

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 97, line 7, through page 101, line 18,  
remove from the amendment: all of said lines

and insert in lieu thereof:

Section 43. Section 400.4297, Florida Statutes, is  
created to read:

400.4297 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 44. Section 400.4298, Florida Statutes, is  
6 created to read:

7 400.4298 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 assisted living facility that has been

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