

1                                   A bill to be entitled  
 2           An act relating to nursing home litigation reform;  
 3           amending s. 400.023, F.S.; specifying conditions under  
 4           which a nursing home resident has a cause of action  
 5           against a licensee or management company; amending s.  
 6           400.0237, F.S.; requiring evidence of the basis for a  
 7           claim for punitive damages; requiring the trial judge  
 8           to conduct an evidentiary hearing before a claimant  
 9           can assert a claim for punitive damages; permitting a  
 10          licensee or management company to be held liable for  
 11          punitive damages under certain circumstances;  
 12          providing criteria for awarding of punitive damages in  
 13          a case of vicarious liability of certain entities;  
 14          providing applicability; providing for severability;  
 15          providing an effective date.

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

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 19           Section 1. Subsection (1) of section 400.023, Florida  
 20   Statutes, is amended to read:

21           400.023 Civil enforcement.—

22           (1) Any resident who alleges negligence or a violation of  
 23 ~~whose~~ rights as specified in this part has ~~are violated~~ shall  
 24 ~~have~~ a cause of action against the licensee or its management  
 25 company, as specifically identified in the application for  
 26 nursing home licensure, and its direct caregiver employees.  
 27 Sections 400.023-400.0238 provide the exclusive remedy against a  
 28 licensee or management company for a cause of action for

29 | recovery of damages for the personal injury or death of a  
30 | nursing home resident arising out of negligence or a violation  
31 | of residents' rights specified in s. 400.022. The action may be  
32 | brought by the resident or his or her guardian, by a person or  
33 | organization acting on behalf of a resident with the consent of  
34 | the resident or his or her guardian, or by the personal  
35 | representative of the estate of a deceased resident regardless  
36 | of the cause of death. If the action alleges a claim for the  
37 | resident's rights or for negligence that caused the death of the  
38 | resident, the claimant shall be required to elect either  
39 | survival damages pursuant to s. 46.021 or wrongful death damages  
40 | pursuant to s. 768.21. If the action alleges a claim for the  
41 | resident's rights or for negligence that did not cause the death  
42 | of the resident, the personal representative of the estate may  
43 | recover damages for the negligence that caused injury to the  
44 | resident. The action may be brought in any court of competent  
45 | jurisdiction to enforce such rights and to recover actual and  
46 | punitive damages for any violation of the rights of a resident  
47 | or for negligence. Any resident who prevails in seeking  
48 | injunctive relief or a claim for an administrative remedy is  
49 | entitled to recover the costs of the action, and a reasonable  
50 | attorney's fee assessed against the defendant not to exceed  
51 | \$25,000. Fees shall be awarded solely for the injunctive or  
52 | administrative relief and not for any claim or action for  
53 | damages whether such claim or action is brought together with a  
54 | request for an injunction or administrative relief or as a  
55 | separate action, except as provided under s. 768.79 or the  
56 | Florida Rules of Civil Procedure. Sections 400.023-400.0238

57 provide the exclusive remedy for a cause of action for recovery  
58 of damages for the personal injury or death of a nursing home  
59 resident arising out of negligence or a violation of rights  
60 specified in s. 400.022. This section does not preclude theories  
61 of recovery not arising out of negligence or s. 400.022 which  
62 are available to a resident or to the agency. The provisions of  
63 chapter 766 do not apply to any cause of action brought under  
64 ss. 400.023-400.0238.

65 Section 2. Subsections (1), (2), and (3) of section  
66 400.0237, Florida Statutes, are amended to read:

67 400.0237 Punitive damages; pleading; burden of proof.—

68 (1) In any action ~~for damages~~ brought under this part, a  
69 ~~no~~ claim for punitive damages may not be brought ~~shall be~~  
70 ~~permitted~~ unless there is a ~~reasonable~~ showing of admissible ~~by~~  
71 evidence that has been submitted in the record or proffered ~~by~~  
72 the parties and provides ~~claimant which would provide a~~  
73 reasonable basis for recovery of such damages when the criteria  
74 set forth in this section are applied. The claimant may move to  
75 amend her or his complaint to assert a claim for punitive  
76 damages as allowed by the rules of civil procedure and in  
77 accordance with the evidentiary requirements set forth in this  
78 section. The trial judge shall conduct an evidentiary hearing  
79 and weigh the admissible evidence submitted by all parties to  
80 ensure that there is a reasonable basis to believe that the  
81 claimant, at trial, will be able to demonstrate by clear and  
82 convincing evidence that the recovery of such damages is  
83 warranted. ~~The rules of civil procedure shall be liberally~~  
84 ~~construed so as to allow the claimant discovery of evidence~~

85 ~~which appears reasonably calculated to lead to admissible~~  
86 ~~evidence on the issue of punitive damages. No~~ A ~~discovery of~~  
87 ~~financial worth~~ may not shall proceed until ~~after~~ the pleading  
88 ~~on concerning~~ punitive damages is approved by the court  
89 ~~permitted.~~

90 (2) A defendant, including the licensee or management  
91 company against whom punitive damages is sought, may be held  
92 liable for punitive damages only if the trier of fact, based on  
93 clear and convincing evidence, finds that a specific individual  
94 or corporate defendant actively and knowingly participated in  
95 intentional misconduct or engaged in conduct that constituted  
96 gross negligence and contributed to the loss, damages, or injury  
97 suffered by the claimant ~~the defendant was personally guilty of~~  
98 ~~intentional misconduct or gross negligence.~~ As used in this  
99 section, the term:

100 (a) "Intentional misconduct" means that the defendant  
101 against whom punitive damages are sought had actual knowledge of  
102 the wrongfulness of the conduct and the high probability that  
103 injury or damage to the claimant would result and, despite that  
104 knowledge, intentionally pursued that course of conduct,  
105 resulting in injury or damage.

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

110 (3) In the case of vicarious liability of an employer,  
111 principal, corporation, or other legal entity, punitive damages  
112 may not be imposed for the conduct of an employee or agent

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113 unless only if the conduct of a specifically identified the  
114 employee or agent meets the criteria specified in subsection (2)  
115 and an officer, director, or manager of the actual employer,  
116 corporation, or legal entity condoned, ratified, or consented to  
117 the specific conduct as alleged in subsection (2).:

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

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

123 ~~(c) The employer, principal, corporation, or other legal~~  
124 ~~entity engaged in conduct that constituted gross negligence and~~  
125 ~~that contributed to the loss, damages, or injury suffered by the~~  
126 ~~claimant.~~

127 Section 3. If any provision of this act or its application  
128 to any person or circumstance is held invalid, the invalidity  
129 does not affect other provisions or applications of this act  
130 which can be given effect without the invalid provision or  
131 application, and to this end the provisions of this act are  
132 severable.

133 Section 4. This act shall take effect July 1, 2013, and  
134 applies to all causes of action that accrue on or after that  
135 date.