

By the Committee on Judiciary; and Senator Galvano

590-03362-13

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1 A bill to be entitled

2 An act relating to nursing home litigation; amending  
3 s. 400.0237, F.S.; providing that a claim for punitive  
4 damages may not be brought unless there is a showing  
5 of admissible evidence proffered by the parties which  
6 provides a reasonable basis for recovery of punitive  
7 damages when certain criteria are applied; requiring  
8 the court to conduct a hearing to determine whether  
9 there is sufficient admissible evidence to ensure that  
10 there is a reasonable basis to believe that the  
11 claimant will be able to demonstrate by clear and  
12 convincing evidence that the recovery of punitive  
13 damages is appropriate; requiring the trier of fact to  
14 find by clear and convincing evidence that a specific  
15 person or corporate defendant actively and knowingly  
16 participated in intentional misconduct or engaged in  
17 conduct that constituted gross negligence and  
18 contributed to the loss, damages, or injury suffered  
19 by the claimant before punitive damages may be  
20 awarded; requiring an officer, director, or manager of  
21 the employer, corporation, or legal entity to condone,  
22 ratify, or consent to certain specified conduct before  
23 holding the licensee vicariously liable for punitive  
24 damages; providing an effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:

27  
28 Section 1. Section 400.0237, Florida Statutes, is amended  
29 to read:

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30 400.0237 Punitive damages; pleading; burden of proof.—

31 (1) (a) In any action ~~for damages~~ brought under this part, a  
32 ~~no~~ claim for punitive damages may not be brought ~~shall be~~  
33 ~~permitted~~ unless there is a reasonable showing of admissible ~~by~~  
34 ~~evidence~~ that has been submitted ~~in the record or proffered~~ by  
35 the parties and provides ~~claimant which would provide~~ a  
36 reasonable basis for recovery of such damages when the criteria  
37 in this section are applied. The claimant may move to amend her  
38 or his complaint to assert a claim for punitive damages as  
39 allowed by the rules of civil procedure in accordance with  
40 evidentiary requirements set forth in this section.

41 (b) The court shall conduct a hearing to determine whether  
42 there is sufficient admissible evidence submitted by the parties  
43 to ensure that there is a reasonable basis to believe that the  
44 claimant, at trial, will be able to demonstrate by clear and  
45 convincing evidence that the recovery of such damages is  
46 warranted. ~~A~~ ~~The rules of civil procedure shall be liberally~~  
47 ~~construed so as to allow the claimant discovery of evidence~~  
48 ~~which appears reasonably calculated to lead to admissible~~  
49 ~~evidence on the issue of punitive damages~~. ~~No~~ discovery of  
50 financial worth may not ~~shall~~ proceed until ~~after~~ the pleading  
51 on concerning punitive damages is approved by the court  
52 permitted.

53 (2) A defendant may be held liable for punitive damages  
54 only if the trier of fact, by ~~based on~~ clear and convincing  
55 evidence, finds that a specific person or corporate defendant  
56 actively and knowingly participated in intentional misconduct or  
57 engaged in conduct that constitutes gross negligence and  
58 contributed to the loss, damages, or injury suffered by the

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59 ~~claimant the defendant was personally guilty of intentional~~  
60 ~~misconduct or gross negligence.~~ As used in this section, the  
61 term:

62 (a) "Intentional misconduct" means that the defendant  
63 against whom punitive damages are sought had actual knowledge of  
64 the wrongfulness of the conduct and the high probability that  
65 injury or damage to the claimant would result and, despite that  
66 knowledge, intentionally pursued that course of conduct,  
67 resulting in injury or damage.

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

72 (3) In the case of vicarious liability of an employer,  
73 principal, corporation, or other legal entity, punitive damages  
74 may not be imposed for the conduct of an employee or agent  
75 unless only if the conduct of a specifically identified the  
76 employee or agent meets the criteria specified in subsection (2)  
77 and an officer, director, or manager of the actual employer,  
78 corporation, or legal entity condoned, ratified, or consented to  
79 the specific conduct as alleged in subsection (2). A state or  
80 federal survey report of nursing facilities may not be used to  
81 establish an entitlement to punitive damages under this section.

82 ~~(a) The employer, principal, corporation, or other legal~~  
83 ~~entity actively and knowingly participated in such conduct;~~

84 ~~(b) The officers, directors, or managers of the employer,~~  
85 ~~principal, corporation, or other legal entity condoned,~~  
86 ~~ratified, or consented to such conduct; or~~

87 ~~(c) The employer, principal, corporation, or other legal~~

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88 ~~entity engaged in conduct that constituted gross negligence and~~  
89 ~~that contributed to the loss, damages, or injury suffered by the~~  
90 ~~claimant.~~

91 (4) The plaintiff shall ~~must~~ establish at trial, by clear  
92 and convincing evidence, its entitlement to an award of punitive  
93 damages. The "greater weight of the evidence" burden of proof  
94 applies to a determination of the amount of damages.

95 (5) This section is remedial in nature and takes ~~shall take~~  
96 effect upon becoming a law.

97 Section 2. This act shall take effect upon becoming a law.