

By Senator Burton

12-00319-24

2024238__

1 A bill to be entitled
2 An act relating to claims against assisted living
3 facilities; amending s. 429.29, F.S.; defining terms;
4 providing requirements for the bringing of an
5 exclusive cause of action for residents' rights
6 violations or negligence against specified
7 individuals; providing certain individuals with
8 immunity from liability for such claims; providing
9 exceptions; amending s. 429.297, F.S.; revising
10 requirements for recovery of certain damages and
11 liability for such damages; revising definitions;
12 deleting obsolete language; providing applicability;
13 providing an effective date.

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

16
17 Section 1. Section 429.29, Florida Statutes, is amended to
18 read:

19 429.29 Civil actions to enforce rights.—

20 (1) As used in this section, the term:

21 (a) "Licensee" means an individual, corporation,
22 partnership, firm, association, governmental entity, or other
23 entity that is issued a permit, registration, certificate, or
24 license by the agency and is legally responsible for all aspects
25 of the operation of the facility.

26 (b) "Management or consulting company" means an individual
27 or entity that contracts with, or receives a fee from, a
28 licensee to provide any of the following services for a
29 facility:

12-00319-24

2024238__

30 1. Hiring or firing the administrator or director of
31 nursing;

32 2. Controlling or having control over staffing levels;

33 3. Controlling or having control over the budget; or

34 4. Implementing and enforcing policies and procedures.

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

38 (2) An exclusive cause of action for a residents' Any
39 person or resident whose rights violation or for negligence as
40 specified under ~~in~~ this part which alleges direct or vicarious
41 liability for the personal injury or death of a resident arising
42 from such rights violation or negligence and which seeks damages
43 for such injury or death may be brought only against the
44 licensee, the licensee's management or consulting company, the
45 licensee's managing employees, or any direct caregivers, whether
46 employees or contractors. A passive investor is not liable under
47 this section. An action against any other individual or entity
48 may be brought only pursuant to subsection (3) ~~are violated~~
49 shall have a cause of action.

50 (a) The action may be brought by the resident or his or her
51 guardian, or by an individual ~~a person~~ or organization acting on
52 behalf of a resident with the consent of the resident or his or
53 her guardian, or by the personal representative of the estate of
54 a deceased resident regardless of the cause of death.

55 (b) If the action alleges a claim for a residents' the
56 resident's rights violation or for negligence that caused the
57 death of the resident, the claimant, after the verdict, but
58 before the judgment is entered, must ~~shall be required to~~ elect

12-00319-24

2024238__

59 ~~either~~ survival damages pursuant to s. 46.021 or wrongful death
60 damages pursuant to s. 768.21. If the action alleges a claim for
61 a residents' ~~the resident's~~ rights violation or for negligence
62 that did not cause the death of the resident, the personal
63 representative of the estate may recover damages for the
64 negligence that caused injury to the resident.

65 (c) The action may be brought in any court of competent
66 jurisdiction to enforce such rights and to recover actual
67 ~~damages,~~ and punitive damages for the residents' rights
68 ~~violation of the rights of a resident~~ or negligence.

69 (d) ~~A~~ Any resident who prevails in seeking injunctive
70 relief or ~~a claim for~~ an administrative remedy is entitled to
71 recover the costs of the action and ~~a~~ reasonable attorney fees
72 ~~attorney's fee~~ assessed against the defendant of up not to
73 ~~exceed~~ \$25,000. Such attorney fees must ~~shall~~ be awarded solely
74 for the injunctive or administrative relief and not for any
75 claim or action for damages whether such claim or action is
76 brought ~~together~~ with a request for an injunction or
77 administrative relief or as a separate action, except as
78 provided under s. 768.79 or the Florida Rules of Civil
79 Procedure. ~~Sections 429.29-429.298 provide the exclusive remedy~~
80 ~~for a cause of action for recovery of damages for the personal~~
81 ~~injury or death of a resident arising out of negligence or a~~
82 ~~violation of rights specified in s. 429.28.~~

83 (e) This section does not preclude theories of recovery not
84 arising out of negligence or s. 429.28 which are available to a
85 resident or to the agency. ~~The provisions of Chapter 766~~ does ~~de~~
86 not apply to any cause of action brought under ss. 429.29-
87 429.298.

12-00319-24

2024238__

88 (3) A cause of action for a residents' rights violation or
89 for negligence may not be asserted against an individual or
90 entity other than the licensee, the licensee's management or
91 consulting company, the licensee's managing employees, and any
92 direct caregivers, whether employees or contractors, unless,
93 after a motion for leave to amend hearing, the court or an
94 arbitration panel determines that there is sufficient evidence
95 in the record or proffered by the claimant to establish a
96 reasonable showing that:

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

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

101
102 For purposes of this subsection, if it is asserted in a proposed
103 amended pleading that such cause of action arose out of the
104 conduct, transaction, or occurrence set forth or attempted to be
105 set forth in the original pleading, the proposed amendment
106 relates back to the original pleading.

107 (4)(2) In any claim brought pursuant to this part alleging
108 a violation of residents' ~~resident's~~ rights or negligence
109 causing injury to or the death of a resident, the claimant has
110 ~~shall have~~ the burden of proving, by a preponderance of the
111 evidence, that:

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

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

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

116 (d) The resident sustained loss, injury, death, or damage

12-00319-24

2024238__

117 as a result of the breach.

118

119 ~~Nothing in~~ This part does not ~~shall be interpreted to~~ create
120 strict liability. A violation of the rights provided ~~set forth~~
121 in s. 429.28 or in any other standard or guidelines specified in
122 this part or in any applicable administrative standard or
123 guidelines of this state or a federal regulatory agency may
124 ~~shall~~ be evidence of negligence but is ~~shall not be~~ considered
125 negligence per se.

126 (5)~~(3)~~ In a any claim brought pursuant to this section, a
127 licensee, individual ~~person~~, or entity has ~~shall have~~ a duty to
128 exercise reasonable care. Reasonable care is that degree of care
129 which a reasonably careful licensee, individual ~~person~~, or
130 entity would use under like circumstances.

131 (6)~~(4)~~ In a any claim for a residents' ~~resident's~~ rights
132 violation or for negligence by a nurse licensed under part I of
133 chapter 464, such nurse has ~~shall have~~ the duty to exercise care
134 consistent with the prevailing professional standard of care for
135 a nurse. The prevailing professional standard of care for a
136 nurse is ~~shall be~~ that level of care, skill, and treatment
137 which, in light of all relevant surrounding circumstances, is
138 recognized as acceptable and appropriate by reasonably prudent
139 similar nurses.

140 (7)~~(5)~~ Discovery of financial information for the purpose
141 of determining the value of punitive damages may not be
142 conducted ~~had~~ unless the plaintiff shows the court by proffer or
143 evidence in the record that a reasonable basis exists to support
144 a claim for punitive damages.

145 (8)~~(6)~~ In addition to any other standards for punitive

12-00319-24

2024238__

146 damages, any award of punitive damages must be reasonable in
147 light of the actual harm suffered by the resident and the
148 egregiousness of the conduct that caused the actual harm to the
149 resident.

150 (9) ~~(7)~~ The resident or the resident's legal representative
151 shall serve a copy of a ~~any~~ complaint alleging in whole or in
152 part a violation of any rights specified in this part to the
153 agency ~~for Health Care Administration~~ at the time of filing the
154 initial complaint with the clerk of the court for the county in
155 which the action is pursued. The requirement of providing a copy
156 of the complaint to the agency does not impair the resident's
157 legal rights or ability to seek relief for his or her claim.

158 Section 2. Section 429.297, Florida Statutes, is amended to
159 read:

160 429.297 Punitive damages; pleading; burden of proof.—

161 (1) A ~~In any action for damages brought under this part, no~~
162 claim for punitive damages may not be brought under this part
163 ~~shall be permitted~~ unless there is a reasonable showing by
164 admissible evidence submitted by the parties which provides ~~in~~
165 ~~the record or proffered by the claimant which would provide a~~
166 reasonable basis for recovery of such damages pursuant to this
167 section.

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

172 (b) The court shall conduct a hearing to determine whether
173 there is sufficient admissible evidence submitted by the parties
174 to ensure that there is a reasonable basis to believe that the

12-00319-24

2024238__

175 claimant, at trial, will be able to demonstrate by clear and
176 convincing evidence that the recovery of such damages is
177 warranted under a claim for direct liability as specified in
178 subsection (2) or under a claim for vicarious liability as
179 specified in subsection (3).

180 (c) The rules of civil procedure must ~~shall~~ be liberally
181 construed so as to allow the claimant discovery of evidence
182 which appears reasonably calculated to lead to admissible
183 evidence on the issue of punitive damages. ~~No~~ Discovery of
184 financial worth may not ~~shall~~ proceed until ~~after~~ the pleading
185 concerning punitive damages is approved by the court ~~permitted~~.

186 (2) A defendant may be held liable for punitive damages
187 only if the trier of fact, by ~~based on~~ clear and convincing
188 evidence, finds that a specific individual or corporate
189 defendant actively and knowingly participated in intentional
190 misconduct or actively and knowingly engaged in conduct that
191 constitutes gross negligence and contributed to the loss,
192 damages, or injury suffered by the claimant ~~the defendant was~~
193 ~~personally guilty of intentional misconduct or gross negligence.~~
194 As used in this section, the term:

195 (b) ~~(a)~~ "Intentional misconduct" means that the defendant
196 against whom punitive damages are sought had actual knowledge of
197 the wrongfulness of the conduct and the high probability that
198 injury or damage to the claimant would result and, despite that
199 knowledge, intentionally pursued that course of conduct,
200 resulting in injury or damage.

201 (a) ~~(b)~~ "Gross negligence" means that the defendant's
202 conduct was so reckless or wanting in care that it constituted a
203 conscious disregard or indifference to the life, safety, or

12-00319-24

2024238__

204 rights of individuals ~~persons~~ exposed to such conduct.

205 (3) In the case of vicarious liability of an individual,
206 employer, principal, corporation, or other legal entity,
207 punitive damages may not be imposed for the conduct of an
208 employee or agent unless ~~only if~~ the conduct of the employee or
209 agent meets the criteria specified in subsection (2) and an
210 officer, director, or manager of the actual employer,
211 corporation, or legal entity condoned, ratified, or consented to
212 the specific conduct as provided in subsection (2)÷

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

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

218 ~~(c) The employer, principal, corporation, or other legal~~
219 ~~entity engaged in conduct that constituted gross negligence and~~
220 ~~that contributed to the loss, damages, or injury suffered by the~~
221 ~~claimant.~~

222 (4) The plaintiff must establish at trial, by clear and
223 convincing evidence, its entitlement to an award of punitive
224 damages. The "greater weight of the evidence" burden of proof
225 applies to a determination of the amount of damages.

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

228 Section 3. The amendments to ss. 429.29 and 429.297,
229 Florida Statutes, made by this act apply to causes of action
230 that accrue on or after July 1, 2024.

231 Section 4. This act shall take effect July 1, 2024.