**Section 330.4290 Private Right of Action**

a) Each resident shall have the right to maintain a private right of action against a facility as described in subsections (b) through (i) of this Section.

b) *The owner and licensee of a facility are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the resident.* (Section 3-601 of the Act)

c) *The licensee shall pay three times the actual damages, or $500, whichever is greater, and costs and attorney's fees to a facility resident whose rights as specified in Part I of Article II of the Act are violated.* (Section 3-602 of the Act)

d) *A resident may maintain an action under this Act and this Part for any other type of relief, including injunctive and declaratory relief, permitted by law.* (Section 3-603 of the Act)

e) *Any damages recoverable under* subsections (b) *through* (i) *of this Section, including minimum damages as provided by these rules, may be recovered in any action which a court may authorize to be brought as a class action pursuant to Part 8 of The Civil Practice Law* (Ill. Rev. Stat. 1987, ch. 110, pars. 2-801 et seq.). *The remedies provided in subsections* (b) *through* (i) *of this Section are in addition to and cumulative with any other legal remedies available to a resident. Exhaustion of any available administrative remedies shall not be required prior to commencement of a suit hereunder.* (Section 3-604 of the Act)

f) *The amount of damages recovered by a resident in an action brought under subsections* (b) *through* (i) *of this Section* *shall be exempt for purposes of determining initial or continuing eligibility for medical assistance under The Illinois Public Aid Code* (Ill. Rev. Stat. 1987, ch. 23, pars. 1-1 et seq.), *as now or hereafter amended, and shall neither be taken into consideration not required to be applied toward the payment or partial payment of the cost of medical care or services available under The Illinois Public Aid Code.* (Section 3-605 of the Act)

g) *Any waiver by a resident or his legal representative of the right to commence an action under subsections* (b) *through* (i) *of this Section*, *whether oral or in writing, shall be null and void, and without legal force or effect.* (Section 3-606 of the Act)

h) *Any party to an action brought under subsections* (b) *through* (i) of this section *shall be entitled to a trial by jury and any waiver of the right to a trial by jury, whether oral or in writing, prior to the commencement of an action, shall be null and void, and without legal force or effect.* (Section 3-607 of the Act)

i) *A licensee or its agents or employees shall not transfer, discharge, evict, harass, dismiss, or retaliate against a resident, a resident's representative, or an employee or agent who makes a report of resident abuse or neglect, brings or testifies in a private right of action, or files a complaint, because of the such action or testimony.* (B) (Section 3-608 of the Act)

(Source: Amended at 13 Ill. Reg. 6562, effective April 17, 1989)