

hbd-08 Bill No. CS for CS for CS for SB 1202, 2nd Eng.
Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Gelber and Heyman offered the following:

Amendment to Amendment (341895)

On page 19, line 18, through page 24, line 20
remove from the amendment: all of said lines

and insert in lieu thereof:

Section 9. Section 400.0237, Florida Statutes, is
created to read:

400.0237 Punitive damages; pleading; burden of
proof.--

(1) In any action for damages brought under this part,
no claim for punitive damages shall be permitted unless there
is a reasonable showing by evidence in the record or proffered
by the claimant which would provide a reasonable basis for
recovery of such damages. The claimant may move to amend her
or his complaint to assert a claim for punitive damages as
allowed by the rules of civil procedure. The rules of civil
procedure shall be liberally construed so as to allow the
claimant discovery of evidence which appears reasonably
calculated to lead to admissible evidence on the issue of

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1 punitive damages. No discovery of financial worth shall
2 proceed until after the pleading concerning punitive damages
3 is permitted.

4 (2) A defendant may be held liable for punitive
5 damages only if the trier of fact, based on clear and
6 convincing evidence, finds that the defendant was personally
7 guilty of intentional misconduct or gross negligence. As used
8 in this section, the term:

9 (a) "Intentional misconduct" means that the defendant
10 had actual knowledge of the wrongfulness of the conduct and
11 the high probability that injury or damage to the claimant
12 would result and, despite that knowledge, intentionally
13 pursued that course of conduct, resulting in injury or damage.

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

18 (3) In the case of an employer, principal,
19 corporation, or other legal entity, punitive damages may be
20 imposed for the conduct of an employee or agent only if the
21 conduct of the employee or agent meets the criteria specified
22 in subsection (2) and:

23 (a) The employer, principal, corporation, or other
24 legal entity actively participated in such conduct;

25 (b) The officers, directors, or managers of the
26 employer, principal, corporation, or other legal entity
27 condoned, ratified, or consented to such conduct; or

28 (c) The employer, principal, corporation, or other
29 legal entity engaged in conduct that constituted gross
30 negligence and that contributed to the loss, damages, or
31 injury suffered by the claimant.

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1 (4) The plaintiff must establish at trial, by clear
2 and convincing evidence, its entitlement to an award of
3 punitive damages. The "greater weight of the evidence" burden
4 of proof applies to a determination of the amount of damages.

5 Section 10. Section 400.0238, Florida Statutes, is
6 created to read:

7 400.0238 Punitive damages; limitation.--

8 (1)(a) Except as provided in paragraphs (b) and (c),
9 an award of punitive damages may not exceed the greater of:

10 1. Three times the amount of compensatory damages
11 awarded to each claimant entitled thereto, consistent with the
12 remaining provisions of this section; or

13 2. The sum of \$1 million.

14 (b) Where the fact finder determines that the
15 unreasonably dangerous nature of the conduct, together with
16 the high likelihood of injury resulting from the conduct, was
17 actually known or should have been known by the managing
18 agent, director, officer, or other person responsible for
19 making policy decisions on behalf of the defendant, it may
20 award an amount of punitive damages not to exceed the greater
21 of:

22 1. Four times the amount of compensatory damages
23 awarded to each claimant entitled thereto, consistent with the
24 remaining provisions of this section; or

25 2. The sum of \$4 million.

26 (c) Where the fact finder determines that at the time
27 of injury the defendant had a specific intent to harm the
28 claimant or that the defendant acted so recklessly or wantonly
29 that it constituted a conscious disregard or indifference to
30 the life, safety, or rights of persons exposed to such
31 conduct, and determines that the defendant's conduct did in

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1 fact harm the claimant, there shall be no cap on punitive
2 damages.

3 (d) This subsection is not intended to prohibit an
4 appropriate court from exercising its jurisdiction under s.
5 768.74 in determining the reasonableness of an award of
6 punitive damages that is less than three times the amount of
7 compensatory damages.

8 (e) In any case in which the findings of fact support
9 an award of punitive damages pursuant to paragraph (b) or
10 paragraph (c), the clerk of the court shall refer the case to
11 the appropriate law enforcement agencies, to the state
12 attorney in the circuit where the long-term care facility that
13 is the subject of the underlying civil cause of action is
14 located, and, for multijurisdictional facility owners, to the
15 Office of the Statewide Prosecutor; and such agencies, state
16 attorney, or Office of the Statewide Prosecutor shall initiate
17 a criminal investigation into the conduct giving rise to the
18 award of punitive damages. All findings by the trier of fact
19 which support an award of punitive damages under this
20 paragraph shall be admissible as evidence in any subsequent
21 civil or criminal proceeding relating to the acts giving rise
22 to the award of punitive damages under this paragraph.

23 (2) The claimant's attorney's fees, if payable from
24 the judgment, are, to the extent that the fees are based on
25 the punitive damages, calculated based on the final judgment
26 for punitive damages. This subsection does not limit the
27 payment of attorney's fees based upon an award of damages
28 other than punitive damages.

29 (3) The jury may neither be instructed nor informed as
30 to the provisions of this section.

31 (4) Any nursing home facility that has been designated

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1 a gold seal facility pursuant to s. 400.235 at the time of the
2 incident that is the subject of a civil action shall be
3 permitted to present such fact to a judge or jury in the
4 damages phase of the hearing pursuant to this section.

5 Section 11. Subsection (1) and paragraph (a) of
6 subsection (2) of section 768.735, Florida Statutes, are
7 amended to read:

8 768.735 Punitive damages; exceptions; limitation.--

9 (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not
10 apply to any civil action based upon child abuse, abuse of the
11 elderly under chapter 415, or abuse of the developmentally
12 disabled ~~or any civil action arising under chapter 400~~. Such
13 actions are governed by applicable statutes and controlling
14 judicial precedent. This section does not apply to claims
15 brought pursuant to s. 400.023 or s. 400.429.

16 (2)(a) In any civil action based upon child abuse,
17 abuse of the elderly under chapter 415, or abuse of the
18 developmentally disabled, ~~or actions arising under chapter 400~~
19 and involving the award of punitive damages, the judgment for
20 the total amount of punitive damages awarded to a claimant may
21 not exceed three times the amount of compensatory damages
22 awarded to each person entitled thereto by the trier of fact,
23 except as provided in paragraph (b). This subsection does not
24 apply to any class action.

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