

26 liability for the personal injury or death of an assisted living
27 resident arising from such negligence or violation of rights and
28 which seeks damages for such injury or death may be brought only
29 against the licensee, the licensee's management or consulting
30 company, the licensee's managing employees, and any direct
31 caregivers, whether employees or contractors. A passive investor
32 is not liable under this section. An action against any other
33 individual or entity may be brought only pursuant to subsection
34 (3) are violated shall have a cause of action.

35 (a) The action may be brought by the resident or his or
36 her guardian, or by a person or organization acting on behalf of
37 a resident with the consent of the resident or his or her
38 guardian, or by the personal representative of the estate of a
39 deceased resident regardless of the cause of death.

40 (b) If the action alleges a claim for the resident's
41 rights or for negligence that caused the death of the resident,
42 the claimant shall, after the verdict, but before the judgment
43 is entered, be required to elect either survival damages
44 pursuant to s. 46.021 or wrongful death damages pursuant to s.
45 768.21. If the action alleges a claim for the resident's rights
46 or for negligence that did not cause the death of the resident,
47 the personal representative of the estate may recover damages
48 for the negligence that caused injury to the resident.

49 (c) The action may be brought in any court of competent
50 jurisdiction to enforce such rights and to recover actual

51 damages, and punitive damages for the violation of the rights of
 52 a resident or negligence.

53 (d) ~~A~~ Any resident who prevails in seeking injunctive
 54 relief or ~~a claim for~~ an administrative remedy is entitled to
 55 recover the costs of the action and ~~a reasonable~~ attorney fees
 56 ~~attorney's fee~~ assessed against the defendant of up to not to
 57 ~~exceed~~ \$25,000. Fees shall be awarded solely for the injunctive
 58 or administrative relief and not for any claim or action for
 59 damages whether such claim or action is brought ~~together~~ with a
 60 request for an injunction or administrative relief or as a
 61 separate action, except as provided under s. 768.79 or the
 62 Florida Rules of Civil Procedure. ~~Sections 429.29-429.298~~
 63 ~~provide the exclusive remedy for a cause of action for recovery~~
 64 ~~of damages for the personal injury or death of a resident~~
 65 ~~arising out of negligence or a violation of rights specified in~~
 66 ~~s. 429.28.~~

67 (e) This section does not preclude theories of recovery
 68 not arising out of negligence or s. 429.28 which are available
 69 to a resident or to the agency. ~~The provisions of~~ Chapter 766
 70 does ~~de~~ not apply to any cause of action brought under ss.
 71 429.29-429.298.

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

73 (a) "Licensee" means an individual, corporation,
 74 partnership, firm, association, governmental entity, or other
 75 entity that is issued a permit, registration, certificate, or

76 license by the agency, and that is legally responsible for all
 77 aspects of the operation of the facility.

78 (b) "Management or consulting company" means an individual
 79 or entity who contracts with, or receives a fee from, a licensee
 80 to provide any of the following services for a facility:

81 1. Hiring or firing of the administrator or director of
 82 nursing;

83 2. Controlling or having control over the staffing levels
 84 at the facility;

85 3. Having control over the budget of the facility; or

86 4. Implementing and enforcing the policies and procedures
 87 of the facility.

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

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

99 (a) The individual or entity owed a duty of reasonable
 100 care to the resident and that the individual or entity breached

101 that duty; and

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

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

110 Section 2. Section 429.297, Florida Statutes, is amended
 111 to read:

112 429.297 Punitive damages; pleading; burden of proof.—

113 (1) ~~A In any action for damages brought under this part,~~
 114 ~~ne~~ claim for punitive damages may not be brought under this part
 115 shall be permitted unless there is a reasonable showing by
 116 admissible evidence that has been submitted by the parties that
 117 provides in the record or proffered by the claimant which would
 118 provide a reasonable basis for recovery of such damages when the
 119 criteria in this section are applied.

120 (a) The claimant may move to amend her or his complaint to
 121 assert a claim for punitive damages as allowed by the rules of
 122 civil procedure in accordance with evidentiary requirements set
 123 forth in this section.

124 (b) The court shall conduct a hearing to determine whether
 125 there is sufficient admissible evidence submitted by the parties

126 to ensure that there is a reasonable basis to believe that the
 127 claimant, at trial, will be able to demonstrate by clear and
 128 convincing evidence that the recovery of such damages is
 129 warranted under a claim for direct liability as specified in
 130 subsection (2) or under a claim for vicarious liability as
 131 specified in subsection (3).

132 (c) The rules of civil procedure shall be liberally
 133 construed so as to allow the claimant discovery of evidence
 134 which appears reasonably calculated to lead to admissible
 135 evidence on the issue of punitive damages. ~~No~~ Discovery of
 136 financial worth may not shall proceed until ~~after~~ the pleading
 137 on concerning punitive damages is approved by the court
 138 ~~permitted~~.

139 (2) A defendant may be held liable for punitive damages
 140 only if the trier of fact, by based on clear and convincing
 141 evidence, finds that a specific person or corporate defendant
 142 actively and knowingly participated in intentional misconduct or
 143 engaged in conduct that constitutes gross negligence and
 144 contributed to the loss, damages, or injury suffered by the
 145 claimant ~~the defendant was personally guilty of intentional~~
 146 ~~misconduct or gross negligence~~. As used in this section, the
 147 term:

148 (a) "Intentional misconduct" means that the defendant
 149 against whom punitive damages are sought had actual knowledge of
 150 the wrongfulness of the conduct and the high probability that

151 injury or damage to the claimant would result and, despite that
 152 knowledge, intentionally pursued that course of conduct,
 153 resulting in injury or damage.

154 (b) "Gross negligence" means that the defendant's conduct
 155 was so reckless or wanting in care that it constituted a
 156 conscious disregard or indifference to the life, safety, or
 157 rights of persons exposed to such conduct.

158 (3) In the case of vicarious liability of an individual,
 159 employer, principal, corporation, or other legal entity,
 160 punitive damages may not be imposed for the conduct of an
 161 employee or agent unless ~~only if~~ the conduct of the employee or
 162 agent meets the criteria specified in subsection (2) and an
 163 officer, director, or manager of the actual employer,
 164 corporation, or legal entity condoned, ratified, or consented to
 165 the specific conduct as provided in subsection (2).÷

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

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

171 ~~(c) The employer, principal, corporation, or other legal~~
 172 ~~entity engaged in conduct that constituted gross negligence and~~
 173 ~~that contributed to the loss, damages, or injury suffered by the~~
 174 ~~claimant.~~

175 (4) The plaintiff shall ~~must~~ establish at trial, by clear

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176 and convincing evidence, its entitlement to an award of punitive
177 damages. The "greater weight of the evidence" burden of proof
178 applies to a determination of the amount of damages.

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

181 Section 3. The amendments made by this act apply to causes
182 of action accruing on or after the effective date of this act.

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