

1 A bill to be entitled

2 An act relating to civil actions involving assisted
3 living facilities; amending s. 429.29, F.S.; providing
4 definitions; providing requirements for an exclusive
5 cause of action for residents' rights violations or
6 negligence to be brought against specified
7 individuals; providing immunity from liability for
8 certain individuals; prohibiting such action from
9 being asserted against certain individuals or entities
10 under certain circumstances; providing exceptions;
11 amending s. 429.297, F.S.; revising requirements for
12 recovery of certain damages and liability for such
13 damages; revising definitions; deleting obsolete
14 language; providing applicability; providing an
15 effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Section 429.29, Florida Statutes, is amended to
20 read:

21 429.29 Civil actions to enforce rights.—

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

23 (a) "Licensee" means an individual, corporation,
24 partnership, firm, association, governmental entity, or other
25 entity that is issued a permit, registration, certificate, or

26 license by the agency and is legally responsible for all aspects
 27 of the operation of the facility.

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

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

33 2. Controlling or having control over staffing levels at
 34 the facility;

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

36 4. Implementing and enforcing the policies and procedures
 37 of the facility; or

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

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

45 (2) An exclusive cause of action for a residents' ~~Any~~
 46 ~~person or resident whose~~ rights violation or for negligence as
 47 specified under ~~in~~ this part which alleges direct or vicarious
 48 liability for the personal injury or death of a resident arising
 49 from such rights violation or negligence and which seeks damages
 50 for such injury or death may be brought only against the

51 licensee, the licensee's management company or active
 52 participant, the licensee's managing employees, or any direct
 53 caregivers, whether employees or contractors. A passive investor
 54 is not liable under this section. An action against any other
 55 individual or entity may be brought only pursuant to subsection
 56 (3) are violated shall have a cause of action.

57 (a) The action may be brought by the resident or his or
 58 her guardian, or by an individual ~~a person~~ or organization
 59 acting on behalf of a resident with the consent of the resident
 60 or his or her guardian, or by the personal representative of the
 61 estate of a deceased resident regardless of the cause of death.

62 (b) If the action alleges a claim for a residents' the
 63 ~~resident's~~ rights violation or for negligence that caused the
 64 death of the resident, the claimant must, after the verdict, but
 65 before the judgment is entered, shall be required to elect
 66 ~~either~~ survival damages pursuant to s. 46.021 or wrongful death
 67 damages pursuant to s. 768.21. If the action alleges a claim for
 68 a residents' the resident's rights violation or for negligence
 69 that did not cause the death of the resident, the personal
 70 representative of the estate may recover damages for the
 71 negligence that caused injury to the resident.

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

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

90 (e) This section does not preclude theories of recovery
 91 not arising out of negligence or s. 429.28 which are available
 92 to a resident or to the agency. ~~The provisions of Chapter 766~~
 93 does ~~de~~ not apply to any cause of action brought under ss.
 94 429.29-429.298.

95 (3) A cause of action for a residents' rights violation or
 96 for negligence may not be asserted against an individual or
 97 entity other than the licensee, the licensee's management
 98 company or active participant, the licensee's managing
 99 employees, or any direct caregivers, whether employees or
 100 contractors, unless, after a motion for leave to amend hearing,

101 the court or an arbitration panel determines that there is
 102 sufficient evidence in the record or proffered by the claimant
 103 to establish a reasonable showing that:

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

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

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

114 (4)-(2) In any claim brought pursuant to this part alleging
 115 a violation of residents' ~~resident's~~ rights or negligence
 116 causing injury to or the death of a resident, the claimant has
 117 ~~shall have~~ the burden of proving, by a preponderance of the
 118 evidence, that:

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

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

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

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

125

126 ~~Nothing in~~ This part does not ~~shall be interpreted to~~ create
127 strict liability. A violation of the rights provided ~~set forth~~
128 in s. 429.28 or in any other standard or guidelines specified in
129 this part or in any applicable administrative standard or
130 guidelines of this state or a federal regulatory agency may
131 ~~shall~~ be evidence of negligence but is ~~shall~~ not be considered
132 negligence per se.

133 (5)~~(3)~~ In a ~~any~~ claim brought pursuant to this section, a
134 licensee, individual ~~person~~, or entity has ~~shall have~~ a duty to
135 exercise reasonable care. Reasonable care is that degree of care
136 which a reasonably careful licensee, individual ~~person~~, or
137 entity would use under like circumstances.

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

147 (7)~~(5)~~ Discovery of financial information for the purpose
148 of determining the value of punitive damages may not be
149 conducted ~~had~~ unless the plaintiff shows the court by proffer or
150 evidence in the record that a reasonable basis exists to support

151 a claim for punitive damages.

152 ~~(8)~~~~(6)~~ In addition to any other standards for punitive
 153 damages, any award of punitive damages must be reasonable in
 154 light of the actual harm suffered by the resident and the
 155 egregiousness of the conduct that caused the actual harm to the
 156 resident.

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

165 Section 2. Section 429.297, Florida Statutes, is amended
 166 to read:

167 429.297 Punitive damages; pleading; burden of proof.—

168 (1) A ~~In any action for damages brought under this part,~~
 169 ~~no~~ claim for punitive damages may not be brought under this part
 170 ~~shall be permitted~~ unless there is a ~~reasonable~~ showing by
 171 admissible evidence submitted by the parties which provides ~~in~~
 172 ~~the record or proffered by the claimant which would provide a~~
 173 reasonable basis for recovery of such damages pursuant to this
 174 section.

175 (a) The claimant may move to amend her or his complaint to

176 assert a claim for punitive damages as allowed by the rules of
177 civil procedure in accordance with evidentiary requirements
178 provided in this section.

179 (b) The court shall conduct a hearing to determine whether
180 there is sufficient admissible evidence submitted by the parties
181 to ensure that there is a reasonable basis to believe that the
182 claimant, at trial, will be able to demonstrate by clear and
183 convincing evidence that the recovery of such damages is
184 warranted under a claim for direct liability as specified in
185 subsection (2) or under a claim for vicarious liability as
186 specified in subsection (3).

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

193 (2) A defendant may be held liable for punitive damages
194 only if the trier of fact, ~~by~~ ~~based on~~ clear and convincing
195 evidence, finds that a specific individual or corporate
196 defendant actively and knowingly participated in intentional
197 misconduct or actively and knowingly engaged in conduct that
198 constitutes gross negligence and contributed to the loss,
199 damages, or injury suffered by the claimant ~~the defendant was~~
200 ~~personally guilty of intentional misconduct or gross negligence.~~

201 As used in this section, the term:

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

206 ~~(b)~~ (a) "Intentional misconduct" means that the defendant
 207 against whom punitive damages are sought had actual knowledge of
 208 the wrongfulness of the conduct and the high probability that
 209 injury or damage to the claimant would result and, despite that
 210 knowledge, intentionally pursued that course of conduct,
 211 resulting in injury or damage.

212 (3) In the case of vicarious liability of an individual,
 213 employer, principal, corporation, or other legal entity,
 214 punitive damages may not be imposed for the conduct of an
 215 employee or agent unless ~~only if~~ the conduct of the employee or
 216 agent meets the criteria specified in subsection (2) and an
 217 officer, director, or manager of the actual employer,
 218 corporation, or legal entity condoned, ratified, or consented to
 219 the specific conduct as provided in subsection (2).~~÷~~

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

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

225 ~~(c) The employer, principal, corporation, or other legal~~

226 ~~entity engaged in conduct that constituted gross negligence and~~
227 ~~that contributed to the loss, damages, or injury suffered by the~~
228 ~~claimant.~~

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

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

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

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