

Bill No. CS for SB 374

Amendment No.

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senators Latvala and Gutman moved the following amendment:

Senate Amendment (with title amendment)

On page 25, between lines 28 and 29,

insert:

Section 14. Subsections (6), (7), and (8) are added to section 400.023, Florida Statutes, to read:

400.023 Civil enforcement.--

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

(a) Within 120 days after the filing of a responsive pleading or defensive motion to a complaint brought under 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 this paragraph for the purpose of an early resolution of the matter.

1. Within 60 days after the filing of the responsive pleading or defensive motion, the parties shall:

a. Agree on a mediator. If the parties cannot agree on a mediator, the defendant shall immediately notify the court,

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1 which shall appoint a mediator within 10 days after such
2 notice.

3 b. Set a date for mediation.

4 c. Prepare an order for the court that identifies 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 a hearing.

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

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

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

18 b. Each party shall mediate in good faith.

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

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

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1 plaintiff is not entitled to recover any attorney's fees.

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

5 (d) This subsection applies to all causes of action
6 that accrue on or after October 1, 1999.

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

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

17
18 (Redesignate subsequent sections.)

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20

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

22 And the title is amended as follows:

23 On page 3, line 18, after the semicolon,

24

25 insert:

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

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providing a standard for any award of punitive
damages;