the claimant has
303 ~~shall have~~ the burden of proving, by a preponderance of the
304 evidence, that:

305 (a) The defendant owed a duty to the resident;

306 (b) The defendant breached the duty to the resident;

307 (c) The breach of the duty is a legal cause of loss,
308 injury, death, or damage to the resident; and

309 (d) The resident sustained loss, injury, death, or damage
310 as a result of the breach.

311
312 ~~Nothing in~~ This part does not ~~shall be interpreted to~~ create
313 strict liability. A violation of the rights provided ~~set forth~~
314 in s. 429.28 or in any other standard or guidelines specified in
315 this part or in any applicable administrative standard or
316 guidelines of this state or a federal regulatory agency may
317 ~~shall~~ be evidence of negligence but is ~~shall not be~~ considered
318 negligence per se.

319 (5) Notwithstanding this section, evidence of a violation

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320 described in subsection (4), including licensure inspections and
321 surveys, cited deficiencies, plans of correction, or sanctions
322 imposed by the agency, is admissible as evidence in a claim
323 under this part only if the evidence relates to a material
324 violation of the standards or guidelines specified in this part
325 or an applicable administrative standard or guideline relating
326 to:

327 (a) The alleged occurrence and the particular individual
328 whose injury or death is the basis for the claim; or

329 (b) A finding by the agency which directly involves
330 substantially similar conduct that occurred at the assisted
331 living facility within a period of 12 months before the date of
332 the alleged occurrence that is the basis for the claim.

333 (6)(3) In a ~~any~~ claim brought pursuant to this section, a
334 licensee, individual person, or entity ~~has shall have~~ a duty to
335 exercise reasonable care. Reasonable care is that degree of care
336 which a reasonably careful licensee, individual person, or
337 entity would use under like circumstances.

338 (7)(4) In a ~~any~~ claim for residents' ~~resident's~~ rights
339 violation or negligence by a nurse licensed under part I of
340 chapter 464, such nurse ~~has shall have~~ the duty to exercise care
341 consistent with the prevailing professional standard of care for
342 a nurse. The prevailing professional standard of care for a
343 nurse ~~is shall be~~ that level of care, skill, and treatment
344 which, in light of all relevant surrounding circumstances, is
345 recognized as acceptable and appropriate by reasonably prudent
346 similar nurses.

347 (8)(5) Discovery of financial information for the purpose
348 of determining the value of punitive damages may not be had

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349 unless the plaintiff shows the court by proffer or evidence in
350 the record that a reasonable basis exists to support a claim for
351 punitive damages.

352 (9) An individual may provide an expert opinion on the
353 appropriate degree of reasonable care that a reasonably careful
354 licensee, individual, or entity would use under like
355 circumstances in operating an assisted living facility as to
356 administrative and other nonclinical issues if the individual
357 has substantial knowledge in regard to operating an assisted
358 living facility in the state by virtue of his or her training
359 and experience during the 3 years immediately preceding the date
360 of the alleged occurrence that is the basis for the claim.

361 (10) An individual who holds an active and valid health
362 care professional license issued by the Department of Health may
363 provide an expert opinion concerning the prevailing professional
364 standard of care that a reasonably prudent similar health care
365 professional would use under the relevant surrounding
366 circumstances. The expert witness must have devoted professional
367 time during the 3 years immediately preceding the date of the
368 alleged occurrence that is the basis for the claim to:

369 (a) The active clinical practice of, or active clinical
370 consultation with respect to, the care and treatment of patients
371 residing in an assisted living facility;

372 (b) The instruction of students or active work in an
373 accredited health professional school or accredited residency or
374 clinical research program with respect to the care and treatment
375 of patients residing in an assisted living facility; or

376 (c) The active clinical practice of, or active clinical
377 consultation with respect to, the care and treatment of patients

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378 who are 65 years of age or older.

379 (11) A physician licensed under chapter 458 or chapter 459
380 who qualifies to provide an expert opinion under subsection (10)
381 and who, by reason of active clinical practice or instruction of
382 students, has knowledge of the applicable standard of care for
383 physicians or other medical support staff, may give expert
384 testimony in a negligence action with respect to the
385 professional standard of care of such physicians or other
386 medical support staff.

387 (12) A nurse licensed to practice professional nursing
388 under chapter 464 who qualifies to provide an expert opinion
389 under subsection (10) and who, by reason of active clinical
390 practice or instruction of students, has knowledge of the
391 applicable standard of care for nurses or other medical support
392 staff, may give expert testimony in a negligence action with
393 respect to the professional standard of care of such nurses or
394 other medical support staff.

395 (13) An expert witness may not testify on a contingency fee
396 basis.

397 (14)~~(6)~~ In addition to any other standards for punitive
398 damages, any award of punitive damages must be reasonable in
399 light of the actual harm suffered by the resident and the
400 egregiousness of the conduct that caused the actual harm to the
401 resident.

402 (15)~~(7)~~ The resident or the resident's legal representative
403 shall serve a copy of a ~~any~~ complaint alleging in whole or in
404 part a violation of any rights specified in this part to the
405 agency ~~for Health Care Administration~~ at the time of filing the
406 initial complaint with the clerk of the court for the county in

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407 which the action is pursued. The requirement of providing a copy
408 of the complaint to the agency does not impair the resident's
409 legal rights or ability to seek relief for his or her claim.

410 (16) A passive investor is not liable under this section.

411 (17) An exclusive cause of action for residents' rights
412 violation or negligence as specified under this part is not a
413 claim for medical negligence; however, s. 768.21(8) applies to a
414 claim alleging death of a resident.

415 Section 6. Subsections (1) and (2), paragraph (a) of
416 subsection (3), and subsection (5) of section 429.293, Florida
417 Statutes, are amended to read:

418 429.293 Presuit notice; investigation; notification of a
419 claim for ~~violation of~~ residents' rights violation or ~~alleged~~
420 negligence; claims evaluation procedure; informal discovery;
421 review; settlement offer; mediation.-

422 (1) As used in ss. 429.29-429.299 ~~this section~~, the term:

423 (a) "Claim for residents' rights violation or negligence"
424 means a negligence claim alleging injury to or the death of a
425 resident arising out of an asserted violation of the rights of a
426 resident under s. 429.28 or an asserted deviation from the
427 applicable standard of care.

428 (b) "Insurer" means any self-insurer authorized under s.
429 627.357, liability insurance carrier, joint underwriting
430 association, or uninsured prospective defendant.

431 (2) Before ~~Prior to~~ filing a claim for residents' rights a
432 ~~violation of a resident's rights~~ or ~~a claim for~~ negligence, a
433 claimant alleging injury to or the death of a resident shall
434 notify each prospective defendant by certified mail, return
435 receipt requested, of an asserted violation of a resident's

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436 rights provided in s. 429.28 or deviation from the standard of
437 care. Such notification shall include an identification of the
438 rights the prospective defendant has violated and the negligence
439 alleged to have caused the incident or incidents and a brief
440 description of the injuries sustained by the resident which are
441 reasonably identifiable at the time of notice. The notice shall
442 contain a certificate of counsel that counsel's reasonable
443 investigation gave rise to a good faith belief that grounds
444 exist for an action against each prospective defendant.
445 Corroboration of reasonable grounds to initiate a claim for
446 residents' rights violation or negligence as to each prospective
447 defendant shall be provided by the claimant's submission of a
448 written expert opinion from an individual qualified as an expert
449 pursuant to s. 400.023 at the time the notice of intent to file
450 a claim is mailed, which stated opinion must corroborate
451 reasonable grounds to support the claim.

452 (3) (a) ~~A~~ No suit may not be filed for a period of 75 days
453 after notice is mailed to any prospective defendant. During the
454 75-day period, the prospective defendants or their insurers
455 shall conduct an evaluation of the claim to determine the
456 liability of each defendant and to evaluate the damages of the
457 claimants. Each defendant or insurer of the defendant shall have
458 a procedure for the prompt evaluation of claims during the 75-
459 day period. The procedure shall include one or more of the
460 following:

- 461 1. Internal review by a duly qualified facility risk
462 manager or claims adjuster;
- 463 2. Internal review by counsel for each prospective
464 defendant;

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465 3. A quality assurance committee authorized under any
466 applicable state or federal statutes or regulations; or

467 4. Any other similar procedure that fairly and promptly
468 evaluates the claims.

469

470 Each defendant or insurer of the defendant shall evaluate the
471 claim in good faith.

472 (5) A ~~No~~ statement, discussion, written document, report,
473 or other work product generated by presuit claims evaluation
474 procedures under this section is not discoverable or admissible
475 in any civil action for any purpose by the opposing party. All
476 participants, including, but not limited to, physicians,
477 investigators, witnesses, and employees or associates of the
478 defendant, are immune from civil liability arising from
479 participation in the presuit claims evaluation procedure. ~~Any~~
480 ~~licensed physician or registered nurse may be retained by either~~
481 ~~party to provide an opinion regarding the reasonable basis of~~
482 ~~the claim.~~ The presuit opinions of the expert are not
483 discoverable or admissible in any civil action for any purpose
484 by the opposing party.

485 Section 7. Section 429.294, Florida Statutes, is amended to
486 read:

487 429.294 Availability of facility records for investigation
488 of residents' ~~resident's~~ rights violations and defenses;
489 penalty.—

490 (1) Failure to provide complete copies of a resident's
491 records, including, but not limited to, all medical records and
492 the resident's chart, within the control or possession of the
493 facility in accordance with s. 400.145, shall constitute

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494 evidence of failure of that party to comply with good faith
495 discovery requirements and shall waive the good faith
496 certificate and presuit notice requirements under this part by
497 the requesting party.

498 (2) A ~~No~~ facility may not shall be held liable for any
499 civil damages as a result of complying with this section.

500 (3) Upon receipt of a written request that complies with
501 the federal Health Insurance Portability and Accountability Act
502 of 1996 (HIPAA) and this section, a facility shall furnish to a
503 competent resident, or to a representative of that resident who
504 is authorized to make requests for the resident's records under
505 HIPAA or subsection (4), copies of the resident's paper and
506 electronic records in the facility's possession. Such records
507 must include any medical records and records concerning the care
508 and treatment of the resident performed by the facility, except
509 for progress notes and consultation report sections of a
510 psychiatric nature. The facility shall provide the requested
511 records within 14 working days after receipt of a request
512 relating to a current resident or within 30 working days after
513 receipt of a request relating to a former resident.

514 (4) Requests for a deceased resident's medical records
515 under this section may be made by:

516 (a) An individual appointed by a court to act as the
517 personal representative, executor, administrator, curator, or
518 temporary administrator of the deceased resident's estate;

519 (b) If a judicial appointment has not been made as provided
520 in paragraph (a), an individual designated by the resident to
521 act as his or her personal representative in a last will that is
522 self-proved under s. 732.503; or

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523 (c) If a judicial appointment has not been made as provided
524 in paragraph (a) or an individual has not been designated by the
525 resident in a last will as provided in paragraph (b), only the
526 following individuals:

527 1. A surviving spouse of the resident.

528 2. If there is no surviving spouse, a surviving child of
529 the resident.

530 3. If there is no surviving spouse or surviving child, a
531 parent of the resident.

532 (5) All requests for a deceased resident's records made by
533 an individual authorized under:

534 (a) Paragraph (4) (a) must include a copy of the letter of
535 administration and a copy of the court order appointing such
536 individual as the personal representative of the deceased
537 resident's estate.

538 (b) Paragraph (4) (b) must include a copy of the self-proved
539 last will designating such individual as the personal
540 representative of the deceased resident's estate.

541 (c) Paragraph (4) (c) must be accompanied by a letter from
542 such individual's attorney verifying such individual's
543 relationship to the deceased resident and the absence of a
544 court-appointed personal representative and self-proved last
545 will.

546 (6) A facility may charge a reasonable fee for the copying
547 of resident records. Such fee may not exceed \$1 per page for the
548 first 25 pages and 25 cents per page for each additional page.
549 The facility shall allow an individual who is authorized to act
550 on behalf of the resident to examine the original records,
551 microfilms, or other suitable reproductions of the records in

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552 its possession upon any reasonable terms imposed by the facility
553 to ensure that the records are not damaged, destroyed, or
554 altered.

555 (7) If a facility determines that disclosure of the records
556 to the resident would be detrimental to the physical or mental
557 health of the resident, the facility may refuse to furnish the
558 records directly to the resident; however, upon such refusal,
559 the resident's records shall, upon written request by the
560 resident, be furnished to any other medical provider designated
561 by the resident.

562 (8) A facility that in good faith and in reliance upon this
563 section releases copies of records shall be indemnified by the
564 party who requested the records pursuant to subsection (2) for
565 any damages resulting from such release, may not be found to
566 have violated any criminal or civil laws, and is not civilly
567 liable to the resident, the resident's estate, or any other
568 individual for any damages resulting from such release.

569 (9) A facility is not required to provide copies of a
570 resident's records requested pursuant to this section more than
571 once per month, except that copies of physician reports in the
572 resident's records must be provided as often as necessary to
573 allow the effective monitoring of the resident's condition.

574 (10) A facility may not be cited by the agency through the
575 survey process for any alleged or actual noncompliance with any
576 of the requirements of this section.

577 (11) This section does not limit any right to obtain
578 records by subpoena or other court process.

579 Section 8. Section 429.295, Florida Statutes, is repealed.

580 Section 9. Subsection (3) of section 429.296, Florida

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581 Statutes, is amended to read:

582 429.296 Statute of limitations.—

583 ~~(3) This section shall apply to causes of action that have~~
584 ~~accrued prior to the effective date of this section; however,~~
585 ~~any such cause of action that would not have been barred under~~
586 ~~prior law may be brought within the time allowed by prior law or~~
587 ~~within 2 years after the effective date of this section,~~
588 ~~whichever is earlier, and will be barred thereafter. In actions~~
589 ~~where it can be shown that fraudulent concealment or intentional~~
590 ~~misrepresentation of fact prevented the discovery of the injury,~~
591 ~~the period of limitations is extended forward 2 years from the~~
592 ~~time that the injury is discovered with the exercise of due~~
593 ~~diligence, but in no event more than 4 years from the effective~~
594 ~~date of this section.~~

595 Section 10. Section 429.297, Florida Statutes, is amended
596 to read:

597 429.297 Punitive damages; pleading; burden of proof.—

598 (1) ~~A~~ In any action for damages brought under this part, no
599 claim for punitive damages may not be brought under this part
600 shall be permitted unless there is a reasonable showing by
601 admissible evidence that has been submitted by the parties which
602 provides in the record or proffered by the claimant which would
603 provide a reasonable basis for recovery of such damages pursuant
604 to this section.

605 (a) The claimant may move to amend her or his complaint to
606 assert a claim for punitive damages as allowed by the rules of
607 civil procedure in accordance with evidentiary requirements
608 provided in this section.

609 (b) The court shall conduct a hearing to determine whether

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610 there is sufficient admissible evidence submitted by the parties
611 to ensure that there is a reasonable basis to believe that the
612 claimant, at trial, will be able to demonstrate by clear and
613 convincing evidence that the recovery of such damages is
614 warranted under a claim for direct liability as specified in
615 subsection (2) or under a claim for vicarious liability as
616 specified in subsection (3).

617 (c) The rules of civil procedure shall be liberally
618 construed so as to allow the claimant discovery of evidence
619 which appears reasonably calculated to lead to admissible
620 evidence on the issue of punitive damages. ~~No~~ Discovery of
621 financial worth may not shall proceed until ~~after~~ the pleading
622 concerning punitive damages is approved by the court permitted.

623 (2) A defendant may be held liable for punitive damages
624 only if the trier of fact, by based on clear and convincing
625 evidence, finds that a specific individual or corporate
626 defendant actively and knowingly participated in intentional
627 misconduct or actively and knowingly engaged in conduct that
628 constitutes gross negligence and contributed to the loss,
629 damages, or injury suffered by the claimant ~~the defendant was~~
630 ~~personally guilty of intentional misconduct or gross negligence.~~
631 As used in this section, the term:

632 (b) ~~(a)~~ "Intentional misconduct" means that the defendant
633 against whom punitive damages are sought had actual knowledge of
634 the wrongfulness of the conduct and the high probability that
635 injury or damage to the claimant would result and, despite that
636 knowledge, intentionally pursued that course of conduct,
637 resulting in injury or damage.

638 (a) ~~(b)~~ "Gross negligence" means that the defendant's

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639 conduct was so reckless or wanting in care that it constituted a
640 conscious disregard or indifference to the life, safety, or
641 rights of individuals ~~persons~~ exposed to such conduct.

642 (3) In the case of vicarious liability of an individual,
643 employer, principal, corporation, or other legal entity,
644 punitive damages may not be imposed for the conduct of an
645 employee or agent unless ~~only if~~ the conduct of the employee or
646 agent meets the criteria specified in subsection (2) and an
647 officer, director, or manager of the actual employer,
648 corporation, or legal entity actively and knowingly participated
649 in or engaged in the specific conduct as provided in subsection
650 (2)÷

651 ~~(a) The employer, principal, corporation, or other legal~~
652 ~~entity actively and knowingly participated in such conduct;~~

653 ~~(b) The officers, directors, or managers of the employer,~~
654 ~~principal, corporation, or other legal entity condoned,~~
655 ~~ratified, or consented to such conduct; or~~

656 ~~(c) The employer, principal, corporation, or other legal~~
657 ~~entity engaged in conduct that constituted gross negligence and~~
658 ~~that contributed to the loss, damages, or injury suffered by the~~
659 ~~claimant.~~

660 (4) The plaintiff shall ~~must~~ establish at trial, by clear
661 and convincing evidence, its entitlement to an award of punitive
662 damages. The "greater weight of the evidence" burden of proof
663 applies to a determination of the amount of damages.

664 ~~(5) This section is remedial in nature and shall take~~
665 ~~effect upon becoming a law.~~

666 Section 11. Section 429.299, Florida Statutes, is created
667 to read:

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668 429.299 Failure to satisfy a judgment or settlement
669 agreement.-

670 (1) Upon the entry by a court in this state of an adverse
671 final judgment against a licensee as defined in s. 429.29(2)
672 which arises from an award pursuant to s. 429.29, including an
673 arbitration award, for a claim for residents' rights violation
674 or negligence, in contract or tort, or from noncompliance with
675 the terms of a settlement agreement as determined by a court or
676 arbitration panel which arises from a claim pursuant to s.
677 429.29, the licensee shall pay the judgment creditor the entire
678 amount of the judgment, award, or settlement and all accrued
679 interest within 60 days after the date such judgment, award, or
680 settlement becomes final and subject to execution unless
681 otherwise mutually agreed to in writing by the parties. Failure
682 to make such payment shall result in additional grounds that may
683 be used by the agency for revoking a license or for denying a
684 renewal application or a related party change of ownership
685 application as provided in this section.

686 (2) The agency is deemed notified of an unsatisfied
687 judgment or settlement under subsection (1) when a certified
688 copy of the judgment and a certified copy of a valid judgment
689 lien certificate, filed in accordance with ss. 55.202 and
690 55.203, are served to the agency by process server or received
691 by certified mail, return receipt requested. Within 60 days
692 after receiving such documents, the agency shall notify the
693 licensee by certified mail, return receipt requested, that it is
694 subject to disciplinary action unless, within 30 days after the
695 date of mailing the notice, the licensee:

696 (a) Shows proof that the unsatisfied judgment or settlement

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697 has been paid in the amount specified;

698 (b) Shows proof of the existence of a payment plan mutually
699 agreed upon by the parties in writing;

700 (c) Furnishes the agency with a copy of a timely filed
701 notice of appeal;

702 (d) Furnishes the agency with a copy of a court order
703 staying execution of the final judgment; or

704 (e) Shows proof by submitting an order from a court or
705 arbitration panel that is overseeing any action seeking
706 indemnification from an insurance carrier or other party that
707 the licensee believes is required to pay the award.

708 (3) If the agency is placed on notice pursuant to
709 subsection (2) and proof pursuant to subsection (2) is not
710 provided by the licensee, the agency shall issue an emergency
711 order pursuant to s. 120.60 declaring that the facility lacks
712 the financial ability to operate and a notice of intent to
713 revoke or deny a license.

714 (4) After the agency is placed on notice pursuant to
715 subsection (2), the following applies:

716 (a) If the license is subject to renewal, the agency may
717 deny the license renewal unless compliance with this section is
718 achieved; and

719 (b) If a change of ownership application for the facility
720 at issue is submitted by the licensee, by an individual or
721 entity identified as having a controlling interest in the
722 licensee, or by a related party, the agency shall deny the
723 change of ownership application unless compliance with this
724 section is achieved.

725 Section 12. The amendments to all sections made by this act

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726 shall apply to causes of action that accrue on or after July 1,
727 2023.

728 Section 13. This act shall take effect July 1, 2023.