

3873</W>

Amendment No. \_\_\_\_ (for drafter's use only)

CHAMBER ACTION

<W>Senate</W>

<W>House</W>

1	.
2	.
3	.
4	.

ORIGINAL STAMP BELOW

11 Representative(s) Frankel offered the following:

**Amendment (with title amendment)**

14 On page 1, line 28 through  
15 page 6, line 29,  
16 remove from the bill: all of said lines

18 and insert in lieu thereof:

19 Section 1. Section 768.096, Florida Statutes, is  
20 created to read:

21 768.096 Employer presumption against negligent  
22 hiring.--

23 (1) In a civil action for the death of, or injury or  
24 damage to, a third person caused by the intentional tort of an  
25 employee, such employee's employer shall be presumed not to  
26 have been negligent in hiring such employee if, before hiring  
27 the employee, the employer conducted a background  
28 investigation of the prospective employee and the  
29 investigation did not reveal any information that reasonably  
30 demonstrated the unsuitability of the prospective employee for  
31 the particular work to be performed or for the employment in

3873</W>

Amendment No. \_\_\_\_ (for drafter's use only)

1 general. A background investigation under this section must  
2 include:  
3 (a) Obtaining a criminal background investigation on  
4 the prospective employee pursuant to subsection (2);  
5 (b) Making a reasonable effort to contact references  
6 and former employers of the prospective employee concerning  
7 the suitability of the prospective employee for employment;  
8 (c) Requiring the prospective employee to complete a  
9 job application form that includes questions concerning  
10 whether he or she has ever been convicted of a crime,  
11 including details concerning the type of crime; the date of  
12 conviction and the penalty imposed; and whether the  
13 prospective employee has ever been a defendant in a civil  
14 action for intentional tort, including the nature of the  
15 intentional tort and the disposition of the action;  
16 (d) Obtaining, with written authorization from the  
17 prospective employee, a complete check of the driver's license  
18 record of the prospective employee if such a check is relevant  
19 to the work the employee will be performing and if the record  
20 can reasonably be obtained; and  
21 (e) Interviewing the prospective employee.  
22 (2) To satisfy the criminal-background-investigation  
23 requirement of this section, an employer must obtain a local  
24 criminal records check through local law enforcement agencies,  
25 a statewide criminal records check through the Department of  
26 Law Enforcement, or a federal criminal records check through  
27 the Federal Bureau of Investigation.  
28 (3) The election by an employer not to conduct the  
29 investigation specified in subsection (1) does not raise any  
30 presumption that the employer failed to use reasonable care in  
31 hiring an employee.

3873</W>

Amendment No. \_\_\_\_ (for drafter's use only)

1           Section 2. Section 768.095, Florida Statutes, is  
2 amended to read:  
3           768.095 Employer immunity from liability; disclosure  
4 of information regarding former or current employees.--An  
5 employer who discloses information about a former or current  
6 employee ~~employee's job performance~~ to a prospective employer  
7 of the former or current employee upon request of the  
8 prospective employer or of the former or current employee is  
9 ~~presumed to be acting in good faith and, unless lack of good~~  
10 ~~faith is shown by clear and convincing evidence, is immune~~  
11 from civil liability for such disclosure or its consequences  
12 ~~unless it is shown by clear and convincing evidence.~~ For  
13 ~~purposes of this section, the presumption of good faith is~~  
14 ~~rebutted upon a showing~~ that the information disclosed by the  
15 former or current employer was knowingly false ~~or deliberately~~  
16 ~~misleading, was rendered with malicious purpose, or violated~~  
17 any civil right of the former or current employee protected  
18 under chapter 760.

19           Section 3. Section 768.725, Florida Statutes, is  
20 created to read:  
21           768.725 Punitive damages; burden of proof.--At trial,  
22 the plaintiff must establish by clear and convincing evidence  
23 its entitlement to an award of punitive damages. The greater  
24 weight of the evidence burden of proof shall apply to the  
25 determination regarding the amount of damages.

26           Section 4. Effective October 1, 1998, and applicable  
27 to all civil actions pending on that date for which the  
28 initial trial or retrial of the action has not commenced and  
29 all civil actions commenced on or after that date, section  
30 768.73, Florida Statutes, is amended to read:  
31           768.73 Punitive damages; limitation.--

3873</W>

Amendment No. \_\_\_\_ (for drafter's use only)

1           (1)(a) In any civil action based on negligence, strict  
2 liability, products liability, misconduct in commercial  
3 transactions, professional liability, or breach of warranty,  
4 and involving willful, wanton, or gross misconduct, the  
5 judgment for the total amount of punitive damages awarded to a  
6 claimant may not exceed three times the amount of compensatory  
7 damages awarded to each person entitled thereto by the trier  
8 of fact, except as provided in paragraph (b). However, this  
9 subsection does not apply to any class action.

10           (b) If any award for punitive damages exceeds the  
11 limitation specified in paragraph (a), the award is presumed  
12 to be excessive and the defendant is entitled to remittitur of  
13 the amount in excess of the limitation unless the claimant  
14 demonstrates to the court by clear and convincing evidence  
15 that the award is not excessive in light of the facts and  
16 circumstances which were presented to the trier of fact.

17           (c) This subsection is not intended to prohibit an  
18 appropriate court from exercising its jurisdiction under s.  
19 768.74 in determining the reasonableness of an award of  
20 punitive damages that is less than three times the amount of  
21 compensatory damages.

22           (2)(a) Except as provided in paragraph (b), punitive  
23 damages shall not be awarded against a defendant in a tort  
24 action if that defendant establishes, before trial, that  
25 punitive damages have previously been awarded against that  
26 defendant in any state or federal court in any action alleging  
27 harm from the same act or single course of conduct for which  
28 the claimant seeks compensatory damages. For purposes of a  
29 tort action, the term "the same act or single course of  
30 conduct" includes acts resulting in the same manufacturing  
31 defects, acts resulting in the same defects in design, or

3873</W>

Amendment No. \_\_\_\_ (for drafter's use only)

1 failure to warn of the same hazards, with respect to similar  
2 units of a product.

3 (b) In subsequent tort actions involving the same act  
4 or single course of conduct for which punitive damages have  
5 already been awarded, if the court determines by clear and  
6 convincing evidence that the amount of prior punitive damages  
7 awarded was insufficient to punish that defendant's behavior,  
8 the court may award subsequent punitive damages. In awarding  
9 subsequent punitive damages, the court shall make specific  
10 findings of fact in the record to support its conclusion. Any  
11 subsequent punitive damage awards shall be reduced by the  
12 amount of any earlier punitive damage awards rendered in state  
13 or federal court.

14 (3) In any civil action, an award of punitive damages  
15 is payable as follows:

16 (a) Sixty-five percent of the award is payable to the  
17 claimant.

18 (b) If the cause of action was based on personal  
19 injury or wrongful death, 35 percent of the award is payable  
20 to the Public Medical Assistance Trust Fund; otherwise, 35  
21 percent of the award is payable to the General Revenue Fund.

22 (4) The clerk of the court shall transmit a copy of  
23 the jury verdict to the Treasurer by certified mail. In the  
24 final judgment, the court shall order the percentages of the  
25 award to be paid as provided in subsection (3).

26 (5) A settlement agreement entered into between the  
27 original parties to the action after a verdict has been  
28 returned must provide a proportionate share payable to the  
29 fund specified in paragraph (3)(b). For purposes of this  
30 subsection, a proportionate share is a 35-percent share of  
31 that percentage of the settlement amount which the portion of

3873</W>

Amendment No. \_\_\_\_ (for drafter's use only)

1 the verdict for punitive damages bears to the total amount  
2 awarded for compensatory and punitive damages.

3 (6) The Department of Banking and Finance shall  
4 collect or cause to be collected all payments due the state  
5 under this section. Such payments shall be made to the  
6 Comptroller and deposited in the appropriate fund specified in  
7 subsection (3).

8 (7) If the full amount of punitive damages awarded  
9 cannot be collected, the claimant and the other recipient  
10 designated pursuant to paragraph (3)(b) are each entitled to a  
11 proportional share of the punitive damages collected.

12 (8) The claimant attorney's fees, if payable from the  
13 judgment, are, to the extent that the fees are based on the  
14 punitive damages, calculated based on the entire judgment for  
15 punitive damages, notwithstanding the provisions of subsection  
16 (3). This subsection does not limit the payment of attorney's  
17 fees based upon an award of damages other than punitive  
18 damages.

19 (9)(2) The jury may neither be instructed nor informed  
20 as to the provisions of this section.

21  
22

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

24 And the title is amended as follows:

25 On page 1, lines 3 through 23  
26 remove from the title of the bill:

27

28 and insert in lieu thereof:

29 creating s. 768.096, F.S.; providing an  
30 employer with a presumption against negligent  
31 hiring under specified conditions in an action

3873</W>

Amendment No. \_\_\_\_ (for drafter's use only)

1 for civil damages resulting from an intentional  
2 tort committed by an employee if the employer  
3 conducts a preemployment background  
4 investigation; prescribing the elements of such  
5 background investigation; specifying that  
6 electing not to complete the background  
7 investigation does not constitute a failure to  
8 use reasonable care in hiring an employee;  
9 amending s. 768.095, F.S.; revising the  
10 conditions under which an employer is immune  
11 from civil liability for disclosing information  
12 regarding an employee to a prospective  
13 employer; creating s. 768.725, F.S.; providing  
14 for evidentiary standards for an award of  
15 punitive damages; amending s. 768.73, F.S.;  
16 requiring certain findings for, and providing  
17 for reduction of, subsequent punitive damage  
18 awards under specified circumstances; requiring  
19 that a specified percentage of an award for  
20 punitive damages be paid to the state;  
21 requiring the Department of Banking and Finance  
22 to collect the payments of such awards;  
23 providing for attorney's fees for the claimant  
24 to be based on the entire award of punitive  
25 damages;

26  
27  
28  
29  
30  
31