

Bill No. CS for SB 874

Amendment No.

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senators Silver, Cowin, Thomas, Horne, Kurth, Clary, Dyer,		
12	Williams, and Bronson moved the following amendment:		
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14	Senate Amendment (with title amendment)		
15	On page 16, between lines 21, and 22,		
16			
17	insert:		
18	Section 7. Subsections (6), (7), and (8) are added to		
19	section 400.023, Florida Statutes, to read:		
20	400.023 Civil enforcement.--		
21	<u>(6) To recover attorney's fees under this section, the</u>		
22	<u>following conditions precedent must be met:</u>		
23	<u>(a) Within 120 days after the filing of a responsive</u>		
24	<u>pleading or defensive motion to a complaint brought under this</u>		
25	<u>section and before trial, the parties or their designated</u>		
26	<u>representatives shall meet in mediation to discuss the issues</u>		
27	<u>of liability and damages in accordance with this paragraph for</u>		
28	<u>the purpose of an early resolution of the matter.</u>		
29	<u>1. Within 60 days after the filing of the responsive</u>		
30	<u>pleading or defensive motion, the parties shall:</u>		
31	<u>a. Agree on a mediator. If the parties cannot agree on</u>		

Bill No. CS for SB 874

Amendment No.

1 a mediator, the defendant shall immediately notify the court,
2 which shall appoint a mediator within 10 days after such
3 notice.

4 b. Set a date for mediation.

5 c. Prepare an order for the court that identifies the
6 mediator, the scheduled date of the mediation, and other terms
7 of the mediation. Absent any disagreement between the parties,
8 the court may issue the order for the mediation submitted by
9 the parties without a hearing.

10 2. The mediation must be concluded within 120 days
11 after the filing of a responsive pleading or defensive motion.
12 The date may be extended only by agreement of all parties
13 subject to mediation under this subsection.

14 3. The mediation shall be conducted in the following
15 manner:

16 a. Each party shall ensure that all persons necessary
17 for complete settlement authority are present at the
18 mediation.

19 b. Each party shall mediate in good faith.

20 4. All aspects of the mediation which are not
21 specifically established by this subsection must be conducted
22 according to the rules of practice and procedure adopted by
23 the Supreme Court of this state.

24 (b) If the parties do not settle the case pursuant to
25 mediation, the last offer of the defendant made at mediation
26 shall be recorded by the mediator in a written report that
27 states the amount of the offer, the date the offer was made in
28 writing, and the date the offer was rejected. If the matter
29 subsequently proceeds to trial under this section and the
30 plaintiff prevails but is awarded an amount in damages,
31 exclusive of attorney's fees, which is equal to or less than

Bill No. CS for SB 874

Amendment No. ____

1 the last offer made by the defendant at mediation, the
2 plaintiff is not entitled to recover any attorney's fees.

3 (c) This subsection applies only to claims for
4 liability and damages and does not apply to actions for
5 injunctive relief.

6 (d) This subsection applies to all causes of action
7 that accrue on or after October 1, 1998.

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

13 (8) In addition to any other standards for punitive
14 damages, any award of punitive damages must be reasonable in
15 light of the actual harm suffered by the resident and the
16 egregiousness of the conduct that caused the actual harm to
17 the resident.

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19

20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 On page 2, line 5, after the semicolon,

23

24 insert:

25 amending s. 400.023, F.S., relating to actions
26 brought on behalf of nursing home residents;
27 providing that a party to any such action may
28 not recover attorney's fees unless the parties
29 submit to mediation; specifying requirements
30 for such mediation; providing for application;
31 providing a standard for any award of punitive

Bill No. CS for SB 874

Amendment No. ____

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