

By the Committee on Civil Justice & Claims and
Representatives Warner, Thrasher and Flanagan

1 A bill to be entitled
2 An act relating to punitive damages; amending
3 s. 768.72, F.S.; revising language with respect
4 to claims for punitive damages in civil
5 actions; requiring clear and convincing
6 evidence of gross negligence or intentional
7 misconduct to support the recovery of such
8 damages; providing definitions; providing
9 criteria for the imposition of punitive damages
10 with respect to employers, principals,
11 corporations, or other legal entities for the
12 conduct of an employee or agent; providing for
13 the application of the section; providing an
14 exception; amending s. 768.73, F.S.; revising
15 language with respect to limitations on
16 punitive damages; providing monetary
17 limitations; providing an exception with
18 respect to intentional misconduct; providing
19 for consolidated punitive damages trials;
20 providing for the effect of certain previous
21 punitive damages awards; providing a limitation
22 on attorney fees; providing for the application
23 of the section; providing an exception;
24 providing an effective date.

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

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28 Section 1. Section 768.72, Florida Statutes, is
29 amended to read:

30 768.72 Pleading in civil actions; claim for punitive
31 damages.--

1 (1) In any civil action, no claim for punitive damages
2 shall be permitted unless there is a reasonable showing by
3 evidence in the record or proffered by the claimant which
4 would provide a reasonable basis for recovery of such damages.
5 The claimant may move to amend her or his complaint to assert
6 a claim for punitive damages as allowed by the rules of civil
7 procedure. The rules of civil procedure shall be liberally
8 construed so as to allow the claimant discovery of evidence
9 which appears reasonably calculated to lead to admissible
10 evidence on the issue of punitive damages. No discovery of
11 financial worth shall proceed until after the pleading
12 concerning punitive damages is permitted.

13 (2) A defendant may be held liable for punitive
14 damages only if the trier of fact, based on clear and
15 convincing evidence, finds that the defendant was personally
16 guilty of intentional misconduct or gross negligence.

17 (a) "Intentional misconduct" means that the defendant
18 had actual knowledge of the wrongfulness of the conduct and
19 the high probability that injury or damage to the claimant
20 would result and, despite that knowledge, intentionally
21 pursued that course of conduct, resulting in injury or damage.

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

26 (3) In the case of an employer, principal,
27 corporation, or other legal entity, punitive damages may be
28 imposed for the conduct of an employee or agent, only if the
29 conduct of the employee or agent meets the criteria specified
30 in subsection (2), and if:

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1 (a) The employer, principal, corporation, or other
2 legal entity actively and knowingly participated in such
3 conduct; or

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

7 (c) The employer, principal, corporation, or other
8 legal entity engaged in conduct which constituted gross
9 negligence and which contributed to the loss, damages, or
10 injury suffered by the claimant.

11 (4) The provisions of this section are remedial in
12 nature and shall be applied to all civil actions pending on
13 the effective date of this act in which the trial or retrial
14 of the action has not commenced.

15 (5) The provisions of this section shall not apply
16 with regard to any civil action based upon child abuse, abuse
17 of the elderly, or abuse of the developmentally disabled, or
18 arising under chapter 400.

19 Section 2. Section 768.73, Florida Statutes, is
20 amended to read:

21 768.73 Punitive damages; limitation.--

22 (1)(a) In any civil action in which the judgment for
23 compensatory damages is for \$50,000 or less, judgment for
24 punitive damages awarded to a claimant may not exceed
25 \$250,000, except as provided in paragraph (b). In any civil
26 action in which the judgment for compensatory damages exceeds
27 \$50,000, the judgment for punitive damages awarded to a
28 claimant may not exceed three times the amount of compensatory
29 damages or \$250,000, whichever is higher, except as provided
30 in paragraph (b)~~based on negligence, strict liability,~~
31 ~~products liability, misconduct in commercial transactions,~~

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

8 (b) No award for punitive damages may exceed the
9 limitations ~~if any award for punitive damages exceeds the~~
10 ~~limitation specified in paragraph (a), the award is presumed~~
11 ~~to be excessive and the defendant is entitled to remittitur of~~
12 ~~the amount in excess of the limitation unless the claimant~~
13 ~~demonstrates to the court by clear and convincing evidence~~
14 ~~that the defendant engaged in intentional misconduct and that~~
15 ~~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) If any defendant in any civil action determines
23 that it has been or may be subject to repetitive claims for
24 punitive damages arising out of the same act or course of
25 conduct, the defendant may move the court for a full
26 determination of the defendant's punitive damage liability for
27 all consequences of the act or course of conduct. Under such
28 circumstances, the issue of liability for punitive damages
29 shall be tried separately from the issue of liability for
30 compensatory damages. Evidence relating to whether punitive
31 damages should be awarded and, if so, in what amount, shall

1 not be admissible until the trier of fact has determined the
2 amount of compensatory damages. The same trier of fact that
3 tried the issues relating to compensatory damages shall try
4 the issues relating to punitive damages. In the phase of the
5 trial concerning punitive damages, if the trier of fact finds
6 that punitive damages are warranted, the trier of fact should
7 consider the national scope, if any, of the misconduct, the
8 degree of wrongfulness and duration of any misconduct, the
9 scope and severity of damages, the financial resources of the
10 defendant, the number of persons harmed, the efforts made by
11 defendant to eliminate or reduce the effects of the
12 misconduct, as well as all other measures taken by the
13 defendant to mitigate the misconduct and damages caused
14 thereby. The court shall reduce any award of punitive damages
15 by the amount of any previous punitive damages awards imposed
16 against the defendant which arose out of the same act or
17 course of conduct.

18 (b) As soon as practicable after the defendant moves
19 for a consolidated punitive damages trial, or within a time
20 frame set by the court, the defendant shall make reasonable
21 efforts to compile a list of current and potential claimants
22 who will share any punitive award. The defendant shall make
23 reasonable efforts to identify and notify any persons or
24 entities that have been impacted by the act or course of
25 conduct under consideration in the punitive damages phase of
26 the trial. Any punitive damages awarded during a trial under
27 this subsection will, to the extent practicable, be equally
28 distributed among current and potential claimants, in a manner
29 to be decided by the trial court. Once a defendant's
30 liability for repetitive punitive damages has been determined
31 under this subsection, no further punitive damages can be

1 awarded in connection with the act or course of conduct
2 covered in this trial.

3 (c) In a consolidated punitive damages trial, the
4 claimants' aggregate attorney fee in regard to punitive
5 damages shall be limited to 15 percent of the overall punitive
6 damages award.

7 (3) If punitive damages have been awarded against a
8 defendant three or more times before the effective date of
9 this act in any state or federal court in actions alleging
10 harm from the same act or course of conduct for which a
11 claimant subsequently seeks compensatory damages, the court
12 may conduct a hearing prior to trial to determine whether the
13 previous awards are sufficient to address all consequences of
14 the act or course of conduct. In making such determination the
15 court shall consider the factors set forth in paragraph (2)(a)
16 as well as whether any previous trier of fact considered the
17 full scope of wrongful conduct and resulting harm. If the
18 court determines that the previous awards are sufficient the
19 punitive damage claim shall not be allowed.

20 (4) The provisions of this section are remedial in
21 nature and shall be applied to all civil actions pending on
22 the effective date of this act in which the trial or retrial
23 of the action has not commenced.

24 (5)~~(2)~~ The jury may neither be instructed nor informed
25 as to the provisions of this section.

26 (6) The provisions of this section shall not apply
27 with regard to any civil action based upon child abuse, abuse
28 of the elderly, or abuse of the developmentally disabled, or
29 arising under chapter 400.

30 Section 3. This act shall take effect October 1 of the
31 year in which enacted.

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HOUSE SUMMARY

Provides that in any civil action, no claim for punitive damages shall be permitted unless clear and convincing evidence exists that the defendant was personally guilty of intentional misconduct or gross negligence. Provides criteria for the imposition of such damages on an employer, principal, corporation, or other legal entity for the action of an agent or employee. Provides monetary limitations on the award of punitive damages and provides described exceptions. Provides for consolidated punitive damages trials. Provides with respect to such consolidated trials that attorney's fees shall be limited to 15 percent of the overall punitive damage award. See bill for details.