

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H3/14/03

A Bill

HOUSE BILL 2419

5 By: Representative Gillespie
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For An Act To Be Entitled

9 AN ACT TO CLARIFY THE LIMITATION ON ACTIONS
10 AGAINST LONG-TERM CARE FACILITIES INVOLVING
11 RESIDENT CARE; TO AMEND ARKANSAS CODE §§ 16-56-
12 105, 16-56-111, AND 20-10-1209 TO CLARIFY THE
13 LIMITATION ON ACTIONS AGAINST LONG-TERM CARE
14 FACILITIES INVOLVING RESIDENT CARE; TO CLARIFY
15 THE ADMISSIBILITY OF UNRESOLVED ALLEGATIONS OF
16 REGULATORY VIOLATIONS IN ACTIONS AGAINST LONG-
17 TERM CARE FACILITIES INVOLVING RESIDENT CARE; TO
18 AUTHORIZE FEES AND COSTS FOR THE PREVAILING PARTY
19 IN SUCH ACTIONS; AND FOR OTHER PURPOSES.
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Subtitle

21 TO CLARIFY THE LIMITATION ON ACTIONS
22 AGAINST LONG-TERM CARE FACILITIES
23 INVOLVING RESIDENT CARE; TO CLARIFY THE
24 ADMISSIBILITY OF UNRESOLVED ALLEGATIONS
25 OF REGULATORY VIOLATIONS, AND TO
26 AUTHORIZE FEES AND COSTS.
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30 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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32 SECTION 1. As used in this act:

33 (1) "Long-term care facility" means a nursing facility, nursing
34 home, residential care facility, post-acute head injury retraining and
35 residential care facility or any other facility that provides long-term
36 medical, personal, or custodial care; and



1 (2) "Resident care" means care provided to a resident of a long-
2 term care facility and includes medical, health, nursing, personal,
3 custodial, or other similar care, including, without limitation, supervision,
4 oversight, observation, assessment, planning, intervention, and evaluation.

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6 SECTION 2. (a) Any action founded upon any liability arising out of
7 resident care provided in a long-term care facility shall be commenced within
8 two (2) years after the cause of action accrues, or from the date the alleged
9 harm, breach, injury, deprivation, infringement, loss, or damage was known or
10 reasonably should have been known.

11 (b) If in any action founded upon any liability arising out of
12 resident care provided in a long-term care facility, claims, defenses, or
13 denials are intentionally made without reasonable cause and found to be
14 untrue, the party pleading them shall thereafter be subject to the payment of
15 reasonable costs actually incurred by the other party by reason of the untrue
16 pleading.

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18 SECTION 3. *Arkansas Code § 16-56-105, pertaining to actions with*
19 *limitation of three (3) years, is amended to read as follows:*

20 *16-56-105. Actions with limitation of three years.*

21 (a) The following actions shall be commenced within three (3) years
22 after the cause of action accrues:

23 (1) *All actions founded upon any contract, obligation, or*
24 *liability not under seal and not in writing, excepting such as are brought*
25 *upon the judgment or decree of some court of record of the United States or*
26 *of this or some other state;*

27 (2) *All actions for arrearages of rent not reserved by some*
28 *instrument in writing, under seal;*

29 (3) *All actions founded on any contract or liability, expressed*
30 *or implied;*

31 (4) *All actions for trespass on lands;*

32 (5) *All actions for libels; and*

33 (6) *All actions for taking or injuring any goods or chattels.*

34 (b) This section shall not apply to an action founded upon any
35 liability arising out of resident care provided in a long-term care facility.

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1 SECTION 4. Arkansas Code § 16-56-111 is amended to read as follows:
2 6-56-111. Notes and instruments in writing and other writings.

3 (a) Actions to enforce written obligations, duties, or rights, except
4 those to which § 4-4-111 is applicable, shall be commenced within five (5)
5 years after the cause of action shall accrue.

6 (b) However, partial payment or written acknowledgment of default
7 shall toll this statute of limitations.

8 (c) This section shall not apply to any action founded upon any
9 liability arising out of resident care provided in a long-term care facility.

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11 SECTION 5. Arkansas Code § 20-10-1209, pertaining to civil enforcement
12 of resident rights, is amended by adding the following new subdivision:

13 (d) Any action founded upon any liability arising out of deprivation
14 or infringement of resident rights under this subchapter shall be commenced
15 within two (2) years after the cause of action accrues, or from the date the
16 alleged harm, breach, injury, deprivation infringement, loss, or damage was
17 known or reasonably should have been known.

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19 SECTION 6. (a) If a Notice of Violation, a Statement of Deficiencies,
20 or any other similar document alleging violations of state or federal
21 statutory or regulatory laws that is issued by the Office of Long-term Care
22 or by the federal government against a long-term care facility is the subject
23 of a state or federal administration appeal or civil action, then the notice,
24 statement, or other similar document shall not be admissible as evidence of a
25 deficient practice, a failure to act in accordance with the appropriate
26 standard of care, or a violation of any federal or state law or regulation in
27 any legal proceeding.

28 (b) If a long-term care facility has entered into a settlement
29 agreement with the Office of Long-Term Care or the federal government to
30 resolve allegations made in a Notice of Violation, a Statement of
31 Deficiencies, or any other similar document alleging violations of state or
32 federal statutory or regulatory laws that is issued by the Office of Long-
33 term Care or by the federal government against a long-term care facility,
34 then the settlement agreement shall not be admissible as evidence of a
35 deficient practice, a failure to act in accordance with the appropriate
36 standard of care, or a violation of any federal or state law or regulation in

1 any legal proceeding.

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3 SECTION 7. Notwithstanding any law to the contrary, the prevailing
4 party in any civil action to recover on any liability arising out of resident
5 care provided in a long-term care facility may be allowed a reasonable
6 attorney's fee to be assessed by the court and collected as costs.

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8 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the
9 General Assembly of the State of Arkansas that in order to alleviate
10 confusion in the law regarding the commencement of actions against long-term
11 care facilities and to minimize unnecessary expenditures, clarification in
12 the limitations on actions arising out of resident care in a long-term care
13 facility should be provided for as soon as possible. Therefore, an emergency
14 is declared to exist and this act being immediately necessary for the
15 preservation of the public peace, health, and safety shall become effective
16 on:

17 (1) The date of its approval by the Governor;

18 (2) If the bill is neither approved nor vetoed by the Governor,
19 the expiration of the period of time during which the Governor may veto the
20 bill; or

21 (3) If the bill is vetoed by the Governor and the veto is
22 overridden, the date the last house overrides the veto.

23 /s/ Gillespie

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