

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

The Council for Healthy Communities offered the following:

Amendment to Amendment (724613)

On page 12, line 23 through page 14, line 12
remove from the amendment: all of said lines

and insert in lieu thereof:

Section 36. Effective July 1, 2001, and applying to
causes of action accruing on or after that date, section
400.4297 Florida Statutes, is created to read:

400.4297 Punitive damages; pleading; burden of
proof.--

(1) In any claim for long-term care facility
negligence, 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

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1 calculated to lead to admissible evidence on the issue of
2 punitive damages. No discovery of financial worth shall
3 proceed until after the pleading concerning punitive damages
4 is permitted.

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

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

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

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

24 (a) The employer, principal, corporation, or other
25 legal entity actively and knowingly participated in such
26 conduct;

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

30 (c) The employer, principal, corporation, or other
31 legal entity engaged in conduct that constituted gross

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1 negligence and that contributed to the loss, damages, or
2 injury suffered by the claimant.

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

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