

1                                   A bill to be entitled  
2           An act relating to punitive damages; amending  
3           s. 400.023, F.S.; providing conditions for the  
4           recovery of attorneys' fees with respect to  
5           civil enforcement of certain infractions  
6           related to nursing homes; providing for  
7           application; providing for discovery; providing  
8           for punitive damages; amending s. 768.72, F.S.;  
9           revising language with respect to claims for  
10          punitive damages in civil actions; requiring  
11          clear and convincing evidence of gross  
12          negligence or intentional misconduct to support  
13          the recovery of such damages; providing  
14          definitions; providing criteria for the  
15          imposition of punitive damages with respect to  
16          employers, principals, corporations, or other  
17          legal entities for the conduct of an employee  
18          or agent; providing for the application of the  
19          section; providing an exception; amending s.  
20          768.73, F.S.; revising language with respect to  
21          limitations on punitive damages; providing  
22          monetary limitations; providing an exception  
23          with respect to intentional misconduct;  
24          providing for consolidated punitive damages  
25          trials; providing for the effect of certain  
26          previous punitive damages awards; providing a  
27          limitation on attorney fees; providing for the  
28          application of the section; providing an  
29          exception; providing an effective date.  
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31   Be It Enacted by the Legislature of the State of Florida:

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

3           400.023 Civil enforcement.--

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

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

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

15           a. Agree on a mediator. If the parties cannot agree on  
16 a mediator, the defendant shall immediately notify the Court,  
17 which shall appoint a mediator within 10 days of such notice.

18           b. Set a date for mediation.

19           c. Prepare an order for the Court identifying the  
20 mediator, the scheduled date of the mediation and other terms  
21 of the mediation. Absent any disagreement between the parties,  
22 the Court may issue the order for the mediation submitted by  
23 the parties without hearing.

24           2. The mediation must be concluded within 120 days of  
25 the filing of responsive pleading or defensive motion. This  
26 date may be extended only by agreement of all parties subject  
27 to mediation under this subsection.

28           3. The mediation shall be conducted in the following  
29 manner:

30           a. Each party shall have present at the mediation all  
31 persons necessary to have complete settlement authority.

1           b. All parties shall mediate in good faith.

2           4. All aspects of the mediation not specifically  
3 established by this subsection shall be conducted according to  
4 the rules of practice and procedure adopted by the Supreme  
5 Court of Florida.

6           (b) If the parties do not settle the case pursuant to  
7 mediation, the last offer of the defendant made at mediation  
8 shall be recorded by the mediator in a written report stating  
9 the amount of the offer, the date it was made in writing and  
10 the date it was rejected. If the matter subsequently proceeds  
11 to trial under this section and the plaintiff prevails but is  
12 awarded an amount in damages exclusive of attorneys' fees  
13 equal to or less than the last offer made by the defendant at  
14 mediation, then the plaintiff shall not be entitled to recover  
15 any attorneys' fees.

16           (c) This subsection shall apply only to claims for  
17 liability and damages and shall not apply to an action for  
18 injunctive relief.

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

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

26           (8) Any award of punitive damages must be reasonable  
27 in light of the harm suffered by the resident and the  
28 egregiousness of the conduct causing the harm.

29           Section 2. Section 768.72, Florida Statutes, is  
30 amended to read:

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1           768.72 Pleading in civil actions; claim for punitive  
2 damages.--

3           (1) In any civil action, no claim for punitive damages  
4 shall be permitted unless there is a reasonable showing by  
5 evidence in the record or proffered by the claimant which  
6 would provide a reasonable basis for recovery of such damages.  
7 The claimant may move to amend her or his complaint to assert  
8 a claim for punitive damages as allowed by the rules of civil  
9 procedure. The rules of civil procedure shall be liberally  
10 construed so as to allow the claimant discovery of evidence  
11 which appears reasonably calculated to lead to admissible  
12 evidence on the issue of punitive damages. No discovery of  
13 financial worth shall proceed until after the pleading  
14 concerning punitive damages is permitted.

15           (2) A defendant may be held liable for punitive  
16 damages only if the trier of fact, based on clear and  
17 convincing evidence, finds that the defendant was personally  
18 guilty of intentional misconduct or gross negligence.

19           (a) "Intentional misconduct" means that the defendant  
20 had actual knowledge of the wrongfulness of the conduct and  
21 the high probability that injury or damage to the claimant  
22 would result and, despite that knowledge, intentionally  
23 pursued that course of conduct, resulting in injury or damage.

24           (b) "Gross negligence" means that the defendant's  
25 conduct was so reckless or wanting in care that it constituted  
26 a conscious disregard or indifference to the life, safety, or  
27 rights of persons exposed to such conduct.

28           (3) In the case of an employer, principal,  
29 corporation, or other legal entity, punitive damages may be  
30 imposed for the conduct of an employee or agent, only if the

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1 conduct of the employee or agent meets the criteria specified  
2 in subsection (2), and if:

3 (a) The employer, principal, corporation, or other  
4 legal entity actively and knowingly participated in such  
5 conduct; or

6 (b) The officers, directors, or managers of the  
7 employer, principal, corporation, or other legal entity  
8 knowingly condoned, ratified, or consented to such conduct; or

9 (c) The employer, principal, corporation, or other  
10 legal entity engaged in conduct which constituted gross  
11 negligence and which contributed to the loss, damages, or  
12 injury suffered by the claimant.

13 (4) The provisions of this section are remedial in  
14 nature and shall be applied to all civil actions pending on  
15 the effective date of this act in which the trial or retrial  
16 of the action has not commenced.

17 (5) The provisions of this section shall not apply  
18 with regard to any civil action based upon child abuse, abuse  
19 of the elderly, or abuse of the developmentally disabled, or  
20 arising under chapter 400.

21 Section 3. Section 768.73, Florida Statutes, is  
22 amended to read:

23 768.73 Punitive damages; limitation.--

24 (1)(a) In any civil action in which the judgment for  
25 compensatory damages is for \$50,000 or less, judgment for  
26 punitive damages awarded to a claimant may not exceed  
27 \$250,000, except as provided in paragraph (b). In any civil  
28 action in which the judgment for compensatory damages exceeds  
29 \$50,000, the judgment for punitive damages awarded to a  
30 claimant may not exceed three times the amount of compensatory  
31 damages or \$250,000, whichever is higher, except as provided

1 ~~in paragraph (b) based on negligence, strict liability,~~  
 2 ~~products liability, misconduct in commercial transactions,~~  
 3 ~~professional liability, or breach of warranty, and involving~~  
 4 ~~willful, wanton, or gross misconduct, the judgment for the~~  
 5 ~~total amount of punitive damages awarded to a claimant may not~~  
 6 ~~exceed three times the amount of compensatory damages awarded~~  
 7 ~~to each person entitled thereto by the trier of fact, except~~  
 8 ~~as provided in paragraph (b). However, this subsection does~~  
 9 ~~not apply to any class action.~~

10           (b) No award for punitive damages may exceed the  
 11 limitations ~~if any award for punitive damages exceeds the~~  
 12 ~~limitation specified in paragraph (a), the award is presumed~~  
 13 ~~to be excessive and the defendant is entitled to remittitur of~~  
 14 ~~the amount in excess of the limitation unless the claimant~~  
 15 ~~demonstrates to the court by clear and convincing evidence~~  
 16 ~~that the defendant engaged in intentional misconduct and that~~  
 17 ~~the award is not excessive in light of the facts and~~  
 18 ~~circumstances which were presented to the trier of fact.~~

19           (c) This subsection is not intended to prohibit an  
 20 appropriate court from exercising its jurisdiction under s.  
 21 768.74 in determining the reasonableness of an award of  
 22 punitive damages that is less than three times the amount of  
 23 compensatory damages.

24           (2)(a) If any defendant in any civil action determines  
 25 that it has been or may be subject to repetitive claims for  
 26 punitive damages arising out of the same act or course of  
 27 conduct, the defendant may move the court for a full  
 28 determination of the defendant's punitive damage liability for  
 29 all consequences of the act or course of conduct. Under such  
 30 circumstances, the issue of liability for punitive damages  
 31 shall be tried separately from the issue of liability for

1 compensatory damages. Evidence relating to whether punitive  
2 damages should be awarded and, if so, in what amount, shall  
3 not be admissible until the trier of fact has determined the  
4 amount of compensatory damages. The same trier of fact that  
5 tried the issues relating to compensatory damages shall try  
6 the issues relating to punitive damages. In the phase of the  
7 trial concerning punitive damages, if the trier of fact finds  
8 that punitive damages are warranted, the trier of fact should  
9 consider the national scope, if any, of the misconduct, the  
10 degree of wrongfulness and duration of any misconduct, the  
11 scope and severity of damages, the financial resources of the  
12 defendant, the number of persons harmed, the efforts made by  
13 defendant to eliminate or reduce the effects of the  
14 misconduct, as well as all other measures taken by the  
15 defendant to mitigate the misconduct and damages caused  
16 thereby. The court shall reduce any award of punitive damages  
17 by the amount of any previous punitive damages awards imposed  
18 against the defendant which arose out of the same act or  
19 course of conduct.

20 (b) As soon as practicable after the defendant moves  
21 for a consolidated punitive damages trial, or within a time  
22 frame set by the court, the defendant shall make reasonable  
23 efforts to compile a list of current and potential claimants  
24 who will share any punitive award. The defendant shall make  
25 reasonable efforts to identify and notify any persons or  
26 entities that have been impacted by the act or course of  
27 conduct under consideration in the punitive damages phase of  
28 the trial. Any punitive damages awarded during a trial under  
29 this subsection will, to the extent practicable, be equally  
30 distributed among current and potential claimants, in a manner  
31 to be decided by the trial court. Once a defendant's

1 liability for repetitive punitive damages has been determined  
2 under this subsection, no further punitive damages can be  
3 awarded in connection with the act or course of conduct  
4 covered in this trial.

5 (c) In a consolidated punitive damages trial, the  
6 claimants' aggregate attorney fee in regard to punitive  
7 damages shall be limited to 15 percent of the overall punitive  
8 damages award.

9 (3) If punitive damages have been awarded against a  
10 defendant three or more times before the effective date of  
11 this act in any state or federal court in actions alleging  
12 harm from the same act or course of conduct for which a  
13 claimant subsequently seeks compensatory damages, the court  
14 may conduct a hearing prior to trial to determine whether the  
15 previous awards are sufficient to address all consequences of  
16 the act or course of conduct. In making such determination the  
17 court shall consider the factors set forth in paragraph (2)(a)  
18 as well as whether any previous trier of fact considered the  
19 full scope of wrongful conduct and resulting harm. If the  
20 court determines that the previous awards are sufficient the  
21 punitive damage claim shall not be allowed.

22 (4) The provisions of this section are remedial in  
23 nature and shall be applied to all civil actions pending on  
24 the effective date of this act in which the trial or retrial  
25 of the action has not commenced.

26 (5)(2) The jury may neither be instructed nor informed  
27 as to the provisions of this section.

28 (6) The provisions of this section shall not apply  
29 with regard to any civil action based upon child abuse, abuse  
30 of the elderly, or abuse of the developmentally disabled, or  
31 arising under chapter 400.



1           Section 4. This act shall take effect October 1 of the  
2 year in which enacted.  
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