

By Senator Yarborough

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1 A bill to be entitled
2 An act relating to actions for recovery of damages for
3 wrongful death; amending s. 768.21, F.S.; deleting a
4 provision prohibiting the recovery of certain damages
5 by specified parties related to the decedent in
6 wrongful death proceedings; amending ss. 400.023,
7 400.0235, and 429.295, F.S.; conforming provisions to
8 changes made by the act; reenacting ss. 95.11(11) and
9 429.29(1), F.S., relating to limitations other than
10 for recovery of real property and civil actions to
11 enforce rights, respectively, to incorporate the
12 amendment made to s. 768.21, F.S., in references
13 thereto; providing an effective date.

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

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17 Section 1. Subsection (8) of section 768.21, Florida
18 Statutes, is amended to read:

19 768.21 Damages.—All potential beneficiaries of a recovery
20 for wrongful death, including the decedent's estate, shall be
21 identified in the complaint, and their relationships to the
22 decedent shall be alleged. Damages may be awarded as follows:

23 ~~(8) The damages specified in subsection (3) shall not be~~
24 ~~recoverable by adult children and the damages specified in~~
25 ~~subsection (4) shall not be recoverable by parents of an adult~~
26 ~~child with respect to claims for medical negligence as defined~~
27 ~~by s. 766.106(1).~~

28 Section 2. Subsection (9) of section 400.023, Florida
29 Statutes, is amended, and paragraph (b) of subsection (1) of

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30 that section is republished, to read:

31 400.023 Civil enforcement.—

32 (1) An exclusive cause of action for negligence or a
33 violation of residents' rights as specified under this part
34 which alleges direct or vicarious liability for the personal
35 injury or death of a nursing home resident arising from such
36 negligence or violation of rights and which seeks damages for
37 such injury or death may be brought only against the licensee,
38 the licensee's management or consulting company, the licensee's
39 managing employees, and any direct caregivers, whether employees
40 or contractors. A passive investor is not liable under this
41 section. An action against any other individual or entity may be
42 brought only pursuant to subsection (3).

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

52 (9) An action under this part for a violation of rights or
53 negligence recognized herein is not a claim for medical
54 malpractice, and ~~s. 768.21(8) does not apply to a claim alleging~~
55 ~~death of the resident.~~

56 Section 3. Section 400.0235, Florida Statutes, is amended
57 to read:

58 400.0235 Certain provisions not applicable to actions under

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59 this part.—An action under this part for a violation of rights
60 or negligence recognized under this part is not a claim for
61 medical malpractice, ~~and the provisions of s. 768.21(8) do not~~
62 ~~apply to a claim alleging death of the resident.~~

63 Section 4. Section 429.295, Florida Statutes, is amended to
64 read:

65 429.295 Certain provisions not applicable to actions under
66 this part.—An action under this part for a violation of rights
67 or negligence recognized herein is not a claim for medical
68 malpractice, ~~and the provisions of s. 768.21(8) do not apply to~~
69 ~~a claim alleging death of the resident.~~

70 Section 5. For the purpose of incorporating the amendment
71 made by this act to section 768.21, Florida Statutes, in a
72 reference thereto, subsection (11) of section 95.11, Florida
73 Statutes, is reenacted to read:

74 95.11 Limitations other than for the recovery of real
75 property.—Actions other than for recovery of real property shall
76 be commenced as follows:

77 (11) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS
78 DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph
79 (5) (e), an action for wrongful death seeking damages authorized
80 under s. 768.21 brought against a natural person for an
81 intentional tort resulting in death from acts described in s.
82 782.04 or s. 782.07 may be commenced at any time. This
83 subsection shall not be construed to require an arrest, the
84 filing of formal criminal charges, or a conviction for a
85 violation of s. 782.04 or s. 782.07 as a condition for filing a
86 civil action.

87 Section 6. For the purpose of incorporating the amendment

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88 made by this act to section 768.21, Florida Statutes, in a
89 reference thereto, subsection (1) of section 429.29, Florida
90 Statutes, is reenacted to read:

91 429.29 Civil actions to enforce rights.—

92 (1) Any person or resident whose rights as specified in
93 this part are violated shall have a cause of action. The action
94 may be brought by the resident or his or her guardian, or by a
95 person or organization acting on behalf of a resident with the
96 consent of the resident or his or her guardian, or by the
97 personal representative of the estate of a deceased resident
98 regardless of the cause of death. If the action alleges a claim
99 for the resident's rights or for negligence that caused the
100 death of the resident, the claimant shall be required to elect
101 either survival damages pursuant to s. 46.021 or wrongful death
102 damages pursuant to s. 768.21. If the action alleges a claim for
103 the resident's rights or for negligence that did not cause the
104 death of the resident, the personal representative of the estate
105 may recover damages for the negligence that caused injury to the
106 resident. The action may be brought in any court of competent
107 jurisdiction to enforce such rights and to recover actual
108 damages, and punitive damages for violation of the rights of a
109 resident or negligence. Any resident who prevails in seeking
110 injunctive relief or a claim for an administrative remedy is
111 entitled to recover the costs of the action and a reasonable
112 attorney's fee assessed against the defendant not to exceed
113 \$25,000. Fees shall be awarded solely for the injunctive or
114 administrative relief and not for any claim or action for
115 damages whether such claim or action is brought together with a
116 request for an injunction or administrative relief or as a

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117 separate action, except as provided under s. 768.79 or the
118 Florida Rules of Civil Procedure. Sections 429.29-429.298
119 provide the exclusive remedy for a cause of action for recovery
120 of damages for the personal injury or death of a resident
121 arising out of negligence or a violation of rights specified in
122 s. 429.28. This section does not preclude theories of recovery
123 not arising out of negligence or s. 429.28 which are available
124 to a resident or to the agency. The provisions of chapter 766 do
125 not apply to any cause of action brought under ss. 429.29-
126 429.298.

127 Section 7. This act shall take effect July 1, 2025.