

1                                   A bill to be entitled  
 2           An act relating to long-term care facility  
 3           responsibility; amending s. 400.024, F.S.; authorizing  
 4           the Agency for Health Care Administration to revoke  
 5           the license or deny a license renewal or change of  
 6           ownership application of a nursing home facility that  
 7           fails to pay a judgment or settlement agreement within  
 8           a specified timeframe; amending s. 400.141, F.S.;  
 9           requiring a nursing home facility to maintain a  
 10          certain level of liability insurance coverage;  
 11          excluding certain types of coverage; amending ss.  
 12          400.0238 and 429.298, F.S.; revising percentages of  
 13          punitive damages awarded to the claimant and deposited  
 14          in the Quality of Long-Term Care Facility Improvement  
 15          Trust Fund; amending s. 627.912, F.S.; requiring  
 16          nursing homes and assisted living facilities to report  
 17          professional liability claims and actions to the  
 18          Office of Insurance Regulation; providing an effective  
 19          date.

20  
 21   Be It Enacted by the Legislature of the State of Florida:

22  
 23           Section 1. Subsection (4) of section 400.0238, Florida  
 24   Statutes, is amended to read:  
 25           400.0238   Punitive damages; limitation.—

26 (4) Notwithstanding any other law to the contrary, the  
27 amount of punitive damages awarded pursuant to this section  
28 shall be ~~equally~~ divided between the claimant and the Quality of  
29 Long-Term Care Facility Improvement Trust Fund. The claimant  
30 shall receive 90 percent of the award and the Quality of Long-  
31 Term Care Facility Improvement Trust Fund shall receive 10  
32 percent of the award, in accordance with the following  
33 provisions:

34 (a) The clerk of the court shall transmit a copy of the  
35 jury verdict to the Chief Financial Officer by certified mail.  
36 In the final judgment, the court shall order the percentages of  
37 the award, payable as provided herein.

38 (b) A settlement agreement entered into between the  
39 original parties to the action after a verdict has been returned  
40 must provide a proportionate share payable to the Quality of  
41 Long-Term Care Facility Improvement Trust Fund specified herein.  
42 For purposes of this paragraph, a proportionate share is a 10-  
43 percent ~~50-percent~~ share of that percentage of the settlement  
44 amount which the punitive damages portion of the verdict bore to  
45 the total of the compensatory and punitive damages in the  
46 verdict.

47 (c) The Department of Financial Services shall collect or  
48 cause to be collected all payments due the state under this  
49 section. Such payments are made to the Chief Financial Officer  
50 and deposited in the appropriate fund specified in this

51 subsection.

52 (d) If the full amount of punitive damages awarded cannot  
53 be collected, the claimant and the other recipient designated  
54 pursuant to this subsection are each entitled to a proportionate  
55 share of the punitive damages collected.

56 Section 2. Subsection (1) of section 400.024, Florida  
57 Statutes, is amended to read:

58 400.024 Failure to satisfy a judgment or settlement  
59 agreement.—

60 (1) Upon the entry by a Florida court of an adverse final  
61 judgment against a licensee as defined in s. 400.023(2) which  
62 arises from an award pursuant to s. 400.023, including an  
63 arbitration award, for a claim of negligence or a violation of  
64 residents' rights, in contract or tort, or from noncompliance  
65 with the terms of a settlement agreement as determined by a  
66 court or arbitration panel, which arises from a claim pursuant  
67 to s. 400.023, the licensee shall pay the judgment creditor the  
68 entire amount of the judgment, award, or settlement and all  
69 accrued interest within 60 days after the date such judgment,  
70 award, or settlement becomes final and subject to execution  
71 unless otherwise mutually agreed to in writing by the parties.  
72 However, no such agreement shall allow for payment more than 6  
73 months after the date such judgment, award, or settlement  
74 becomes final and subject to execution. Failure to make such  
75 payment shall result in additional grounds that may be used by

76 the agency for revoking a license or for denying a renewal  
77 application or a related party change of ownership application  
78 as provided in this section.

79 Section 3. Paragraph (q) of subsection (1) of section  
80 400.141, Florida Statutes, is amended to read:

81 400.141 Administration and management of nursing home  
82 facilities.—

83 (1) Every licensed facility shall comply with all  
84 applicable standards and rules of the agency and shall:

85 (q) Maintain ~~general and~~ professional liability insurance  
86 coverage that is in force at all times in an amount not less  
87 than \$2 million per claim and with a minimum annual aggregate of  
88 not less than \$4 million. Any professional liability insurance  
89 that provides for the payment of litigation costs or attorney  
90 fees for the defense of a claim against a nursing home pursuant  
91 to s. 400.023, s. 400.0233, or the common law of this state as a  
92 deduction from the liability limits of the policy or that in any  
93 way reduces the liability coverage limits available under the  
94 policy for a settlement or judgment by any amount attributable  
95 to litigation costs or attorney fees incurred during the course  
96 of the defense of the insured does not fulfill the insurance  
97 requirement of this section. In lieu of such coverage, a state-  
98 designated teaching nursing home and its affiliated assisted  
99 living facilities created under s. 430.80 may demonstrate proof  
100 of financial responsibility as provided in s. 430.80(3)(g).

101 Section 4. Subsection (4) of section 429.298, Florida  
102 Statutes, is amended to read:

103 429.298 Punitive damages; limitation.—

104 (4) Notwithstanding any other law to the contrary, the  
105 amount of punitive damages awarded pursuant to this section  
106 shall be ~~equally~~ divided between the claimant and the Quality of  
107 Long-Term Care Facility Improvement Trust Fund. The claimant  
108 shall receive 90 percent of the award and the Quality of Long-  
109 Term Care Facility Improvement Trust Fund shall receive 10  
110 percent of the award, in accordance with the following  
111 provisions:

112 (a) The clerk of the court shall transmit a copy of the  
113 jury verdict to the Chief Financial Officer by certified mail.  
114 In the final judgment, the court shall order the percentages of  
115 the award, payable as provided herein.

116 (b) A settlement agreement entered into between the  
117 original parties to the action after a verdict has been returned  
118 must provide a proportionate share payable to the Quality of  
119 Long-Term Care Facility Improvement Trust Fund specified herein.  
120 For purposes of this paragraph, a proportionate share is a 10-  
121 percent ~~50-percent~~ share of that percentage of the settlement  
122 amount which the punitive damages portion of the verdict bore to  
123 the total of the compensatory and punitive damages in the  
124 verdict.

125 (c) The Department of Financial Services shall collect or

126 cause to be collected all payments due the state under this  
127 section. Such payments are made to the Chief Financial Officer  
128 and deposited in the appropriate fund specified in this  
129 subsection.

130 (d) If the full amount of punitive damages awarded cannot  
131 be collected, the claimant and the other recipient designated  
132 pursuant to this subsection are each entitled to a proportionate  
133 share of the punitive damages collected.

134 Section 5. Subsection (1) of section 627.912, Florida  
135 Statutes, is amended to read:

136 627.912 Professional liability claims and actions; reports  
137 by insurers and health care providers; annual report by office.—

138 (1) (a) Each self-insurer authorized under s. 627.357 and  
139 each commercial self-insurance fund authorized under s. 624.462,  
140 authorized insurer, surplus lines insurer, risk retention group,  
141 and joint underwriting association providing professional  
142 liability insurance to a practitioner of medicine licensed under  
143 chapter 458, to a practitioner of osteopathic medicine licensed  
144 under chapter 459, to a podiatric physician licensed under  
145 chapter 461, to a dentist licensed under chapter 466, to a  
146 hospital licensed under chapter 395, to a crisis stabilization  
147 unit licensed under part IV of chapter 394, to a nursing home  
148 licensed under part II of chapter 400, to an assisted living  
149 facility licensed under part I of chapter 429, to a health  
150 maintenance organization certificated under part I of chapter

151 641, to clinics included in chapter 390, or to an ambulatory  
152 surgical center as defined in s. 395.002, and each insurer  
153 providing professional liability insurance to a member of The  
154 Florida Bar shall report to the office as set forth in paragraph  
155 (c) any written claim or action for damages for personal  
156 injuries claimed to have been caused by error, omission, or  
157 negligence in the performance of such insured's professional  
158 services or based on a claimed performance of professional  
159 services without consent.

160 (b) For purposes of this section, the term "claim" means  
161 the receipt of a notice of intent to initiate litigation, a  
162 summons and complaint, or a written demand from a person or his  
163 or her legal representative stating an intention to pursue an  
164 action for damages against a person described in paragraph (a).

165 (c) The duty to report specified in paragraph (a) arises  
166 upon the occurrence of the first of:

167 1. The entry of any judgment against any provider  
168 identified in paragraph (a) for which all appeals as a matter of  
169 right have been exhausted or for which the time period for  
170 filing such an appeal has expired;

171 2. The execution of an agreement between a provider  
172 identified in paragraph (a) or an entity required to report  
173 under that paragraph and a claimant to settle damages purported  
174 to arise from the provision of professional services, which  
175 agreement includes the indemnity payment of at least \$1;

176 however, if any applicable law requires any such agreement to be  
177 approved by the court, the duty arises when the agreement is  
178 approved;

179 3. The final payment of any indemnity money by any of the  
180 entities required to report under paragraph (a) on behalf of any  
181 provider identified in that paragraph for damages purported to  
182 arise from professional services rendered; or

183 4. The final disposition of a claim for which no indemnity  
184 payment was made on behalf of the insured but for which loss  
185 adjustment expenses were paid in excess of \$5,000. As used in  
186 this subparagraph, the term "final disposition" means the  
187 insurer has brought down all reserves and closed its file.

188 (d) After any calendar year in which no claim or action  
189 for damages was closed, the entity shall file a no claim  
190 submission report. Such report shall be filed with the office no  
191 later than April 1 of each calendar year for the immediately  
192 preceding calendar year. If a reporting entity submits such a  
193 report for a particular calendar year and subsequently discovers  
194 that its report was submitted in error, the reporting entity  
195 shall promptly notify the office of the error and take steps as  
196 directed by the office to make the needed corrections.

197 (e) If a claim is initially opened and then closed, and is  
198 subsequently reopened, the reopened claim shall be treated as a  
199 new claim and reported after the occurrence of the first of any  
200 event listed in paragraph (c).

201 (f) Each health care practitioner and health care facility  
202 listed in paragraph (a) must report any claim or action for  
203 damages as described in paragraph (a), if the claim is not  
204 otherwise required to be reported by an insurer or other  
205 insuring entity.

206 (g) Reports under this subsection shall be filed with the  
207 office no later than 30 days following the occurrence of the  
208 first of any event listed in paragraph (c). An insurer is not  
209 required to file a new or amended report on a claim more than 1  
210 year after submitting an initial report.

211 Section 6. This act shall take effect July 1, 2018.