

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>      </u>	(Y/N)
ADOPTED AS AMENDED	<u>      </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>      </u>	(Y/N)
FAILED TO ADOPT	<u>      </u>	(Y/N)
WITHDRAWN	<u>      </u>	(Y/N)
OTHER	<u>      </u>	

---

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
2 Representative Chamberlin offered the following:

**Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:  
6 Section 1. Section 429.29, Florida Statutes, is amended to  
7 read:

8 429.29 Civil actions to enforce rights.—

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

10 (a) "Licensee" means an individual, corporation,  
11 partnership, firm, association, governmental entity, or other  
12 entity that is issued a permit, registration, certificate, or  
13 license by the agency and is legally responsible for all aspects  
14 of the operation of the facility.

Amendment No. 1

15           (b) "Management company or active participant" means an  
16 individual or entity that contracts or receives a fee to provide  
17 any of the following services for a facility:

18           1. Hiring or firing the administrator or director of  
19 nursing;

20           2. Controlling or having control over staffing levels at  
21 the facility;

22           3. Having control over the budget of the facility;

23           4. Implementing and enforcing the policies and procedures  
24 of the facility; or

25           5. Receiving and controlling a line of credit, loan, or  
26 other credit instrument that is used either in whole or in part  
27 by, or for the benefit of, the subject facility where a resident  
28 resides or resided during the subject residency.

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

32           (2) An exclusive cause of action for a residents' ~~Any~~  
33 ~~person or resident whose~~ rights violation or for negligence as  
34 specified under ~~in~~ this part which alleges direct or vicarious  
35 liability for the personal injury or death of a resident arising  
36 from such rights violation or negligence and which seeks damages  
37 for such injury or death may be brought only against the  
38 licensee, the licensee's management company or active  
39 participant, the licensee's managing employees, or any direct

535771 - h0995-strikeall.docx

Published On: 1/31/2024 2:47:56 PM

Amendment No. 1

40 caregivers, whether employees or contractors. A passive investor  
41 is not liable under this section. An action against any other  
42 individual or entity may be brought only pursuant to subsection  
43 (3) are violated shall have a cause of action.

44 (a) The action may be brought by the resident or his or  
45 her guardian, or by an individual ~~a person~~ or organization  
46 acting on behalf of a resident with the consent of the resident  
47 or his or her guardian, or by the personal representative of the  
48 estate of a deceased resident regardless of the cause of death.

49 (b) If the action alleges a claim for a residents' the  
50 ~~resident's~~ rights violation or for negligence that caused the  
51 death of the resident, the claimant, after the verdict, but  
52 before the judgment is entered, must ~~shall be required to~~ elect  
53 ~~either~~ survival damages pursuant to s. 46.021 or wrongful death  
54 damages pursuant to s. 768.21. If the action alleges a claim for  
55 a residents' the resident's rights violation or for negligence  
56 that did not cause the death of the resident, the personal  
57 representative of the estate may recover damages for the  
58 negligence that caused injury to the resident.

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

63 (d) ~~A Any~~ resident who prevails in seeking injunctive  
64 relief or ~~a claim for~~ an administrative remedy is entitled to

535771 - h0995-strikeall.docx

Published On: 1/31/2024 2:47:56 PM

Amendment No. 1

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

77 (e) This section does not preclude theories of recovery  
78 not arising out of negligence or s. 429.28 which are available  
79 to a resident or to the agency. ~~The provisions of Chapter 766~~  
80 does de not apply to any cause of action brought under ss.  
81 429.29-429.298.

82 (3) A cause of action for a residents' rights violation or  
83 for negligence may not be asserted against an individual or  
84 entity other than the licensee, the licensee's management  
85 company or active participant, the licensee's managing  
86 employees, and any direct caregivers, whether employees or  
87 contractors, unless, after a motion for leave to amend hearing,  
88 the court or an arbitration panel determines that there is

Amendment No. 1

89 sufficient evidence in the record or proffered by the claimant  
90 to establish a reasonable showing that:

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

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

95  
96 For purposes of this subsection, if it is asserted in a proposed  
97 amended pleading that such cause of action arose out of the  
98 conduct, transaction, or occurrence set forth or attempted to be  
99 set forth in the original pleading, the proposed amendment  
100 relates back to the original pleading.

101 (4)-(2) In any claim brought pursuant to this part alleging  
102 a violation of residents' ~~resident's~~ rights or negligence  
103 causing injury to or the death of a resident, the claimant has  
104 ~~shall have~~ the burden of proving, by a preponderance of the  
105 evidence, that:

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

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

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

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

112

## Amendment No. 1

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

120 (5)(3) In a ~~any~~ claim brought pursuant to this section, a  
121 licensee, individual ~~person~~, or entity has ~~shall have~~ a duty to  
122 exercise reasonable care. Reasonable care is that degree of care  
123 which a reasonably careful licensee, individual ~~person~~, or  
124 entity would use under like circumstances.

125 (6)(4) In a ~~any~~ claim for a residents' ~~resident's~~ rights  
126 violation or for negligence by a nurse licensed under part I of  
127 chapter 464, such nurse has ~~shall have~~ the duty to exercise care  
128 consistent with the prevailing professional standard of care for  
129 a nurse. The prevailing professional standard of care for a  
130 nurse is ~~shall be~~ that level of care, skill, and treatment  
131 which, in light of all relevant surrounding circumstances, is  
132 recognized as acceptable and appropriate by reasonably prudent  
133 similar nurses.

134 (7)(5) Discovery of financial information for the purpose  
135 of determining the value of punitive damages may not be  
136 conducted ~~had~~ unless the plaintiff shows the court by proffer or

Amendment No. 1

137 evidence in the record that a reasonable basis exists to support  
138 a claim for punitive damages.

139 ~~(8)-(6)~~ In addition to any other standards for punitive  
140 damages, any award of punitive damages must be reasonable in  
141 light of the actual harm suffered by the resident and the  
142 egregiousness of the conduct that caused the actual harm to the  
143 resident.

144 ~~(9)-(7)~~ The resident or the resident's legal representative  
145 shall serve a copy of a ~~any~~ complaint alleging in whole or in  
146 part a violation of any rights specified in this part to the  
147 agency ~~for Health Care Administration~~ at the time of filing the  
148 initial complaint with the clerk of the court for the county in  
149 which the action is pursued. The requirement of providing a copy  
150 of the complaint to the agency does not impair the resident's  
151 legal rights or ability to seek relief for his or her claim.

152 Section 2. Section 429.297, Florida Statutes, is amended  
153 to read:

154 429.297 Punitive damages; pleading; burden of proof.—

155 (1) ~~A In any action for damages brought under this part,~~  
156 ~~ne~~ claim for punitive damages may not be brought under this part  
157 ~~shall be permitted~~ unless there is a ~~reasonable~~ showing by  
158 admissible evidence submitted by the parties which provides in  
159 ~~the record or proffered by the claimant which would provide a~~  
160 reasonable basis for recovery of such damages pursuant to this  
161 section.

535771 - h0995-strikeall.docx

Published On: 1/31/2024 2:47:56 PM

Amendment No. 1

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

166        (b) The court shall conduct a hearing to determine whether  
167 there is sufficient admissible evidence submitted by the parties  
168 to ensure that there is a reasonable basis to believe that the  
169 claimant, at trial, will be able to demonstrate by clear and  
170 convincing evidence that the recovery of such damages is  
171 warranted under a claim for direct liability as specified in  
172 subsection (2) or under a claim for vicarious liability as  
173 specified in subsection (3).

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

180        (2) A defendant may be held liable for punitive damages  
181 only if the trier of fact, by ~~based on~~ clear and convincing  
182 evidence, finds that a specific individual or corporate  
183 defendant actively and knowingly participated in intentional  
184 misconduct or actively and knowingly engaged in conduct that  
185 constitutes gross negligence and contributed to the loss,  
186 damages, or injury suffered by the claimant ~~the defendant was~~

535771 - h0995-strikeall.docx

Published On: 1/31/2024 2:47:56 PM



Amendment No. 1

187 ~~personally guilty of intentional misconduct or gross negligence.~~

188 As used in this section, the term:

189 ~~(b)-(a)~~ "Intentional misconduct" means that the defendant  
190 against whom punitive damages are sought had actual knowledge of  
191 the wrongfulness of the conduct and the high probability that  
192 injury or damage to the claimant would result and, despite that  
193 knowledge, intentionally pursued that course of conduct,  
194 resulting in injury or damage.

195 ~~(a)-(b)~~ "Gross negligence" means that the defendant's  
196 conduct was so reckless or wanting in care that it constituted a  
197 conscious disregard or indifference to the life, safety, or  
198 rights of individuals ~~persons~~ exposed to such conduct.

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

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

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

535771 - h0995-strikeall.docx

Published On: 1/31/2024 2:47:56 PM

Amendment No. 1

212 ~~(c) The employer, principal, corporation, or other legal~~  
213 ~~entity engaged in conduct that constituted gross negligence and~~  
214 ~~that contributed to the loss, damages, or injury suffered by the~~  
215 ~~claimant.~~

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

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

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

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

226

227 -----

228 **T I T L E A M E N D M E N T**

229 Remove everything before the enacting clause and insert:  
230 An act relating to civil actions involving assisted living  
231 facilities; amending s. 429.29, F.S.; defining terms; providing  
232 requirements for the bringing of an exclusive cause of action  
233 for residents' rights violations or negligence against specified  
234 individuals; providing certain individuals with immunity from  
235 liability for such claims; providing exceptions; amending s.  
236 429.297, F.S.; revising requirements for recovery of certain

535771 - h0995-strikeall.docx

Published On: 1/31/2024 2:47:56 PM

Amendment No. 1

237 | damages and liability for such damages; revising definitions;  
238 | deleting obsolete language; providing applicability; providing  
239 | an effective date.