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3873</W>

Amendment No. ____ (for drafter's use only)

CHAMBER ACTION

<W>Senate</W>

<W>House</W>

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ORIGINAL STAMP BELOW

Representative(s) Littlefield offered the following:

Amendment (with title amendment)

On page 1, line 27 of the bill

insert:

Section 1. Subsections (6), (7), and (8) are added to section 400.023, Florida Statutes, to read:

400.023 Civil enforcement.--

(6) To recover attorneys' fees under this section the following conditions precedent must be met:

(a) Within 120 days of the filing of a responsive pleading or defensive motion to a complaint brought pursuant to this section, and before trial, the parties or their designated representatives shall meet in mediation to discuss the issues of liability and damages in accordance with paragraph (a) for the purpose of early resolution of the matter.

1. The parties shall within 60 days of the filing of the responsive pleading or defensive motion:

a. Agree on a mediator. If the parties cannot agree on

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1 a mediator, the defendant shall immediately notify the Court,
2 which shall appoint a mediator within 10 days of such notice.
3 b. Set a date for mediation.
4 c. Prepare an order for the Court identifying the
5 mediator, the scheduled date of the mediation and other terms
6 of the mediation. Absent any disagreement between the parties,
7 the Court may issue the order for the mediation submitted by
8 the parties without hearing.
9 2. The mediation must be concluded within 120 days of
10 the filing of responsive pleading or defensive motion. This
11 date may be extended only by agreement of all parties subject
12 to mediation under this subsection.
13 3. The mediation shall be conducted in the following
14 manner:
15 a. Each party shall have present at the mediation all
16 persons necessary to have complete settlement authority.
17 b. All parties shall mediate in good faith.
18 4. All aspects of the mediation not specifically
19 established by this subsection shall be conducted according to
20 the rules of practice and procedure adopted by the Supreme
21 Court of Florida.
22 (b) If the parties do not settle the case pursuant to
23 mediation, the last offer of the defendant made at mediation
24 shall be recorded by the mediator in a written report stating
25 the amount of the offer, the date it was made in writing and
26 the date it was rejected. If the matter subsequently proceeds
27 to trial under this section and the plaintiff prevails but is
28 awarded an amount in damages exclusive of attorneys' fees
29 equal to or less than the last offer made by the defendant at
30 mediation, then the plaintiff shall not be entitled to recover
31 any attorneys' fees.

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1 (c) This subsection shall apply only to claims for
2 liability and damages and shall not apply to an action for
3 injunctive relief.

4 (d) This subsection shall apply to all causes of
5 action accruing after July 1, 1998.

6 (7) Discovery of financial information for the
7 purposes of determining the value of punitive damages may not
8 be had unless the plaintiff shows the Court by proffer or
9 evidence in the record that a reasonable basis exists to
10 support a claim for punitive damages.

11 (8) Any award of punitive damages must be reasonable
12 in light of the harm suffered by the resident and the
13 egregiousness of the conduct causing the harm.

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15
16 ===== T I T L E A M E N D M E N T =====

17 And the title is amended as follows:

18 On page 1, line 2, after the semicolon

19
20
21 insert:

22 amending s. 400.023, F.S.; providing conditions
23 for the recovery of attorneys' fees with
24 respect to civil enforcement of certain
25 infractions related to nursing homes; providing
26 for application; providing for discovery;
27 providing for punitive damages;