

By Senator Webster

308-590-99

1 A bill to be entitled
2 An act relating to civil action; creating s.
3 768.725, F.S.; providing evidentiary standards
4 for an award of punitive damages; amending s.
5 768.72, F.S.; revising provisions with respect
6 to claims for punitive damages in civil
7 actions; requiring clear and convincing
8 evidence of gross negligence or intentional
9 misconduct to support the recovery of such
10 damages; providing definitions; providing
11 criteria for the imposition of punitive damages
12 with respect to employers, principals,
13 corporations, or other legal entities for the
14 conduct of an employee or agent; providing for
15 the application of the section; amending s.
16 768.73, F.S.; revising provisions with respect
17 to limitations on punitive damages; providing
18 monetary limitations; providing an exception
19 with respect to intentional misconduct;
20 providing for the effect of certain previous
21 punitive damages awards; specifying the basis
22 for calculating attorney's fees on judgments
23 for punitive damages; providing for the
24 application of the section; creating s.
25 768.735, F.S.; providing that ss.
26 768.72(2)-(4), 768.725, and 768.73, F.S.,
27 relating to punitive damages, are inapplicable
28 to specified causes of action; limiting the
29 amount of punitive damages that may be awarded
30 to a claimant in certain civil actions
31 involving abuse or arising under ch. 400, F.S.;

1 creating s. 768.736, F.S.; providing that ss.
2 768.725 and 768.73, F.S., relating to punitive
3 damages, do not apply to intoxicated
4 defendants; providing for severability;
5 providing an effective date.
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7 Be It Enacted by the Legislature of the State of Florida:
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9 Section 1. Section 768.725, Florida Statutes, is
10 created to read:

11 768.725 Punitive damages; burden of proof.--In all
12 civil actions the plaintiff must establish at trial by clear
13 and convincing evidence its entitlement to an award of
14 punitive damages. The "greater weight of the evidence" burden
15 of proof applies to a determination of the amount of damages.

16 Section 2. Section 768.72, Florida Statutes, is
17 amended to read:

18 768.72 Pleading in civil actions; claim for punitive
19 damages.--

20 (1) In any civil action, no claim for punitive damages
21 shall be permitted unless there is a reasonable showing by
22 evidence in the record or proffered by the claimant which
23 would provide a reasonable basis for recovery of such damages.
24 The claimant may move to amend her or his complaint to assert
25 a claim for punitive damages as allowed by the rules of civil
26 procedure. The rules of civil procedure shall be liberally
27 construed so as to allow the claimant discovery of evidence
28 which appears reasonably calculated to lead to admissible
29 evidence on the issue of punitive damages. No discovery of
30 financial worth shall proceed until after the pleading
31 concerning punitive damages is permitted.

1 (2) A defendant may be held liable for punitive
2 damages only if the trier of fact, based on clear and
3 convincing evidence, finds that the defendant was personally
4 guilty of intentional misconduct or gross negligence. As used
5 in this section, the term:

6 (a) "Intentional misconduct" means that the defendant
7 had actual knowledge of the wrongfulness of the conduct and
8 the high probability that injury or damage to the claimant
9 would result and, despite that knowledge, intentionally
10 pursued that course of conduct, resulting in injury or damage.

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

15 (3) In the case of an employer, principal,
16 corporation, or other legal entity, punitive damages may be
17 imposed for the conduct of an employee or agent only if the
18 conduct of the employee or agent meets the criteria specified
19 in subsection (2) and:

20 (a) The employer, principal, corporation, or other
21 legal entity actively and knowingly participated in such
22 conduct;

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

26 (c) The employer, principal, corporation, or other
27 legal entity engaged in conduct that constituted gross
28 negligence and that contributed to the loss, damages, or
29 injury suffered by the claimant.

30 (4) The provisions of this section are remedial in
31 nature and must be applied to all civil actions pending on

1 October 1, 1998, in which the trial or retrial of the action
2 has not commenced.

3 Section 3. Section 768.73, Florida Statutes, is
4 amended to read:

5 768.73 Punitive damages; limitation.--

6 (1)(a) In any civil action in which the judgment for
7 compensatory damages is for \$50,000 or less, judgment for
8 punitive damages awarded to a claimant may not exceed
9 \$250,000, except as provided in paragraph (b). In any civil
10 action in which the judgment for compensatory damages exceeds
11 \$50,000, the judgment for punitive damages awarded to a
12 claimant may not exceed three times the amount of compensatory
13 damages or \$250,000, whichever is higher, except as provided
14 in paragraph (b).~~based on negligence, strict liability,~~
15 ~~products liability, misconduct in commercial transactions,~~
16 ~~professional liability, or breach of warranty, and involving~~
17 ~~willful, wanton, or gross misconduct, the judgment for the~~
18 ~~total amount of punitive damages awarded to a claimant may not~~
19 ~~exceed three times the amount of compensatory damages awarded~~
20 ~~to each person entitled thereto by the trier of fact, except~~
21 ~~as provided in paragraph (b). However, this subsection does~~
22 ~~not apply to any class action.~~

23 (b) An ~~if any~~ award for punitive damages may not
24 exceed ~~exceeds~~ the limitations ~~limitation~~ specified in
25 paragraph (a), ~~the award is presumed to be excessive and the~~
26 ~~defendant is entitled to remittitur of the amount in excess of~~
27 ~~the limitation~~ unless the claimant demonstrates to the court
28 by clear and convincing evidence that the defendant engaged in
29 intentional misconduct and that the award is not excessive in
30 light of the facts and circumstances which were presented to
31 the trier of fact.

1 (c) This subsection is not intended to prohibit an
2 appropriate court from exercising its jurisdiction under s.
3 768.74 in determining the reasonableness of an award of
4 punitive damages that is less than three times the amount of
5 compensatory damages.

6 (2)(a) Except as provided in paragraph (b), punitive
7 damages may not be awarded against a defendant in a civil
8 action if that defendant establishes, before trial, that
9 punitive damages have previously been awarded against that
10 defendant in any state or federal court in any action alleging
11 harm from the same act or single course of conduct for which
12 the claimant seeks compensatory damages. For purposes of a
13 civil action, the term "the same act or single course of
14 conduct" includes acts resulting in the same manufacturing
15 defects, acts resulting in the same defects in design, or
16 failure to warn of the same hazards, with respect to similar
17 units of a product.

18 (b) In subsequent civil actions involving the same act
19 or single course of conduct for which punitive damages have
20 already been awarded, if the court determines by clear and
21 convincing evidence that the amount of prior punitive damages
22 awarded was insufficient to punish that defendant's behavior,
23 the court may award subsequent punitive damages. In awarding
24 subsequent punitive damages, the court shall make specific
25 findings of fact in the record to support its conclusion. In
26 addition, the court may consider whether the defendant's act
27 or course of conduct has ceased. Any subsequent punitive
28 damage awards must be reduced by the amount of any earlier
29 punitive damage awards rendered in state or federal court.

30 (3) The claimant attorney's fees, if payable from the
31 judgment, are, to the extent that the fees are based on the

1 punitive damages, calculated based on the entire judgment for
2 punitive damages. This subsection does not limit the payment
3 of attorney's fees based upon an award of damages other than
4 punitive damages.

5 (4)(2) The jury may neither be instructed nor informed
6 as to the provisions of this section.

7 (5) The provisions of this section are remedial in
8 nature and must be applied to all civil actions pending on
9 October 1, 1998, in which the trial or retrial of the action
10 has not commenced.

11 Section 4. Section 768.735, Florida Statutes, is
12 created to read:

13 768.735 Punitive damages; exceptions; limitation.--

14 (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not
15 apply to any civil action based upon child abuse, abuse of the
16 elderly, or abuse of the developmentally disabled or any civil
17 action arising under chapter 400. Such actions are governed by
18 applicable statutes and controlling judicial precedent.

19 (2)(a) In any civil action based upon child abuse,
20 abuse of the elderly, or abuse of the developmentally
21 disabled, or actions arising under chapter 400 and involving
22 the award of punitive damages, the judgment for the total
23 amount of punitive damages awarded to a claimant may not
24 exceed three times the amount of compensatory damages awarded
25 to each person entitled thereto by the trier of fact, except
26 as provided in paragraph (b). This subsection does not apply
27 to any class action.

28 (b) If any award for punitive damages exceeds the
29 limitation specified in paragraph (a), the award is presumed
30 to be excessive and the defendant is entitled to remittitur of
31 the amount in excess of the limitation unless the claimant

1 demonstrates to the court by clear and convincing evidence
2 that the award is not excessive in light of the facts and
3 circumstances that were presented to the trier of fact.

4 (c) This subsection is not intended to prohibit an
5 appropriate court from exercising its jurisdiction under s.
6 768.74 in determining the reasonableness of an award of
7 punitive damages which is less than three times the amount of
8 compensatory damages.

9 (d) The jury may not be instructed or informed as to
10 the provisions of this section.

11 Section 5. Section 768.736, Florida Statutes, is
12 created to read:

13 768.736 Punitive damages; exceptions for
14 intoxication.--Sections 768.725 and 768.73 do not apply to any
15 defendant who, at the time of the act or omission for which
16 punitive damages are sought, was under the influence of any
17 alcoholic beverage or drug to the extent that the defendant's
18 normal faculties were impaired, or who had a blood or breath
19 alcohol level of 0.08 percent or higher.

20 Section 6. If any provision of this act or the
21 application thereof to any person or circumstance is held
22 invalid, the invalidity does not affect other provisions or
23 applications of the act which can be given effect without the
24 invalid provision or application, and to this end the
25 provisions of this act are declared severable.

26 Section 7. This act shall take effect October 1, 1999.
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SENATE SUMMARY

Provides evidentiary standards for an award of punitive damages in civil actions, and revises existing law relating to claims for punitive damages in such actions. Provides definitions. Provides criteria for awarding damages against an employer, principal, corporation, or other legal entity for conduct of its employee or agent. Revises existing limitations on punitive damages, and provides monetary limitations. Provides an exception from the limitations if the defendant engaged in intentional misconduct. Prohibits an award of punitive damages if such damages have been previously awarded against the defendant in a state or federal court in an action alleging harm from the same act or single course of conduct for which the plaintiff seeks compensatory damages, and provides exceptions. Provides that ss. 768.72(2)-(4), 768.725, and 768.73, F.S., do not apply to actions based on the abuse of children, the elderly, the developmentally disabled, or actions arising under ch. 400, F.S. Provides that ss. 768.725 and 768.73, F.S., do not apply to defendants who at the time of the act or omission for which punitive damages are sought was under the influence of alcoholic beverages or drugs.