

As Introduced

**124th General Assembly
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H. B. No. 412

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A B I L L

To amend sections 2305.11, 2315.21, 2711.23, 2711.24, 1
3721.02, and 3721.17 and to enact sections 3721.171 2
and 5111.411 of the Revised Code relative to the 3
results of a home inspection or nursing facility 4
survey, liability of a residential care facility or 5
a home for employee actions, liability of a 6
residential care facility or a home for punitive 7
damages, and expansion of the definition of 8
"medical claim" in the statute of limitations. 9

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

Section 1. That sections 2305.11, 2315.21, 2711.23, 2711.24, 10
3721.02, and 3721.17 be amended and sections 3721.171 and 5111.411 11
of the Revised Code be enacted to read as follows: 12

Sec. 2305.11. (A) An action for libel, slander, malicious 13
prosecution, or false imprisonment, an action for malpractice 14
other than an action upon a medical, dental, optometric, or 15
chiropractic claim, or an action upon a statute for a penalty or 16

forfeiture shall be commenced within one year after the cause of 17
action accrued, provided that an action by an employee for the 18
payment of unpaid minimum wages, unpaid overtime compensation, or 19
liquidated damages by reason of the nonpayment of minimum wages or 20
overtime compensation shall be commenced within two years after 21
the cause of action accrued. 22

(B)(1) Subject to division (B)(2) of this section, an action 23
upon a medical, dental, optometric, or chiropractic claim shall be 24
commenced within one year after the cause of action accrued, 25
except that, if prior to the expiration of that one-year period, a 26
claimant who allegedly possesses a medical, dental, optometric, or 27
chiropractic claim gives to the person who is the subject of that 28
claim written notice that the claimant is considering bringing an 29
action upon that claim, that action may be commenced against the 30
person notified at any time within one hundred eighty days after 31
the notice is so given. 32

(2) Except as to persons within the age of minority or of 33
unsound mind, as provided by section 2305.16 of the Revised Code: 34

(a) In no event shall any action upon a medical, dental, 35
optometric, or chiropractic claim be commenced more than four 36
years after the occurrence of the act or omission constituting the 37
alleged basis of the medical, dental, optometric, or chiropractic 38
claim. 39

(b) If an action upon a medical, dental, optometric, or 40
chiropractic claim is not commenced within four years after the 41
occurrence of the act or omission constituting the alleged basis 42
of the medical, dental, optometric, or chiropractic claim, then, 43
notwithstanding the time when the action is determined to accrue 44
under division (B)(1) of this section, any action upon that claim 45
is barred. 46

(C) A civil action for unlawful abortion pursuant to section 47

2919.12 of the Revised Code, a civil action authorized by division 48
(H) of section 2317.56 of the Revised Code, a civil action 49
pursuant to division (B)(1) or (2) of section 2307.51 of the 50
Revised Code for performing a dilation and extraction procedure or 51
attempting to perform a dilation and extraction procedure in 52
violation of section 2919.15 of the Revised Code, and a civil 53
action pursuant to division (B)(1) or (2) of section 2307.52 of 54
the Revised Code for terminating or attempting to terminate a 55
human pregnancy after viability in violation of division (A) or 56
(B) of section 2919.17 of the Revised Code shall be commenced 57
within one year after the performance or inducement of the 58
abortion, within one year after the attempt to perform or induce 59
the abortion in violation of division (A) or (B) of section 60
2919.17 of the Revised Code, within one year after the performance 61
of the dilation and extraction procedure, or, in the case of a 62
civil action pursuant to division (B)(2) of section 2307.51 of the 63
Revised Code, within one year after the attempt to perform the 64
dilation and extraction procedure. 65

(D) As used in this section: 66

(1) "Hospital" includes any person, corporation, association, 67
board, or authority that is responsible for the operation of any 68
hospital licensed or registered in the state, including, but not 69
limited to, those ~~which~~ that are owned or operated by the state, 70
political subdivisions, any person, any corporation, or any 71
combination thereof. "Hospital" also includes any person, 72
corporation, association, board, entity, or authority that is 73
responsible for the operation of any clinic that employs a 74
full-time staff of physicians practicing in more than one 75
recognized medical specialty and rendering advice, diagnosis, 76
care, and treatment to individuals. "Hospital" does not include 77
any hospital operated by the government of the United States or 78
any of its branches. 79

(2) "Physician" means a person who is licensed to practice medicine and surgery or osteopathic medicine and surgery by the state medical board or a person who otherwise is authorized to practice medicine and surgery or osteopathic medicine and surgery in this state.

(3) "Medical claim" means any claim that is asserted in any civil action against a physician, podiatrist, ~~or~~ hospital, home, or residential facility, against any employee or agent of a physician, podiatrist, ~~or~~ hospital, home, or residential facility, or against a registered nurse or physical therapist, and that arises out of the medical diagnosis, care, or treatment of any person. "Medical claim" includes derivative the following:

(a) Derivative claims for relief that arise from the medical diagnosis, care, or treatment of a person;

(b) Claims resulting from acts or omissions in providing health care or from the hiring, training, supervision, retention, or termination of health caregivers;

(c) Claims brought under section 3721.17 of the Revised Code.

(4) "Podiatrist" means any person who is licensed to practice podiatric medicine and surgery by the state medical board.

(5) "Dentist" means any person who is licensed to practice dentistry by the state dental board.

(6) "Dental claim" means any claim that is asserted in any civil action against a dentist, or against any employee or agent of a dentist, and that arises out of a dental operation or the dental diagnosis, care, or treatment of any person. "Dental claim" includes derivative claims for relief that arise from a dental operation or the dental diagnosis, care, or treatment of a person.

(7) "Derivative claims for relief" include, but are not

limited to, claims of a parent, guardian, custodian, or spouse of
an individual who was the subject of any medical diagnosis, care,
or treatment, dental diagnosis, care, or treatment, dental
operation, optometric diagnosis, care, or treatment, or
chiropractic diagnosis, care, or treatment, that arise from that
diagnosis, care, treatment, or operation, and that seek the
recovery of damages for any of the following:

(a) Loss of society, consortium, companionship, care,
assistance, attention, protection, advice, guidance, counsel,
instruction, training, or education, or any other intangible loss
that was sustained by the parent, guardian, custodian, or spouse;

(b) Expenditures of the parent, guardian, custodian, or
spouse for medical, dental, optometric, or chiropractic care or
treatment, for rehabilitation services, or for other care,
treatment, services, products, or accommodations provided to the
individual who was the subject of the medical diagnosis, care, or
treatment, the dental diagnosis, care, or treatment, the dental
operation, the optometric diagnosis, care, or treatment, or the
chiropractic diagnosis, care, or treatment.

(8) "Registered nurse" means any person who is licensed to
practice nursing as a registered nurse by the state board of
nursing.

(9) "Chiropractic claim" means any claim that is asserted in
any civil action against a chiropractor, or against any employee
or agent of a chiropractor, and that arises out of the
chiropractic diagnosis, care, or treatment of any person.
"Chiropractic claim" includes derivative claims for relief that
arise from the chiropractic diagnosis, care, or treatment of a
person.

(10) "Chiropractor" means any person who is licensed to
practice chiropractic by the chiropractic examining board.

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(11) "Optometric claim" means any claim that is asserted in any civil action against an optometrist, or against any employee or agent of an optometrist, and that arises out of the optometric diagnosis, care, or treatment of any person. "Optometric claim" includes derivative claims for relief that arise from the optometric diagnosis, care, or treatment of a person.

(12) "Optometrist" means any person licensed to practice optometry by the state board of optometry.

(13) "Physical therapist" means any person who is licensed to practice physical therapy under Chapter 4755. of the Revised Code.

(14) "Home" has the same meaning as in section 3721.10 of the Revised Code.

(15) "Residential facility" means a facility licensed under section 5123.19 of the Revised Code.

Sec. 2315.21. (A) As used in this section:

(1) "Tort action" means a civil action for damages for injury or loss to person or property. "Tort action" includes a product liability claim for damages for injury or loss to person or property that is subject to sections 2307.71 to 2307.80 of the Revised Code, but does not include a civil action for damages for a breach of contract or another agreement between persons.

(2) "Trier of fact" means the jury or, in a nonjury action, the court.

(3) "Home" has the same meaning as in section 3721.10 of the Revised Code.

(B) Subject to division (D) of this section, punitive or exemplary damages are not recoverable from a defendant in question in a tort action unless both of the following apply:

(1) The actions or omissions of that defendant demonstrate

malice, aggravated or egregious fraud, oppression, or insult, or
that defendant as principal or master authorized, participated in,
or ratified actions or omissions of an agent or servant that so
demonstrate+.

(2) The plaintiff in question has adduced proof of actual
damages that resulted from actions or omissions as described in
division (B)(1) of this section.

(C)(1) In a tort action, the trier of fact shall determine
the liability of any defendant for punitive or exemplary damages
and the amount of those damages.

(2) In a tort action, the burden of proof shall be upon a
plaintiff in question, by clear and convincing evidence, to
establish that the plaintiff is entitled to recover punitive or
exemplary damages.

(D) This section does not apply to tort actions against the
state in the court of claims or to the extent that another section
of the Revised Code expressly provides any of the following:

(1) Punitive or exemplary damages are recoverable from a
defendant in question in a tort action on a basis other than that
the actions or omissions of that defendant demonstrate malice,
aggravated or egregious fraud, oppression, or insult, or on a
basis other than that the defendant in question as principal or
master authorized, participated in, or ratified actions or
omissions of an agent or servant that so demonstrate+.

(2) Punitive or exemplary damages are recoverable from a
defendant in question in a tort action irrespective of whether the
plaintiff in question has adduced proof of actual damages+.

(3) The burden of proof upon a plaintiff in question to
recover punitive or exemplary damages from a defendant in question
in a tort action is one other than clear and convincing evidence+.

(4) Punitive or exemplary damages are not recoverable from a defendant in question in a tort action.

(E) When determining the amount of an award of punitive or exemplary damages against either a home or a residential facility licensed under section 5123.19 of the Revised Code, the trier of fact shall consider all of the following:

(1) The ability of the home or residential facility to pay the award of punitive or exemplary damages based on the home's or residential facility's assets, income, and net worth;

(2) Whether the amount of punitive or exemplary damages is sufficient to deter future tortious conduct;

(3) The financial ability of the home or residential facility, both currently and in the future, to provide accommodations, personal care services, and skilled nursing care.

Sec. 2711.23. (A) To be valid and enforceable, any arbitration agreements pursuant to sections 2711.01 and 2711.22 of the Revised Code for controversies involving hospital or medical care, diagnosis, or treatment ~~which~~ that are entered into prior to rendering such care, diagnosis, or treatment shall include or be subject to the following conditions:

~~(A)~~(1) The agreement shall provide that medical or hospital care, diagnosis, or treatment will be provided whether or not the patient signs the agreement to arbitrate.

~~(B)~~(2) The agreement shall provide that the patient, or the patient's spouse, or the personal representative of ~~his~~ the patient's estate in the event of the patient's death or incapacity, shall have a right to withdraw the patient's consent to arbitrate ~~his~~ the patient's claim by notifying the physician or hospital in writing within sixty days after the patient's discharge from the hospital for any claim arising out of

hospitalization, or within sixty days after the termination of the 230
physician-patient relationship for the physical condition involved 231
for any claim against a physician. Nothing in this division shall 232
be construed to mean that the spouse of a competent patient can 233
withdraw over the objection of the patient the consent of the 234
patient to arbitrate~~+~~. 235

~~(C)~~(3) The agreement shall provide that the decision whether 236
or not to sign the agreement is solely a matter for the patient's 237
determination without any influence by the physician or hospital~~+~~. 238

~~(D)~~(4) The agreement shall, ~~if appropriate,~~ provide, if 239
appropriate, that its terms constitute a waiver of any right to a 240
trial in court, or a waiver of any right to a trial by jury~~+~~. 241

~~(E)~~(5) The agreement shall provide that the arbitration 242
expenses shall be divided equally between the parties to the 243
agreement~~+~~. 244

~~(F)~~(6) Any arbitration panel shall consist of three persons, 245
no more than one of whom shall be a physician or the 246
representative of a hospital~~+~~. 247

~~(G)~~(7) The arbitration agreement shall be separate from any 248
other agreement, consent, or document~~+~~. 249

~~(H)~~(8) The agreement shall not be submitted to a patient for 250
approval when the patient's condition prevents the patient from 251
making a rational decision whether or not to agree~~+~~. 252

~~(I)~~(9) Filing of a medical claim, ~~as defined in division (D)~~ 253
~~of section 2305.11 of the Revised Code,~~ within the sixty days 254
provided for withdrawal of a patient from the arbitration 255
agreement shall be deemed a withdrawal from ~~such~~ that agreement~~+~~. 256

~~(J)~~(10) The agreement shall contain a separately stated 257
notice that clearly informs the patient of ~~his~~ the patient's 258
rights under division ~~(B)~~(A)(2) of this section. 259

(B) As used in this section, the terms "hospital": 260

(1) "Hospital" and "physician" shall have the same meanings 261
set forth as in division (D) of section 2305.11 of the Revised 262
Code. 263

(2) "Medical claim" has the same meaning as in division (D) 264
of section 2305.11 of the Revised Code, except that it does not 265
include a claim against a home or residential facility or an 266
employee or agent of a home or residential facility. 267

(3) "Home" has the same meaning as in section 3721.10 of the 268
Revised Code. 269

(4) "Residential facility" means a facility licensed under 270
section 5123.19 of the Revised Code. 271

(C) The provisions of this division section apply to 272
hospitals, doctors of medicine, doctors of osteopathic medicine, 273
and doctors of podiatric medicine. 274

(D) This section does not apply to homes or residential 275
facilities. 276

Sec. 2711.24. (A) To the extent it is in ten-point type and 277
is executed in the following form, an arbitration agreement of the 278
type stated in section 2711.23 of the Revised Code shall be 279
presumed valid and enforceable in the absence of proof by a 280
preponderance of the evidence that the execution of the agreement 281
was induced by fraud, that the patient executed the agreement as a 282
direct result of the willful or negligent disregard by the 283
physician or hospital of the patient's right not to so execute, or 284
that the patient executing the agreement was not able to 285
communicate effectively in spoken and written English or any other 286
language in which the agreement is written: 287

"AGREEMENT TO RESOLVE FUTURE MALPRACTICE 288

CLAIM BY BINDING ARBITRATION 289

In the event of any dispute or controversy arising out of the diagnosis, treatment, or care of the patient by the provider of medical services, the dispute or controversy shall be submitted to binding arbitration.

Within fifteen days after a party to this agreement has given written notice to the other of demand for arbitration of ~~said~~ that dispute or controversy, the parties to the dispute or controversy shall each appoint an arbitrator and give notice of ~~such~~ the appointment to the other. Within a reasonable time after ~~such~~ notices have been given, the two arbitrators so selected shall select a neutral arbitrator and give notice of the selection ~~thereof~~ of a neutral arbitrator to the parties. The arbitrators shall hold a hearing within a reasonable time from the date of notice of selection of the neutral arbitrator.

Expenses of the arbitration shall be shared equally by the parties to this agreement.

The patient, by signing this agreement, also acknowledges that ~~he~~ the patient has been informed that:

(1) Medical or hospital care, diagnosis, or treatment will be provided whether or not the patient signs the agreement to arbitrate.

(2) The agreement may not even be submitted to a patient for approval when the patient's condition prevents the patient from making a rational decision whether or not to agree.

(3) The decision whether or not to sign the agreement is solely a matter for the patient's determination without any influence by the physician or hospital.

(4) The agreement waives the patient's right to a trial in court for any future malpractice claim ~~he~~ the patient may have against the physician or hospital.

(5) The patient must be furnished with two copies of this agreement. 320
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PATIENT'S RIGHT TO CANCEL 322
HIS AGREEMENT TO ARBITRATE 323

The patient, or the patient's spouse or the personal 324
representative of ~~his~~ the patient's estate in the event of the 325
patient's death or incapacity, has the right to cancel this 326
agreement to arbitrate by notifying the physician or hospital in 327
writing within sixty days after the patient's discharge from the 328
hospital for any claim against a hospital, or within sixty days 329
after the termination of the physician-patient relationship for 330
the physical condition involved for claims against physicians. The 331
patient, or ~~his~~ the patient's spouse or representative, as 332
appropriate, may cancel this agreement by merely writing 333
"cancelled" on the face of one of ~~his~~ the patient's copies of the 334
agreement, signing ~~his~~ the patient's name under ~~such that~~ word, 335
and mailing, by certified mail, return receipt requested, ~~such~~ 336
that copy to the physician or hospital within ~~such the~~ sixty-day 337
period. 338

Filing of a medical claim in a court within the sixty days 339
provided for cancellation of the arbitration agreement by the 340
patient will cancel the agreement without any further action by 341
the patient. 342

Date: 343

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Signature of Provider of Medical Services 345

..... 346

Signature of Patient" 347

(B) As used in this section ~~the terms "hospital":~~ 348

(1) "Hospital" and "physician" have the same meanings ~~set~~ 349
~~forth~~ as in division (D) of section 2305.11 of the Revised Code. 350

The	351
<u>(2) "Home" has the same meaning as in section 3721.10 of the Revised Code.</u>	352 353
<u>(3) "Residential facility" means a facility licensed under section 5123.19 of the Revised Code.</u>	354 355
<u>(C) The provisions of this division <u>section</u> apply to hospitals, doctors of medicine, doctors of osteopathic medicine, and doctors of podiatric medicine.</u>	356 357 358
<u>(D) This section does not apply to homes or residential facilities.</u>	359 360
Sec. 3721.02. (A) The director of health shall license homes and establish procedures to be followed in inspecting and licensing homes. The director may inspect a home at any time. Each home shall be inspected by the director at least once prior to the issuance of a license and at least once every fifteen months thereafter. The state fire marshal or a township, municipal, or other legally constituted fire department approved by the marshal shall also inspect a home prior to issuance of a license, at least once every fifteen months thereafter, and at any other time requested by the director. A home does not have to be inspected prior to issuance of a license by the director, state fire marshal, or a fire department if ownership of the home is assigned or transferred to a different person and the home was licensed under this chapter immediately prior to the assignment or transfer. The director may enter at any time, for the purposes of investigation, any institution, residence, facility, or other structure which <u>that</u> has been reported to the director or that the director has reasonable cause to believe is operating as a nursing home, residential care facility, or home for the aging without a valid license required by section 3721.05 of the Revised Code or, in the case of a county home or district home, is operating	361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381

despite the revocation of its residential care facility license. 382
The director may delegate the director's authority and duties 383
under this chapter to any division, bureau, agency, or official of 384
the department of health. 385

(B) A single facility may be licensed both as a nursing home 386
pursuant to this chapter and as an adult care facility pursuant to 387
Chapter 3722. of the Revised Code if the director determines that 388
the part or unit to be licensed as a nursing home can be 389
maintained separate and discrete from the part or unit to be 390
licensed as an adult care facility. 391

(C) In determining the number of residents in a home for the 392
purpose of licensing, the director shall consider all the 393
individuals for whom the home provides accommodations as one group 394
unless one of the following is the case: 395

~~(A)~~(1) The home is a home for the aging, in which case all 396
the individuals in the part or unit licensed as a nursing home 397
shall be considered as one group, and all the individuals in the 398
part or unit licensed as a rest home shall be considered as 399
another group. 400

~~(B)~~(2) The home is both a nursing home and an adult care 401
facility. In that case, all the individuals in the part or unit 402
licensed as a nursing home shall be considered as one group, and 403
all the individuals in the part or unit licensed as an adult care 404
facility shall be considered as another group. 405

~~(C)~~(3) The home maintains, in addition to a nursing home or 406
residential care facility, a separate and discrete part or unit 407
that provides accommodations to individuals who do not require or 408
receive skilled nursing care and do not receive personal care 409
services from the home, in which case the individuals in the 410
separate and discrete part or unit shall not be considered in 411
determining the number of residents in the home if the separate 412
and discrete part or unit is in compliance with the Ohio basic 413

building code established by the board of building standards under 414
Chapters 3781. and 3791. of the Revised Code and the home permits 415
the director, on request, to inspect the separate and discrete 416
part or unit and speak with the individuals residing there, if 417
they consent, to determine whether the separate and discrete part 418
or unit meets the requirements of this division. 419

(D) The director of health shall charge an application fee 420
and an annual renewal licensing and inspection fee of one hundred 421
dollars for each fifty persons or part thereof of a home's 422
licensed capacity. All fees collected by the director for the 423
issuance or renewal of licenses shall be deposited into the state 424
treasury to the credit of the general operations fund created in 425
section 3701.83 of the Revised Code for use only in administering 426
and enforcing this chapter and rules adopted under it. 427

(E) The results of an inspection or investigation of a home 428
that is conducted under this section, including any statement of 429
deficiencies and all findings and deficiencies cited in the 430
statement on the basis of the inspection or investigation, shall 431
be used solely to determine the home's compliance with this 432
chapter in any action or proceeding other than an action commenced 433
under division (I) of section 3721.17 of the Revised Code. Those 434
results of an inspection or investigation, that statement of 435
deficiencies, and the findings and deficiencies cited in that 436
statement shall not be used in any court or in any action or 437
proceeding that is pending in any court and are not admissible in 438
evidence in any action or proceeding unless that action or 439
proceeding is an appeal of an action by the department of health 440
under this chapter or is an action by any department or agency of 441
the state to enforce this chapter. 442

Sec. 3721.17. (A) Any resident who believes that the 443
resident's rights under sections 3721.10 to 3721.17 of the Revised 444

Code have been violated may file a grievance under procedures 445
adopted pursuant to division (A)(2) of section 3721.12 of the 446
Revised Code. 447

When the grievance committee determines a violation of 448
sections 3721.10 to 3721.17 of the Revised Code has occurred, it 449
shall notify the administrator of the home. If the violation 450
cannot be corrected within ten days, or if ten days have elapsed 451
without correction of the violation, the grievance committee shall 452
refer the matter to the department of health. 453

(B) Any person who believes that a resident's rights under 454
sections 3721.10 to 3721.17 of the Revised Code have been violated 455
may report or cause reports to be made of the information directly 456
to the department of health. No person who files a report is 457
liable for civil damages resulting from the report. 458

(C)(1) Within thirty days of receiving a complaint under this 459
section, the department of health shall investigate any complaint 460
referred to it by a home's grievance committee and any complaint 461
from any source that alleges that the home provided substantially 462
less than adequate care or treatment, or substantially unsafe 463
conditions, or, within seven days of receiving a complaint, refer 464
it to the attorney general, if the attorney general agrees to 465
investigate within thirty days. 466

(2) Within thirty days of receiving a complaint under this 467
section, the department of health may investigate any alleged 468
violation of sections 3721.10 to 3721.17 of the Revised Code, or 469
of rules, policies, or procedures adopted pursuant to those 470
sections, not covered by division (C)(1) of this section, or it 471
may, within seven days of receiving a complaint, refer the 472
complaint to the grievance committee at the home where the alleged 473
violation occurred, or to the attorney general if the attorney 474
general agrees to investigate within thirty days. 475

(D) If, after an investigation, the department of health 476

finds probable cause to believe that a violation of sections 477
3721.10 to 3721.17 of the Revised Code, or of rules, policies, or 478
procedures adopted pursuant to those sections, has occurred at a 479
home that is certified under the medicare or medicaid program, it 480
shall cite one or more findings or deficiencies under sections 481
5111.35 to 5111.62 of the Revised Code. If the home is not so 482
certified, the department shall hold an adjudicative hearing 483
within thirty days under Chapter 119. of the Revised Code. 484

(E) Upon a finding at an adjudicative hearing under division 485
(D) of this section that a violation of sections 3721.10 to 486
3721.17 of the Revised Code, or of rules, policies, or procedures 487
adopted pursuant thereto, has occurred, the department of health 488
shall make an order for compliance, set a reasonable time for 489
compliance, and assess a fine pursuant to division (F) of this 490
section. The fine shall be paid to the general revenue fund only 491
if compliance with the order is not shown to have been made within 492
the reasonable time set in the order. The department of health may 493
issue an order prohibiting the continuation of any violation of 494
sections 3721.10 to 3721.17 of the Revised Code. 495

Findings at the hearings conducted under this section may be 496
appealed pursuant to Chapter 119. of the Revised Code, except that 497
an appeal may be made to the court of common pleas of the county 498
in which the home is located. 499

The department of health shall initiate proceedings in court 500
to collect any fine assessed under this section ~~which~~ that is 501
unpaid thirty days after the violator's final appeal is exhausted. 502

(F) Any home found, pursuant to an adjudication hearing under 503
division (D) of this section, to have violated sections 3721.10 to 504
3721.17 of the Revised Code, or rules, policies, or procedures 505
adopted pursuant to those sections may be fined not less than one 506
hundred nor more than five hundred dollars for a first offense. 507
For each subsequent offense, the home may be fined not less than 508

two hundred nor more than one thousand dollars. 509

A violation of sections 3721.10 to 3721.17 of the Revised 510
Code is a separate offense for each day of the violation and for 511
each resident who claims the violation. 512

(G) No home or employee of a home shall retaliate against any 513
person who: 514

(1) Exercises any right set forth in sections 3721.10 to 515
3721.17 of the Revised Code, including, but not limited to, filing 516
a complaint with the home's grievance committee or reporting an 517
alleged violation to the department of health; 518

(2) Appears as a witness in any hearing conducted under this 519
section or section 3721.162 of the Revised Code; 520

(3) Files a civil action alleging a violation of sections 521
3721.10 to 3721.17 of the Revised Code, or notifies a county 522
prosecuting attorney or the attorney general of a possible 523
violation of sections 3721.10 to 3721.17 of the Revised Code. 524

If, under the procedures outlined in this section, a home or 525
its employee is found to have retaliated, the violator may be 526
fined up to one thousand dollars. 527

(H) When legal action is indicated, any evidence of criminal 528
activity found in an investigation under division (C) of this 529
section shall be given to the prosecuting attorney in the county 530
in which the home is located for investigation. 531

(I)(1) Any resident whose rights under sections 3721.10 to 532
3721.17 of the Revised Code are violated has a cause of action 533
against any person or home committing the violation. The action 534
may be commenced by the resident or by the resident's ~~sponsor~~ 535
legal guardian or other legally authorized representative on 536
behalf of the resident or the resident's estate. 537

(2)(a) The plaintiff in an action filed under division (I)(1) 538

of this section may obtain injunctive relief against the violation 539
of the resident's rights. The plaintiff also may recover 540
compensatory damages based upon a showing, by a preponderance of 541
the evidence, that the violation of the resident's rights resulted 542
from a negligent act or omission of the person or home and that 543
the violation was the proximate cause of the resident's injury, 544
death, or loss to person or property. If compensatory damages are 545
awarded for a violation of the resident's rights, section 2315.21 546
of the Revised Code, ~~except divisions (E)(1) and (2) of that~~ 547
~~section,~~ shall apply to an award of punitive or exemplary damages 548
for the violation. 549

(b) The court, in a case in which only injunctive relief is 550
granted, may award to the prevailing party reasonable attorney's 551
fees limited to the work reasonably performed. 552

(3) Division (I)(2)(a) of this section shall be considered to 553
be purely remedial in operation and shall be applied in a remedial 554
manner in any civil action in which this section is relevant, 555
whether the action is pending in court or commenced on or after 556
July 9, 1998. 557

(4) In an action brought under this section, or any other 558
action brought by or on behalf of a resident or former resident of 559
a home or a residential facility licensed under section 5123.19 of 560
the Revised Code for injury, death, or loss to person or property, 561
evidence of the care and treatment rendered by the home or 562
facility to any resident other than the resident or former 563
resident who brought the action or on whose behalf the action was 564
brought is inadmissible. 565

Sec. 3721.171. (A) A home or a residential facility licensed 566
under section 5123.19 of the Revised Code is not liable in damages 567
in a civil action for injury, death, or loss to person or property 568
for an alleged violation of Chapter 3721. of the Revised Code 569

allegedly caused by any act or omission of an employee of the home 570
or residential facility if either of the following applies: 571

(1) The employee is acting outside the scope of the 572
employee's employment and authority. 573

(2) The employee is acting in violation of a written and 574
implemented policy of the home or residential facility, provided 575
the home or facility has in place a system for monitoring 576
compliance with its written policy. 577

(B) Division (A) of this section does not apply if the home 578
or residential facility had actual knowledge of the employee's 579
actions and affirmatively failed to implement prompt and 580
appropriate corrective action. 581

Sec. 5111.411. The results of a survey of a nursing facility 582
that is conducted under section 5111.39 of the Revised Code, 583
including any statement of deficiencies and all findings and 584
deficiencies cited in the statement on the basis of the survey, 585
shall be used solely to determine the nursing facility's 586
compliance with certification requirements. Those results of a 587
survey, that statement of deficiencies, and the findings and 588
deficiencies cited in that statement shall not be used in any 589
court or in any action or proceeding that is pending in any court 590
and are not admissible in evidence in any action or proceeding 591
unless that action or proceeding is an appeal of an administrative 592
action by the department of job and family services or contracting 593
agency under this chapter or is an action by any department or 594
agency of the state to enforce this chapter. 595

Section 2. That existing sections 2305.11, 2315.21, 2711.23, 596
2711.24, 3721.02, and 3721.17 of the Revised Code are hereby 597
repealed. 598