

Bill No. CS for SB 378, 1st Eng.

Amendment No. ____

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Kurth moved the following amendment:

Senate Amendment (with title amendment)

On page 5, line 2, through page 6, line 11, delete those lines

and insert: intentional misconduct or gross negligence and that the award is not excessive in light of the facts and circumstances which were presented to the trier of fact.

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

(2)(a) Except as provided in paragraph (b), punitive damages shall not be awarded against a defendant in a civil action if that defendant establishes, before trial, that punitive damages have previously been awarded against the defendant in any state or federal court in any action alleging harm from the same act or single course of conduct for which the claimant seeks compensatory damages. For purposes of a

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1 civil action, the term "the same act or single course of
2 conduct" includes acts resulting in the same manufacturing
3 defects, acts resulting in the same defects in design, or
4 failure to warn of the same hazards, with respect to similar
5 units of a product.

6 (b) In subsequent civil actions involving the same act
7 or single course of conduct for which punitive damages have
8 already been awarded, if the court determines by clear and
9 convincing evidence that the amount of prior punitive damages
10 awarded was insufficient to punish that defendant's behavior,
11 the court shall permit the jury to consider the issue of
12 awarding subsequent punitive damages. In permitting the issue
13 of awarding subsequent punitive damages, the court shall make
14 specific findings of fact in the record to support its
15 determination of the insufficiency of the prior punitive
16 damages awards. In its determination the court may consider
17 whether the defendant's act or course of conduct has ceased.
18 If a jury then subsequently awards punitive damages, the court
19 shall, in entering final judgment, reduce the subsequent
20 punitive damages award by the total amount of any prior
21 punitive damages awards rendered in any state or federal
22 court; provided the subsequent damages award shall be reduced
23 only if, prior to the jury making a determination of the
24 amount of any subsequent award, the jury is informed that the
25 amount of its award will be reduced and informed of the amount
26 of such reduction.

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

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1 punitive damages.

2 ~~(4)(2)~~ Except as provided in subsection (2),the jury
3 may neither be instructed nor informed as to the provisions of
4 this section.

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

8 And the title is amended as follows:

9 On page 1, lines 19-27, delete those lines

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11

and insert:

12 with respect to intentional misconduct or gross
13 negligence; specifying the basis for
14 calculating attorney's fees on judgments for
15 punitive damages; providing for the effect of
16 certain previous punitive damages awards;

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