

Bill No. CS for SB 378

Amendment No. \_\_\_\_

Senate

CHAMBER ACTION

House

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Senator Webster moved the following amendment:

**Senate Amendment (with title amendment)**

On page 4, line 27, through page 5, line 15, strike all of said 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 may not be awarded against a defendant in a civil action if that defendant establishes, before trial, that punitive damages have previously been awarded against that 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 may permit a jury to consider an award of subsequent  
12 punitive damages. In permitting a jury to consider awarding  
13 subsequent punitive damages, the court shall make specific  
14 findings of fact in the record to support its conclusion. In  
15 addition, the court may consider whether the defendant's act  
16 or course of conduct has ceased. Any subsequent punitive  
17 damage awards must be reduced by the amount of any earlier  
18 punitive damage awards rendered in state or federal court.

19 (3) The claimant attorney's fees, if payable from the  
20 judgment, are, to the extent that the fees are based on the  
21 punitive damages, calculated based on the final judgment for  
22 punitive damages. This subsection does not limit the payment  
23 of attorney's fees based upon an award of damages other than  
24 punitive damages.

25 (4)~~(2)~~ The jury may neither be instructed nor informed  
26 as to the provisions of this section.

27 (5) The provisions of this section are remedial in  
28 nature and must be applied to all civil actions pending on  
29 October 1, 1999, in which the trial or retrial of the action  
30 has not commenced.

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

2 And the title is amended as follows:

3            On page 1, line 19, after the semicolon

4

5 insert:

6            prohibiting the award of subsequent punitive  
7            damages against a defendant if punitive damages  
8            were previously awarded against the defendant  
9            for harm arising out of the same act or single  
10            course of conduct; providing an exception;

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