

**As Reported by the House Civil and Commercial Law Committee**

**124th General Assembly**

**Regular Session**

**2001-2002**

**Sub. H. B. No. 412**

**REPRESENTATIVES Seitz, Schneider, Schmidt, Kearns, Webster, Raga,  
Brinkman, DeWine, Setzer, Britton, Husted, Faber, Gilb, Fessler, Hoops,  
Schaffer, Lendrum, Rhine, Flowers, Olman, Sullivan, Ogg, G. Smith, Trakas,  
Peterson, Clancy, Callender, Roman, Wolpert, Latta, Womer Benjamin,  
Calvert, Carey, Kilbane, Reidelbach, Aslanides, Widowfield, Niehaus**

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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 section 5111.411 2  
of the Revised Code relative to the results of a 3  
home inspection or nursing facility survey, 4  
liability of a residential care facility or a home 5  
for punitive damages, and expansion of the 6  
definition of "medical claim" in the statute of 7  
limitations. 8

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

**Section 1.** That sections 2305.11, 2315.21, 2711.23, 2711.24, 9  
3721.02, and 3721.17 be amended and section 5111.411 of the 10  
Revised Code be enacted to read as follows: 11

**Sec. 2305.11.** (A) An action for libel, slander, malicious 12  
prosecution, or false imprisonment, an action for malpractice 13  
other than an action upon a medical, dental, optometric, or 14  
chiropractic claim, or an action upon a statute for a penalty or 15  
forfeiture shall be commenced within one year after the cause of 16

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

(B)(1) Subject to division (B)(2) of this section, an action 22  
upon a medical, dental, optometric, or chiropractic claim shall be 23  
commenced within one year after the cause of action accrued, 24  
except that, if prior to the expiration of that one-year period, a 25  
claimant who allegedly possesses a medical, dental, optometric, or 26  
chiropractic claim gives to the person who is the subject of that 27  
claim written notice that the claimant is considering bringing an 28  
action upon that claim, that action may be commenced against the 29  
person notified at any time within one hundred eighty days after 30  
the notice is so given. 31

(2) Except as to persons within the age of minority or of 32  
unsound mind, as provided by section 2305.16 of the Revised Code: 33

(a) In no event shall any action upon a medical, dental, 34  
optometric, or chiropractic claim be commenced more than four 35  
years after the occurrence of the act or omission constituting the 36  
alleged basis of the medical, dental, optometric, or chiropractic 37  
claim. 38

(b) If an action upon a medical, dental, optometric, or 39  
chiropractic claim is not commenced within four years after the 40  
occurrence of the act or omission constituting the alleged basis 41  
of the medical, dental, optometric, or chiropractic claim, then, 42  
notwithstanding the time when the action is determined to accrue 43  
under division (B)(1) of this section, any action upon that claim 44  
is barred. 45

(C) A civil action for unlawful abortion pursuant to section 46  
2919.12 of the Revised Code, a civil action authorized by division 47

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(H) of section 2317.56 of the Revised Code, a civil action  
pursuant to division (B)(1) or (2) of section 2307.51 of the  
Revised Code for performing a dilation and extraction procedure or  
attempting to perform a dilation and extraction procedure in  
violation of section 2919.15 of the Revised Code, and a civil  
action pursuant to division (B)(1) or (2) of section 2307.52 of  
the Revised Code for terminating or attempting to terminate a  
human pregnancy after viability in violation of division (A) or  
(B) of section 2919.17 of the Revised Code shall be commenced  
within one year after the performance or inducement of the  
abortion, within one year after the attempt to perform or induce  
the abortion in violation of division (A) or (B) of section  
2919.17 of the Revised Code, within one year after the performance  
of the dilation and extraction procedure, or, in the case of a  
civil action pursuant to division (B)(2) of section 2307.51 of the  
Revised Code, within one year after the attempt to perform the  
dilation and extraction procedure.

(D) As used in this section:

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

(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

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an individual who was the subject of any medical diagnosis, care, 110  
or treatment, dental diagnosis, care, or treatment, dental 111  
operation, optometric diagnosis, care, or treatment, or 112  
chiropractic diagnosis, care, or treatment, that arise from that 113  
diagnosis, care, treatment, or operation, and that seek the 114  
recovery of damages for any of the following: 115

(a) Loss of society, consortium, companionship, care, 116  
assistance, attention, protection, advice, guidance, counsel, 117  
instruction, training, or education, or any other intangible loss 118  
that was sustained by the parent, guardian, custodian, or spouse; 119

(b) Expenditures of the parent, guardian, custodian, or 120  
spouse for medical, dental, optometric, or chiropractic care or 121  
treatment, for rehabilitation services, or for other care, 122  
treatment, services, products, or accommodations provided to the 123  
individual who was the subject of the medical diagnosis, care, or 124  
treatment, the dental diagnosis, care, or treatment, the dental 125  
operation, the optometric diagnosis, care, or treatment, or the 126  
chiropractic diagnosis, care, or treatment. 127

(8) "Registered nurse" means any person who is licensed to 128  
practice nursing as a registered nurse by the state board of 129  
nursing. 130

(9) "Chiropractic claim" means any claim that is asserted in 131  
any civil action against a chiropractor, or against any employee 132  
or agent of a chiropractor, and that arises out of the 133  
chiropractic diagnosis, care, or treatment of any person. 134  
"Chiropractic claim" includes derivative claims for relief that 135  
arise from the chiropractic diagnosis, care, or treatment of a 136  
person. 137

(10) "Chiropractor" means any person who is licensed to 138  
practice chiropractic by the chiropractic examining board. 139

(11) "Optometric claim" means any claim that is asserted in 140

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, 170  
or ratified actions or omissions of an agent or servant that so 171  
demonstrate+. 172

(2) The plaintiff in question has adduced proof of actual 173  
damages that resulted from actions or omissions as described in 174  
division (B)(1) of this section. 175

(C)(1) In a tort action, the trier of fact shall determine 176  
the liability of any defendant for punitive or exemplary damages 177  
and the amount of those damages. 178

(2) In a tort action, the burden of proof shall be upon a 179  
plaintiff in question, by clear and convincing evidence, to 180  
establish that the plaintiff is entitled to recover punitive or 181  
exemplary damages. 182

(D) This section does not apply to tort actions against the 183  
state in the court of claims or to the extent that another section 184  
of the Revised Code expressly provides any of the following: 185

(1) Punitive or exemplary damages are recoverable from a 186  
defendant in question in a tort action on a basis other than that 187  
the actions or omissions of that defendant demonstrate malice, 188  
aggravated or egregious fraud, oppression, or insult, or on a 189  
basis other than that the defendant in question as principal or 190  
master authorized, participated in, or ratified actions or 191  
omissions of an agent or servant that so demonstrate+. 192

(2) Punitive or exemplary damages are recoverable from a 193  
defendant in question in a tort action irrespective of whether the 194  
plaintiff in question has adduced proof of actual damages+. 195

(3) The burden of proof upon a plaintiff in question to 196  
recover punitive or exemplary damages from a defendant in question 197  
in a tort action is one other than clear and convincing evidence+. 198

(4) Punitive or exemplary damages are not recoverable from a 199

defendant in question in a tort action. 200

(E) When determining the amount of an award of punitive or 201  
exemplary damages against either a home or a residential facility 202  
licensed under section 5123.19 of the Revised Code, the trier of 203  
fact shall consider all of the following: 204

(1) The ability of the home or residential facility to pay 205  
the award of punitive or exemplary damages based on the home's or 206  
residential facility's assets, income, and net worth; 207

(2) Whether the amount of punitive or exemplary damages is 208  
sufficient to deter future tortious conduct; 209

(3) The financial ability of the home or residential 210  
facility, both currently and in the future, to provide 211  
accommodations, personal care services, and skilled nursing care. 212

**Sec. 2711.23.** (A) To be valid and enforceable, any 213  
arbitration agreements pursuant to sections 2711.01 and 2711.22 of 214  
the Revised Code for controversies involving hospital or medical 215  
care, diagnosis, or treatment ~~which~~ that are entered into prior to 216  
rendering such care, diagnosis, or treatment shall include or be 217  
subject to the following conditions: 218

~~(A)~~(1) The agreement shall provide that medical or hospital 219  
care, diagnosis, or treatment will be provided whether or not the 220  
patient signs the agreement to arbitrate~~r~~. 221

~~(B)~~(2) The agreement shall provide that the patient, or the 222  
patient's spouse, or the personal representative of ~~his~~ the 223  
patient's estate in the event of the patient's death or 224  
incapacity, shall have a right to withdraw the patient's consent 225  
to arbitrate ~~his~~ the patient's claim by notifying the physician or 226  
hospital in writing within sixty days after the patient's 227  
discharge from the hospital for any claim arising out of 228  
hospitalization, or within sixty days after the termination of the 229



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

~~(C)~~(3) The agreement shall provide that the decision whether 235  
or not to sign the agreement is solely a matter for the patient's 236  
determination without any influence by the physician or hospital~~+~~. 237

~~(D)~~(4) The agreement shall, ~~if appropriate,~~ provide, if 238  
appropriate, that its terms constitute a waiver of any right to a 239  
trial in court, or a waiver of any right to a trial by jury~~+~~. 240

~~(E)~~(5) The agreement shall provide that the arbitration 241  
expenses shall be divided equally between the parties to the 242  
agreement~~+~~. 243

~~(F)~~(6) Any arbitration panel shall consist of three persons, 244  
no more than one of whom shall be a physician or the 245  
representative of a hospital~~+~~. 246

~~(G)~~(7) The arbitration agreement shall be separate from any 247  
other agreement, consent, or document~~+~~. 248

~~(H)~~(8) The agreement shall not be submitted to a patient for 249  
approval when the patient's condition prevents the patient from 250  
making a rational decision whether or not to agree~~+~~. 251

~~(I)~~(9) Filing of a medical claim, ~~as defined in division (D)~~ 252  
~~of section 2305.11 of the Revised Code,~~ within the sixty days 253  
provided for withdrawal of a patient from the arbitration 254  
agreement shall be deemed a withdrawal from ~~such that~~ that agreement~~+~~. 255

~~(J)~~(10) The agreement shall contain a separately stated 256  
notice that clearly informs the patient of ~~his~~ the patient's 257  
rights under division ~~(B)~~(A)(2) of this section. 258

(B) As used in this section, ~~the terms "hospital":~~ 259

(1) "Hospital" and "physician" shall have the same meanings set forth as in division (D) of section 2305.11 of the Revised Code. 260  
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(2) "Medical claim" has the same meaning as in division (D) of section 2305.11 of the Revised Code, except that it does not include a claim against a home or residential facility or an employee or agent of a home or residential facility. 263  
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(3) "Home" has the same meaning as in section 3721.10 of the Revised Code. 267  
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(4) "Residential facility" means a facility licensed under section 5123.19 of the Revised Code. 269  
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(C) The provisions of this division section apply to hospitals, doctors of medicine, doctors of osteopathic medicine, and doctors of podiatric medicine. 271  
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(D) This section does not apply to homes or residential facilities. 274  
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**Sec. 2711.24. (A)** To the extent it is in ten-point type and is executed in the following form, an arbitration agreement of the type stated in section 2711.23 of the Revised Code shall be presumed valid and enforceable in the absence of proof by a preponderance of the evidence that the execution of the agreement was induced by fraud, that the patient executed the agreement as a direct result of the willful or negligent disregard by the physician or hospital of the patient's right not to so execute, or that the patient executing the agreement was not able to communicate effectively in spoken and written English or any other language in which the agreement is written: 276  
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"AGREEMENT TO RESOLVE FUTURE MALPRACTICE 287

CLAIM BY BINDING ARBITRATION 288

In the event of any dispute or controversy arising out of the 289

diagnosis, treatment, or care of the patient by the provider of 290  
medical services, the dispute or controversy shall be submitted to 291  
binding arbitration. 292

Within fifteen days after a party to this agreement has given 293  
written notice to the other of demand for arbitration of ~~said~~ that 294  
dispute or controversy, the parties to the dispute or controversy 295  
shall each appoint an arbitrator and give notice of ~~such~~ the 296  
appointment to the other. Within a reasonable time after ~~such~~ 297  
notices have been given, the two arbitrators so selected shall 298  
select a neutral arbitrator and give notice of the selection 299  
~~thereof~~ of a neutral arbitrator to the parties. The arbitrators 300  
shall hold a hearing within a reasonable time from the date of 301  
notice of selection of the neutral arbitrator. 302

Expenses of the arbitration shall be shared equally by the 303  
parties to this agreement. 304

The patient, by signing this agreement, also acknowledges 305  
that ~~he~~ the patient has been informed that: 306

(1) Medical or hospital care, diagnosis, or treatment will be 307  
provided whether or not the patient signs the agreement to 308  
arbitrate~~+~~. 309

(2) The agreement may not even be submitted to a patient for 310  
approval when the patient's condition prevents the patient from 311  
making a rational decision whether or not to agree~~+~~. 312

(3) The decision whether or not to sign the agreement is 313  
solely a matter for the patient's determination without any 314  
influence by the physician or hospital~~+~~. 315

(4) The agreement waives the patient's right to a trial in 316  
court for any future malpractice claim ~~he~~ the patient may have 317  
against the physician or hospital~~+~~. 318

(5) The patient must be furnished with two copies of this 319

agreement.

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PATIENT'S RIGHT TO CANCEL

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HIS AGREEMENT TO ARBITRATE

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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, has the right to cancel this agreement to arbitrate by notifying the physician or hospital in writing within sixty days after the patient's discharge from the hospital for any claim against a hospital, or within sixty days after the termination of the physician-patient relationship for the physical condition involved for claims against physicians. The patient, or ~~his~~ the patient's spouse or representative, as appropriate, may cancel this agreement by merely writing "cancelled" on the face of one of ~~his~~ the patient's copies of the agreement, signing ~~his~~ the patient's name under ~~such~~ that word, and mailing, by certified mail, return receipt requested, ~~such~~ that copy to the physician or hospital within ~~such~~ the sixty-day period.

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

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Date:

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Signature of Provider of Medical Services

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Signature of Patient"

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

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(1) "Hospital" and "physician" have the same meanings ~~set forth~~ as in division (D) of section 2305.11 of the Revised Code.  
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(2) "Home" has the same meaning as in section 3721.10 of the Revised Code. 351  
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(3) "Residential facility" means a facility licensed under section 5123.19 of the Revised Code. 353  
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(C) The provisions of this ~~division~~ section apply to 355  
hospitals, doctors of medicine, doctors of osteopathic medicine, 356  
and doctors of podiatric medicine. 357

(D) This section does not apply to homes or residential facilities. 358  
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**Sec. 3721.02.** (A) The director of health shall license homes 360  
and establish procedures to be followed in inspecting and 361  
licensing homes. The director may inspect a home at any time. Each 362  
home shall be inspected by the director at least once prior to the 363  
issuance of a license and at least once every fifteen months 364  
thereafter. The state fire marshal or a township, municipal, or 365  
other legally constituted fire department approved by the marshal 366  
shall also inspect a home prior to issuance of a license, at least 367  
once every fifteen months thereafter, and at any other time 368  
requested by the director. A home does not have to be inspected 369  
prior to issuance of a license by the director, state fire 370  
marshal, or a fire department if ownership of the home is assigned 371  
or transferred to a different person and the home was licensed 372  
under this chapter immediately prior to the assignment or 373  
transfer. The director may enter at any time, for the purposes of 374  
investigation, any institution, residence, facility, or other 375  
structure ~~which~~ that has been reported to the director or that the 376  
director has reasonable cause to believe is operating as a nursing 377  
home, residential care facility, or home for the aging without a 378  
valid license required by section 3721.05 of the Revised Code or, 379  
in the case of a county home or district home, is operating 380  
despite the revocation of its residential care facility license. 381

The director may delegate the director's authority and duties 382  
under this chapter to any division, bureau, agency, or official of 383  
the department of health. 384

(B) A single facility may be licensed both as a nursing home 385  
pursuant to this chapter and as an adult care facility pursuant to 386  
Chapter 3722. of the Revised Code if the director determines that 387  
the part or unit to be licensed as a nursing home can be 388  
maintained separate and discrete from the part or unit to be 389  
licensed as an adult care facility. 390

(C) In determining the number of residents in a home for the 391  
purpose of licensing, the director shall consider all the 392  
individuals for whom the home provides accommodations as one group 393  
unless one of the following is the case: 394

~~(A)~~(1) The home is a home for the aging, in which case all 395  
the individuals in the part or unit licensed as a nursing home 396  
shall be considered as one group, and all the individuals in the 397  
part or unit licensed as a rest home shall be considered as 398  
another group. 399

~~(B)~~(2) The home is both a nursing home and an adult care 400  
facility. In that case, all the individuals in the part or unit 401  
licensed as a nursing home shall be considered as one group, and 402  
all the individuals in the part or unit licensed as an adult care 403  
facility shall be considered as another group. 404

~~(C)~~(3) The home maintains, in addition to a nursing home or 405  
residential care facility, a separate and discrete part or unit 406  
that provides accommodations to individuals who do not require or 407  
receive skilled nursing care and do not receive personal care 408  
services from the home, in which case the individuals in the 409  
separate and discrete part or unit shall not be considered in 410  
determining the number of residents in the home if the separate 411  
and discrete part or unit is in compliance with the Ohio basic 412  
building code established by the board of building standards under 413

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

(D) The director of health shall charge an application fee 419  
and an annual renewal licensing and inspection fee of one hundred 420  
dollars for each fifty persons or part thereof of a home's 421  
licensed capacity. All fees collected by the director for the 422  
issuance or renewal of licenses shall be deposited into the state 423  
treasury to the credit of the general operations fund created in 424  
section 3701.83 of the Revised Code for use only in administering 425  
and enforcing this chapter and rules adopted under it. 426

(E) The results of an inspection or investigation of a home 427  
that is conducted under this section, including any statement of 428  
deficiencies and all findings and deficiencies cited in the 429  
statement on the basis of the inspection or investigation, shall 430  
be used solely to determine the home's compliance with this 431  
chapter or another chapter of the Revised Code in any action or 432  
proceeding other than an action commenced under division (I) of 433  
section 3721.17 of the Revised Code. Those results of an 434  
inspection or investigation, that statement of deficiencies, and 435  
the findings and deficiencies cited in that statement shall not be 436  
used in any court or in any action or proceeding that is pending 437  
in any court and are not admissible in evidence in any action or 438  
proceeding unless that action or proceeding is an appeal of an 439  
action by the department of health under this chapter or is an 440  
action by any department or agency of the state to enforce this 441  
chapter or another chapter of the Revised Code. 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



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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.

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

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

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

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

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

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

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

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(I)(1) Any resident whose rights under sections 3721.10 to 3721.17 of the Revised Code are violated has a cause of action against any person or home committing the violation. The action may be commenced by the resident or by the resident's ~~sponsor~~ legal guardian or other legally authorized representative on behalf of the resident or the resident's estate. Further, if the resident is unable to do so, the resident's spouse, parent, or

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adult child also may commence the action on behalf of the resident 539  
or the resident's estate, and the result of that action shall bind 540  
the resident or the resident's estate. 541

(2)(a) The plaintiff in an action filed under division (I)(1) 542  
of this section may obtain injunctive relief against the violation 543  
of the resident's rights. The plaintiff also may recover 544  
compensatory damages based upon a showing, by a preponderance of 545  
the evidence, that the violation of the resident's rights resulted 546  
from a negligent act or omission of the person or home and that 547  
the violation was the proximate cause of the resident's injury, 548  
death, or loss to person or property. If compensatory damages are 549  
awarded for a violation of the resident's rights, section 2315.21 550  
of the Revised Code, ~~except divisions (E)(1) and (2) of that~~ 551  
~~section,~~ shall apply to an award of punitive or exemplary damages 552  
for the violation. 553

(b) The court, in a case in which only injunctive relief is 554  
granted, may award to the prevailing party reasonable attorney's 555  
fees limited to the work reasonably performed. 556

(3) Division (I)(2)(a) of this section shall be considered to 557  
be purely remedial in operation and shall be applied in a remedial 558  
manner in any civil action in which this section is relevant, 559  
whether the action is pending in court or commenced on or after 560  
July 9, 1998. 561

(4) Within thirty days after the filing of a complaint in an 562  
action for damages brought against a home under division (I)(1) of 563  
this section by or on behalf of a resident or former resident of 564  
the home, the plaintiff or plaintiff's counsel shall send written 565  
notice of the filing of the complaint to the department of job and 566  
family services if the department has a right of recovery under 567  
section 5101.58 of the Revised Code against the liability of the 568  
home for the cost of medical services and care arising out of 569  
injury, disease, or disability of the resident or former resident. 570

Sec. 5111.411. The results of a survey of a nursing facility 571  
that is conducted under section 5111.39 of the Revised Code, 572  
including any statement of deficiencies and all findings and 573  
deficiencies cited in the statement on the basis of the survey, 574  
shall be used solely to determine the nursing facility's 575  
compliance with certification requirements or with this chapter or 576  
another chapter of the Revised Code. Those results of a survey, 577  
that statement of deficiencies, and the findings and deficiencies 578  
cited in that statement shall not be used in any court or in any 579  
action or proceeding that is pending in any court and are not 580  
admissible in evidence in any action or proceeding unless that 581  
action or proceeding is an appeal of an administrative action by 582  
the department of job and family services or contracting agency 583  
under this chapter or is an action by any department or agency of 584  
the state to enforce this chapter or another chapter of the 585  
Revised Code. 586

**Section 2.** That existing sections 2305.11, 2315.21, 2711.23, 587  
2711.24, 3721.02, and 3721.17 of the Revised Code are hereby 588  
repealed. 589

**Section 3.** Nothing in this act applies to proceedings or 590  
appeals involving workers' compensation claims under Chapter 4121. 591  
or 4123. of the Revised Code. 592

**Section 4.** If any provision of section 2305.11, 2315.21, 593  
2711.23, 2711.24, 3721.02, or 3721.17 of the Revised Code, as 594  
amended by this act, any provision of section 5111.411 of the 595  
Revised Code, as enacted by this act, or the application of any 596  
provision of those sections to any person or circumstance is held 597  
invalid, the invalidity does not affect other provisions or 598  
applications of the particular section or related sections that 599

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can be given effect without the invalid provision or application,	600
and to this end the provisions of the particular section are	601
severable.	602