

Amendment No. 01b (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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2		.	
3		.	
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ORIGINAL STAMP BELOW

11 The Council for Ready Infrastructure offered the following:

13 **Amendment (with title amendment)**

14 On page 14, line 16 through page 38, line 16
15 remove from the bill: all of said lines

17 and insert in lieu thereof:

18 Section 4. Effective July 1, 2001, and applying to
19 causes of action accruing on or after that date, section
20 400.023, Florida Statutes, is amended to read:

21 400.023 Civil enforcement.--

22 (1) Any resident whose rights as specified in this
23 part are violated ~~deprived or infringed upon~~ shall have a
24 cause of action for long-term care facility negligence ~~against~~
25 ~~any licensee responsible for the violation~~. The action may be
26 brought by the resident or his or her guardian, by a person or
27 organization acting on behalf of a resident with the consent
28 of the resident or his or her guardian, or by the personal
29 representative of the estate of a deceased resident regardless
30 of the cause of death. If the action alleges a claim for the
31 resident's rights or for negligence that caused the death of

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1 the resident, the claimant shall be required to elect either
2 survival damages pursuant to s. 46.021 or wrongful death
3 damages pursuant to s. 768.21 ~~when the cause of death resulted~~
4 ~~from the deprivation or infringement of the decedent's rights.~~
5 If the action alleges a claim for the resident's rights or for
6 negligence that did not cause the death of the resident, the
7 personal representative of the estate may recover damages for
8 the negligence that caused injury to the resident.The action
9 may be brought in any court of competent jurisdiction to
10 enforce such rights and to recover actual and punitive damages
11 for any violation of deprivation or infringement on the rights
12 of a resident or for negligence. Any resident who prevails in
13 seeking injunctive relief or a claim for an administrative
14 remedy is entitled to recover the costs of the action, and a
15 reasonable attorney's fee assessed against the defendant not
16 to exceed \$25,000. Fees shall be awarded solely for the
17 injunctive or administrative relief and not for any claim or
18 action for damages whether such claim or action is brought
19 together with a request for an injunction or administrative
20 relief or as a separate action, except as provided under s.
21 768.79 or the Florida Rules of Civil Procedure.Any plaintiff
22 who prevails in any such action may be entitled to recover
23 ~~reasonable attorney's fees, costs of the action, and damages,~~
24 ~~unless the court finds that the plaintiff has acted in bad~~
25 ~~faith, with malicious purpose, and that there was a complete~~
26 ~~absence of a justiciable issue of either law or fact.~~
27 ~~Prevailing defendants may be entitled to recover reasonable~~
28 ~~attorney's fees pursuant to s. 57.105.~~The remedies provided
29 in this section are in addition to and cumulative with other
30 legal and administrative remedies available to a resident and
31 to the agency. Sections 400.023-400.0238 provide the

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1 exclusive remedy for a cause of action for recovery of damages
2 for the personal injury or death of a nursing home resident
3 arising out of negligence or violation of rights specified in
4 s. 400.022. This section shall not be construed as precluding
5 theories of recovery not arising out of negligence or s.
6 400.022 that are available to a resident or to the agency.
7 The provisions of chapter 766 do not apply to any cause of
8 action brought under ss. 400.023-400.0238.

9 (2) In any claim for long-term care facility
10 negligence causing injury to or the death of a resident, the
11 claimant shall have the burden of proving, by a preponderance
12 of the evidence, that:

13 (a) The defendant owed a duty to the resident;

14 (b) The defendant breached the duty to the resident;

15 (c) The breach of the duty is a legal cause of loss,
16 injury, death or damage to the resident; and

17 (d) The resident sustained loss, injury, death or
18 damage as a result of the breach.

19
20 Nothing in this part shall be interpreted to create strict
21 liability. A violation of the rights set forth in s. 400.022
22 or in any other standard or guidelines specified in this part
23 or in any applicable administrative standard or guidelines of
24 this state or a federal regulatory agency shall be evidence of
25 negligence but shall not be considered negligence per se.

26 ~~(2) Attorneys' fees shall be based on the following~~
27 ~~criteria:~~

28 ~~(a) The time and labor required;~~

29 ~~(b) The novelty and difficulty of the questions;~~

30 ~~(c) The skill requisite to perform the legal service~~
31 ~~properly;~~

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- 1 ~~(d) The preclusion of other employment by the attorney~~
2 ~~due to the acceptance of the case;~~
- 3 ~~(e) The customary fee;~~
- 4 ~~(f) Whether the fee is fixed or contingent;~~
- 5 ~~(g) The amount involved or the results obtained;~~
- 6 ~~(h) The experience, reputation, and ability of the~~
7 ~~attorneys;~~
- 8 ~~(i) The costs expended to prosecute the claim;~~
- 9 ~~(j) The type of fee arrangement between the attorney~~
10 ~~and the client;~~
- 11 ~~(k) Whether the relevant market requires a contingency~~
12 ~~fee multiplier to obtain competent counsel;~~
- 13 ~~(l) Whether the attorney was able to mitigate the risk~~
14 ~~of nonpayment in any way.~~
- 15 (3) In any claim for long-term care facility
16 negligence, a licensee, person or entity shall have a duty to
17 exercise reasonable care. Reasonable care is that degree of
18 care which a reasonably careful licensee, person or entity
19 would use under like circumstances.
- 20 (4) In any claim for long-term care facility
21 negligence, a nurse licensed under part I of chapter 464 shall
22 have the duty to exercise care consistent with the prevailing
23 professional standard of care for a nurse. The prevailing
24 professional standard of care for a nurse shall be that level
25 of care, skill, and treatment which, in light of all relevant
26 surrounding circumstances is recognized as acceptable and
27 appropriate by reasonably prudent similar nurses.
- 28 ~~(5)(3)~~ A licensee, person, or entity shall not be
29 liable for the medical negligence of any physician rendering
30 care or treatment to the resident except for the
31 administrative services of a medical director as required in

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1 this part. Nothing in this subsection shall be construed to
2 protect a licensee, person, or entity from liability for
3 failure to provide a resident with appropriate observation,
4 assessment, nursing diagnosis, planning, intervention, and
5 evaluation of care by nursing staff.

6 (6) the resident or their legal representative shall
7 serve a copy of any complaint, alleging in whole or in part,
8 the violation of any rights specified in this part to the
9 Agency for Health Care Administration at the time of filing
10 the initial complaint with the Clerk of the Court for the
11 county in which the action is pursued.

12 ~~(4) Claimants alleging a deprivation or infringement~~
13 ~~of adequate and appropriate health care pursuant to s.~~
14 ~~400.022(1)(k) which resulted in personal injury to or the~~
15 ~~death of a resident shall conduct an investigation which shall~~
16 ~~include a review by a licensed physician or registered nurse~~
17 ~~familiar with the standard of nursing care for nursing home~~
18 ~~residents pursuant to this part. Any complaint alleging such~~
19 ~~a deprivation or infringement shall be accompanied by a~~
20 ~~verified statement from the reviewer that there exists reason~~
21 ~~to believe that a deprivation or infringement occurred during~~
22 ~~the resident's stay at the nursing home. Such opinion shall~~
23 ~~be based on records or other information available at the time~~
24 ~~that suit is filed. Failure to provide records in accordance~~
25 ~~with the requirements of this chapter shall waive the~~
26 ~~requirement of the verified statement.~~

27 ~~(5) For the purpose of this section, punitive damages~~
28 ~~may be awarded for conduct which is willful, wanton, gross or~~
29 ~~flagrant, reckless, or consciously indifferent to the rights~~
30 ~~of the resident.~~

31 ~~(6) To recover attorney's fees under this section, the~~

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- 1 ~~following conditions precedent must be met:~~
- 2 ~~(a) Within 120 days after the filing of a responsive~~
- 3 ~~pleading or defensive motion to a complaint brought under this~~
- 4 ~~section and before trial, the parties or their designated~~
- 5 ~~representatives shall meet in mediation to discuss the issues~~
- 6 ~~of liability and damages in accordance with this paragraph for~~
- 7 ~~the purpose of an early resolution of the matter.~~
- 8 ~~1. Within 60 days after the filing of the responsive~~
- 9 ~~pleading or defensive motion, the parties shall:~~
- 10 ~~a. Agree on a mediator. If the parties cannot agree on~~
- 11 ~~a mediator, the defendant shall immediately notify the court,~~
- 12 ~~which shall appoint a mediator within 10 days after such~~
- 13 ~~notice.~~
- 14 ~~b. Set a date for mediation.~~
- 15 ~~c. Prepare an order for the court that identifies the~~
- 16 ~~mediator, the scheduled date of the mediation, and other terms~~
- 17 ~~of the mediation. Absent any disagreement between the parties,~~
- 18 ~~the court may issue the order for the mediation submitted by~~
- 19 ~~the parties without a hearing.~~
- 20 ~~2. The mediation must be concluded within 120 days~~
- 21 ~~after the filing of a responsive pleading or defensive motion.~~
- 22 ~~The date may be extended only by agreement of all parties~~
- 23 ~~subject to mediation under this subsection.~~
- 24 ~~3. The mediation shall be conducted in the following~~
- 25 ~~manner:~~
- 26 ~~a. Each party shall ensure that all persons necessary~~
- 27 ~~for complete settlement authority are present at the~~
- 28 ~~mediation.~~
- 29 ~~b. Each party shall mediate in good faith.~~
- 30 ~~4. All aspects of the mediation which are not~~
- 31 ~~specifically established by this subsection must be conducted~~

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1 ~~according to the rules of practice and procedure adopted by~~
2 ~~the Supreme Court of this state.~~

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

13 ~~(c) This subsection applies only to claims for~~
14 ~~liability and damages and does not apply to actions for~~
15 ~~injunctive relief.~~

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

18 ~~(7) Discovery of financial information for the purpose~~
19 ~~of determining the value of punitive damages may not be had~~
20 ~~unless the plaintiff shows the court by proffer or evidence in~~
21 ~~the record that a reasonable basis exists to support a claim~~
22 ~~for punitive damages.~~

23 ~~(8) In addition to any other standards for punitive~~
24 ~~damages, any award of punitive damages must be reasonable in~~
25 ~~light of the actual harm suffered by the resident and the~~
26 ~~egregiousness of the conduct that caused the actual harm to~~
27 ~~the resident.~~

28 Section 5. Effective July 1, 2001, and applying to
29 causes of action accruing on or after that date, section
30 400.0233, Florida Statutes, is created to read:

31 400.0233 Presuit notice; investigation; notification

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1 of violation of resident's rights or alleged negligence;
2 claims evaluation procedure; informal discovery; review.--

3 (1) As used in this section, the term:

4 (a) "Claim for long-term care facility negligence"
5 means a negligence claim alleging injury to or the death of a
6 resident arising out of an asserted violation of the rights of
7 a resident under s. 400.022 or an asserted deviation from the
8 applicable standard of care.

9 (b) "Insurer" means any self-insurer authorized under
10 s. 627.357, liability insurance carrier, Joint Underwriting
11 Association, or any uninsured prospective defendant.

12 (2) Prior to filing a claim for long-term care
13 facility negligence, a claimant alleging injury to or the
14 death of a resident shall notify each prospective defendant by
15 certified mail, return receipt requested, of an asserted
16 violation of a resident's rights provided in s. 400.022 or
17 deviation from the standard of care. Such notification shall
18 include an identification of the rights the prospective
19 defendant has violated and the negligence alleged to have
20 caused the incident or incidents and a brief description of
21 the injuries sustained by the resident which are reasonably
22 identifiable at the time of notice. The notice shall contain a
23 certificate of counsel that counsel's reasonable investigation
24 gave rise to a good-faith belief that grounds exist for an
25 action against each prospective defendant.

26 (3)(a) No suit may be filed for a period of 75 days
27 after notice is mailed to any prospective defendant. During
28 the 75-day period, the prospective defendants or their
29 insurers shall conduct an evaluation of the claim to determine
30 the liability of each defendant and to evaluate the damages of
31 the claimants. Each defendant or insurer of the defendant

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1 shall have a procedure for the prompt evaluation of claims
2 during the 75-day period. The procedure shall include one or
3 more of the following:

4 1. Internal review by a duly qualified facility risk
5 manager or claims adjuster;

6 2. Internal review by counsel for each prospective
7 defendant;

8 3. A quality assurance committee authorized under any
9 applicable state or federal statutes or regulations;

10 4. Any other similar procedure that fairly and
11 promptly evaluates the claims.

12
13 Each defendant or insurer of the defendant shall evaluate the
14 claim in good faith.

15 (b) At or before the end of the 75 days, the defendant
16 or insurer of the defendant shall provide the claimant with a
17 written response:

18 1. Rejecting the claim; or

19 2. Making a settlement offer.

20 (c) The response shall be delivered to the claimant if
21 not represented by counsel or to the claimant's attorney, by
22 certified mail, return receipt requested. Failure of the
23 prospective defendant or insurer of the defendant to reply to
24 the notice within 75 days after receipt shall be deemed a
25 rejection of the claim for purposes of this section.

26 (4) The notification of a claim for long-term care
27 facility negligence shall be served within the applicable
28 statute of limitations period; however, during the 75-day
29 period, the statute of limitations is tolled as to all
30 prospective defendants. Upon stipulation by the parties, the
31 75-day period may be extended and the statute of limitations

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1 is tolled during any such extension. Upon receiving written
2 notice by certified mail, return receipt requested, of
3 termination of negotiations in an extended period, the
4 claimant shall have 60 days or the remainder of the period of
5 the statute of limitations, whichever is greater, within which
6 to file suit.

7 (5) No statement, discussion, written document,
8 report, or other work product generated by presuit claims
9 evaluation procedures under this section is discoverable or
10 admissible in any civil action for any purpose by the opposing
11 party. All participants, including, but not limited to,
12 physicians, investigators, witnesses, and employees or
13 associates of the defendant, are immune from civil liability
14 arising from participation in the presuit claims evaluation
15 procedure. Any licensed physician or registered nurse may be
16 retained by either party to provide an opinion regarding the
17 reasonable basis of the claim. The presuit opinions of the
18 expert are not discoverable or admissible in any civil action
19 for any purpose by the opposing party.

20 (6) Upon receipt by a prospective defendant of a
21 notice of claim, the parties shall make discoverable
22 information available without formal discovery as provided in
23 subsection (7).

24 (7) Informal discovery may be used by a party to
25 obtain unsworn statements and the production of documents or
26 things as follows:

27 (a) Unsworn statements.--Any party may require other
28 parties to appear for the taking of an unsworn statement.
29 Such statements may be used only for the purpose of claims
30 evaluation and are not discoverable or admissible in any civil
31 action for any purpose by any party. A party seeking to take

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1 the unsworn statement of any party must give reasonable notice
2 in writing to all parties. The notice must state the time and
3 place for taking the statement and the name and address of the
4 party to be examined. Unless otherwise impractical, the
5 examination of any party must be done at the same time by all
6 other parties. Any party may be represented by counsel at the
7 taking of an unsworn statement. An unsworn statement may be
8 recorded electronically, stenographically, or on videotape.
9 The taking of unsworn statements is subject to the provisions
10 of the Florida Rules of Civil Procedure and may be terminated
11 for abuses.

12 (b) Documents or things.--Any party may request
13 discovery of relevant documents or things. The documents or
14 things must be produced, at the expense of the requesting
15 party, within 20 days after the date of receipt of the
16 request. A party is required to produce relevant and
17 discoverable documents or things within that party's
18 possession or control, if in good faith it can reasonably be
19 done within the timeframe of the claims evaluation process.

20 (8) Each request for and notice concerning informal
21 discovery pursuant to this section must be in writing, and a
22 copy thereof must be sent to all parties. Such a request or
23 notice must bear a certificate of service identifying the name
24 and address of the person to whom the request or notice is
25 served, the date of the request or notice, and the manner of
26 service thereof.

27 (9) If a prospective defendant makes a written
28 settlement offer, the claimant shall have 15 days from the
29 date of receipt to accept the offer. An offer shall be deemed
30 rejected unless accepted by delivery of a written notice of
31 acceptance.

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1 (10) To the extent not inconsistent with this part,
2 the provisions of the Florida Mediation Code, Florida Rules of
3 Civil Procedure, shall be applicable to such proceedings.

4 (11) Within 30 days after the claimant's receipt of
5 the defendant's response to the claim, the parties or their
6 designated representatives shall meet in mediation to discuss
7 the issues of liability and damages in accordance with the
8 mediation rules of practice and procedures adopted by the
9 Supreme Court. Upon stipulation of the parties, this 30-day
10 period may be extended and the statute of limitations is
11 tolled during the mediation and any such extension. At the
12 conclusion of mediation the claimant shall have 60 days or the
13 remainder of the period of the statute of limitations,
14 whichever is greater, within which to file suit.

15 Section 6. Effective July 1, 2001, and applying to
16 causes of action accruing on or after that date, section
17 400.0234, Florida Statutes, is created to read:

18 400.0234 Availability of facility records for
19 investigation of resident's rights violations and defenses;
20 penalty.--

21 (1) Failure to provide complete copies of a resident's
22 records including, but not limited to, all medical records and
23 the resident's chart, within the control or possession of the
24 facility in accordance with s. 400.145 shall constitute
25 evidence of failure of that party to comply with good-faith
26 discovery requirements and shall waive the good-faith
27 certificate and presuit notice requirements under this part by
28 the requesting party.

29 (2) No facility shall be held liable for any civil
30 damages as a result of complying with this section.

31 Section 7. Effective July 1, 2001, and applying to

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1 causes of action accruing on or after that date, section
2 400.0235, Florida Statutes, is created to read:
3 400.0235 Certain provisions not applicable to claims
4 for long-term care facility negligence.--A claim for long-term
5 care facility negligence is not a claim for medical
6 malpractice, and the provisions of s. 768.21(8) do not apply
7 to a claim alleging death of the resident.

8 Section 8. Effective July 1, 2001, section 400.0236,
9 Florida Statutes, is created to read:

10 400.0236 Statute of limitations.--

11 (1) Any claim for long-term care facility negligence
12 shall be commenced within 2 years from the time the incident
13 giving rise to the action occurred or within 2 years from the
14 time the incident is discovered or should have been discovered
15 with the exercise of due diligence; however, in no event shall
16 the action be commenced later than 4 years from the date of
17 the incident or occurrence out of which the cause of action
18 accrued.

19 (2) In those actions covered by this subsection in
20 which it can be shown that fraudulent concealment or
21 intentional misrepresentation of fact prevented the discovery
22 of the injury, the period of limitations is extended forward 2
23 years from the time that the injury is discovered with the
24 exercise of due diligence, but in no event for more than 6
25 years from the date the incident giving rise to the injury
26 occurred.

27 (3) This section shall apply to causes of action that
28 have accrued prior to the effective date of this section;
29 however, any such cause of action that would not have been
30 barred under prior law may be brought within the time allowed
31 by prior law or within 2 years after the effective date of

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1 this section, whichever is earlier, and will be barred
2 thereafter. In actions where it can be shown that fraudulent
3 concealment or intentional misrepresentation of fact prevented
4 the discovery of the injury, the period of limitations is
5 extended forward 2 years from the time that the injury is
6 discovered with the exercise of due diligence but in no event
7 more than 4 years from the effective date of this section.

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

10 400.0237 Punitive damages; pleading; burden of
11 proof.--

12 (1) In any claim for long-term care facility
13 negligence, no claim for punitive damages shall be permitted
14 unless there is a reasonable showing by evidence in the record
15 or proffered by the claimant which would provide a reasonable
16 basis for recovery of such damages. The claimant may move to
17 amend her or his complaint to assert a claim for punitive
18 damages as allowed by the rules of civil procedure. The rules
19 of civil procedure shall be liberally construed so as to allow
20 the claimant discovery of evidence which appears reasonably
21 calculated to lead to admissible evidence on the issue of
22 punitive damages. No discovery of financial worth shall
23 proceed until after the pleading concerning punitive damages
24 is permitted.

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

30 (a) "Intentional misconduct" means that the defendant
31 had actual knowledge of the wrongfulness of the conduct and

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1 the high probability that injury or damage to the claimant
2 would result and, despite that knowledge, intentionally
3 pursued that course of conduct, resulting in injury or damage.

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

8 (3) In the case of an employer, principal,
9 corporation, or other legal entity, punitive damages may be
10 imposed for the conduct of an employee or agent only if the
11 conduct of the employee or agent meets the criteria specified
12 in subsection (2) and:

13 (a) The employer, principal, corporation, or other
14 legal entity actively and knowingly participated in such
15 conduct;

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

19 (c) The employer, principal, corporation, or other
20 legal entity engaged in conduct that constituted gross
21 negligence and that contributed to the loss, damages, or
22 injury suffered by the claimant.

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

27 (5) This section is remedial in nature and shall take
28 effect upon becoming a law.

29 Section 10. Section 400.0238, Florida Statutes, is
30 created to read:

31 400.0238 Punitive damages; limitation.--

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1 (1)(a) Except as provided in paragraph (b), an award
2 of punitive damages may not exceed the greater of:

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

6 2. The sum of \$1 million.

7 (b) Where the fact finder determines beyond a
8 reasonable doubt that at the time of injury the wrongful
9 conduct proven under this section was motivated primarily by
10 unreasonable financial gain and determines that the
11 unreasonably dangerous nature of the conduct, together with
12 the high likelihood of injury resulting from the conduct, was
13 actually known by the managing agent, director, officer, or
14 other person responsible for making policy decisions on behalf
15 of the defendant, or at the time of injury the defendant had a
16 specific intent to harm the claimant and the finder of fact
17 determines by clear and convincing evidence that the
18 defendant's conduct did in fact harm the claimant, there shall
19 be no cap on punitive damages.

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

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

31 (3) The jury may neither be instructed nor informed as

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1 to the provisions of this section.

2 (4) This section is remedial in nature and shall take
3 effect upon becoming a law.

4 Section 11. Subsection (1) and paragraph (a) of
5 subsection (2) of section 768.735, Florida Statutes, are
6 amended and subsection (3) is added to that section to read:

7 768.735 Punitive damages; exceptions; limitation.--

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

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

24 (3) This section is remedial in nature and shall take
25 effect upon becoming a law.

26 Section 12. Section 415.1111, Florida Statutes, is
27 amended to read:

28 415.1111 Civil actions.--A vulnerable adult who has
29 been abused, neglected, or exploited as specified in this
30 chapter has a cause of action against any perpetrator and may
31 recover actual and punitive damages for such abuse, neglect,

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1 or exploitation. The action may be brought by the vulnerable
2 adult, or that person's guardian, by a person or organization
3 acting on behalf of the vulnerable adult with the consent of
4 that person or that person's guardian, or by the personal
5 representative of the estate of a deceased victim without
6 regard to whether the cause of death resulted from the abuse,
7 neglect, or exploitation. The action may be brought in any
8 court of competent jurisdiction to enforce such action and to
9 recover actual and punitive damages for any deprivation of or
10 infringement on the rights of a vulnerable adult. A party who
11 prevails in any such action may be entitled to recover
12 reasonable attorney's fees, costs of the action, and damages.
13 The remedies provided in this section are in addition to and
14 cumulative with other legal and administrative remedies
15 available to a vulnerable adult. Notwithstanding the
16 foregoing, any civil action for damages against any licensee
17 or entity who establishes, controls, conducts, manages, or
18 operates a facility licensed under part II of chapter 400
19 relating to its operation of the licensed facility shall be
20 brought as a claim for long-term care facility negligence, or
21 against any licensee or entity who establishes, controls,
22 conducts, manages, or operates a facility licensed under part
23 III of chapter 400 relating to its operation of the licensed
24 facility shall be brought as a claim for long-term care
25 facility negligence. Such licensee or entity shall not be
26 vicariously liable for the acts or omissions of its employees
27 or agents or any other third party in an action brought under
28 this section.

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

2 And the title is amended as follows:

3 On page 1, line 16 through page 3, line 11
4 remove from the title of the bill: all of said lines

5

6 and insert in lieu thereof:

7 providing penalties; amending s. 400.023, F.S.;
8 providing for election of survival damages,
9 wrongful death damages, or recovery for
10 negligence; providing for attorney's fees for
11 injunctive relief or administrative remedy;
12 providing that ch. 766, F.S., does not apply to
13 actions under this section; providing burden of
14 proof; providing that a violation of a right is
15 not negligence per se; prescribing the duty of
16 care; prescribing a nurse's duty of care;
17 eliminating presuit provisions; eliminating the
18 requirement for presuit mediation; requiring a
19 copy of complaint to be served on Agency;
20 creating s. 400.0233, F.S; providing for
21 presuit notice; prohibiting the filing of suit
22 for a specified time; requiring a response to
23 the notice; tolling the statute of limitations;
24 limiting discovery of presuit investigation
25 documents; limiting liability of presuit
26 investigation participants; authorizing the
27 obtaining of opinions from a nurse or doctor;
28 authorizing the obtaining of unsworn
29 statements; authorizing discovery of relevant
30 documents; prescribing the time for acceptance
31 of settlement offers; requiring mediation;

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1 prescribing the time to file suit; creating s.
2 400.0234, F.S.; requiring the availability of
3 facility records for presuit investigation;
4 specifying the records to be made available;
5 specifying what constitutes evidence of failure
6 to make records available in good faith;
7 specifying the consequences of such failure;
8 creating s. 400.0235, F.S.; providing that the
9 provisions of s. 768.21(8), F.S., do not apply
10 to actions under part II of ch. 400, F.S.;
11 creating s. 400.0236, F.S.; providing a statute
12 of limitations; providing a statute of
13 limitations when there is fraudulent
14 concealment or intentional misrepresentation of
15 fact; providing for application of the statute
16 of limitation to accrued actions; creating s.
17 400.0237, F.S.; requiring evidence of the basis
18 for punitive damages; prohibiting discovery
19 relating to financial worth; providing for
20 proof of punitive damages; defining the terms
21 "intentional misconduct" and "gross
22 negligence"; prescribing criteria governing
23 employers' liability for punitive damages;
24 providing for the remedial nature of
25 provisions; creating s. 400.0238, F.S.;
26 prescribing limits on the amount of punitive
27 damages; providing for the calculation of
28 attorney's fees; amending s. 768.735, F.S.;
29 providing that the section is inapplicable to
30 actions brought under ch. 400, F.S.; amending
31 s. 415.1111, F.S.; limiting actions against

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nursing homes and assisted living facilities;