

By the Committee on Judiciary and Senator Webster

308-1637A-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 specifying the basis for calculating attorney's
21 fees on judgments for punitive damages;
22 providing for the application of the section;
23 creating s. 768.735, F.S.; providing that ss.
24 768.72(2)-(4), 768.725, and 768.73, F.S.,
25 relating to punitive damages, are inapplicable
26 to specified causes of action; limiting the
27 amount of punitive damages that may be awarded
28 to a claimant in certain civil actions
29 involving abuse or arising under ch. 400, F.S.;
30 creating s. 768.736, F.S.; providing that ss.
31 768.725 and 768.73, F.S., relating to punitive

1 damages, do not apply to intoxicated
2 defendants; providing for severability;
3 providing an effective date.

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

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7 Section 1. Section 768.725, Florida Statutes, is
8 created to read:

9 768.725 Punitive damages; burden of proof.--In all
10 civil actions the plaintiff must establish at trial by clear
11 and convincing evidence its entitlement to an award of
12 punitive damages. The "greater weight of the evidence" burden
13 of proof applies to a determination of the amount of damages.

14 Section 2. Section 768.72, Florida Statutes, is
15 amended to read:

16 768.72 Pleading in civil actions; claim for punitive
17 damages.--

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

30 (2) A defendant may be held liable for punitive
31 damages only if the trier of fact, based on clear and

1 convincing evidence, finds that the defendant was personally
2 guilty of intentional misconduct or gross negligence. As used
3 in this section, the term:

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

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

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

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

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

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

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

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

3 768.73 Punitive damages; limitation.--

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

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

30 (c) This subsection is not intended to prohibit an
31 appropriate court from exercising its jurisdiction under s.

1 768.74 in determining the reasonableness of an award of
2 punitive damages that is less than three times the amount of
3 compensatory damages.

4 (2) The claimant attorney's fees, if payable from the
5 judgment, are, to the extent that the fees are based on the
6 punitive damages, calculated based on the final judgment for
7 punitive damages. This subsection does not limit the payment
8 of attorney's fees based upon an award of damages other than
9 punitive damages.

10 (3)~~(2)~~ The jury may neither be instructed nor informed
11 as to the provisions of this section.

12 (4) The provisions of this section are remedial in
13 nature and must be applied to all civil actions pending on
14 October 1, 1999, in which the trial or retrial of the action
15 has not commenced.

16 Section 4. Section 768.735, Florida Statutes, is
17 created to read:

18 768.735 Punitive damages; exceptions; limitation.--

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

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

3 (b) If any award for punitive damages exceeds the
4 limitation specified in paragraph (a), the award is presumed
5 to be excessive and the defendant is entitled to remittitur of
6 the amount in excess of the limitation unless the claimant
7 demonstrates to the court by clear and convincing evidence
8 that the award is not excessive in light of the facts and
9 circumstances that were presented to the trier of fact.

10 (c) This subsection is not intended to prohibit an
11 appropriate court from exercising its jurisdiction under s.
12 768.74 in determining the reasonableness of an award of
13 punitive damages which is less than three times the amount of
14 compensatory damages.

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

17 Section 5. Section 768.736, Florida Statutes, is
18 created to read:

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

26 Section 6. If any provision of this act or the
27 application thereof to any person or circumstance is held
28 invalid, the invalidity does not affect other provisions or
29 applications of the act which can be given effect without the
30 invalid provision or application, and to this end the
31 provisions of this act are declared severable.

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

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3 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
4 COMMITTEE SUBSTITUTE FOR
5 SB 378

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6 Section 768.73, F.S., provides limitations on punitive
7 damages. Subsection (2), as proposed in the bill, has been
8 deleted. Subsection (2) contained restrictions on awarding
9 subsequent punitive damages against a defendant when punitive
10 damages had already been awarded against that defendant for
11 the same act or single course of conduct in any prior lawsuit
12 in federal or state court.

10 A technical change clarifies that the provisions in section 2,
11 pertaining to the level of conduct necessary to hold
12 individuals and employers liable for punitive damages, is
13 applicable to all civil actions pending on October 1, 1999, in
14 which the trial or retrial has not commenced.

13 A technical change clarifies that the claimant's attorney's
14 fees, to the extent they are based on punitive damages as
15 provided in s. 768.73, F.S., are calculated based on the final
16 judgment for punitive damages.

15 A technical change clarifies that the provisions in section 3,
16 pertaining to limitations on punitive damages, are applicable
17 to all civil actions pending on October 1, 1999, in which the
18 trial or retrial has not commenced.

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