

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1498

By: Representative Gazaway

For An Act To Be Entitled

AN ACT CONCERNING THE CIVIL ENFORCEMENT OF CERTAIN
CAUSES OF ACTION AGAINST A LONG-TERM CARE FACILITY BY
A RESIDENT OF THAT FACILITY; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING THE CIVIL ENFORCEMENT OF
CERTAIN CAUSES OF ACTION AGAINST A LONG-
TERM CARE FACILITY BY A RESIDENT OF THAT
FACILITY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 20-10-1209 is amended to read as follows:
20-10-1209. Civil enforcement.

(a)(1) ~~Any~~ A resident who is injured by a deprivation or infringement of his or her rights as specified in this subchapter may bring a cause of action ~~under § 16-114-201 et seq.,~~ against any licensee responsible for the deprivation or infringement.

(2) The action may be brought by the resident or his or her guardian or by the personal representative of the estate of a deceased resident.

(3) The action may be brought in any court of competent jurisdiction in the county in which the injury occurred or where the licensee is located to enforce such rights and to recover actual and punitive damages.

(4) The resident may seek to recover actual damages when there is a finding that an employee of the long-term care facility failed to do something which a reasonably careful person would do or did something which a



reasonable person would not do under circumstances similar to those shown by the evidence in the case, which caused an injury due to an infringement or a deprivation of the resident's rights.

(5) ~~No~~ A separate award of attorney's fees may not be made by the court.

(b)(1) A licensee ~~shall not be~~ is not liable for the medical negligence of ~~any~~ a physician rendering care or treatment to the resident, except for the services of a medical director as required ~~in~~ under this subchapter.

(2) ~~Nothing in this subsection shall be construed to~~ This section does not protect a licensee from liability for failure to provide a resident with appropriate observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care by nursing staff.

(c) For the purpose of this section, punitive damages may be awarded for conduct ~~which~~ that is willful, wanton, gross or flagrant, reckless, or consciously indifferent to the rights of the resident.

~~(d)(1) A deprivation or infringement of rights under this subchapter does not itself create an additional cause of action.~~

~~(2) However, a deprivation or infringement of rights under this subchapter may be used as evidence of negligence.~~