

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          prohibiting the award of subsequent punitive  
21          damages against a defendant if punitive damages  
22          were previously awarded against the defendant  
23          for harm arising out of the same act or single  
24          course of conduct; providing an exception;  
25          specifying the basis for calculating attorney's  
26          fees on judgments for punitive damages;  
27          providing for the application of the section;  
28          creating s. 768.735, F.S.; providing that ss.  
29          768.72(2)-(4), 768.725, and 768.73, F.S.,  
30          relating to punitive damages, are inapplicable  
31          to specified causes of action; limiting the

1 amount of punitive damages that may be awarded  
2 to a claimant in certain civil actions  
3 involving abuse or arising under ch. 400, F.S.;  
4 creating s. 768.736, F.S.; providing that ss.  
5 768.725 and 768.73, F.S., relating to punitive  
6 damages, do not apply to intoxicated  
7 defendants; providing for severability;  
8 providing an effective date.  
9

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

11  
12 Section 1. Section 768.725, Florida Statutes, is  
13 created to read:

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

19 Section 2. Section 768.72, Florida Statutes, is  
20 amended to read:

21 768.72 Pleading in civil actions; claim for punitive  
22 damages.--

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

1 evidence on the issue of punitive damages. No discovery of  
2 financial worth shall proceed until after the pleading  
3 concerning punitive damages is permitted.

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

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

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

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

23 (a) The employer, principal, corporation, or other  
24 legal entity actively and knowingly participated in such  
25 conduct;

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

29 (c) The employer, principal, corporation, or other  
30 legal entity engaged in conduct that constituted gross

31

1 negligence and that contributed to the loss, damages, or  
2 injury suffered by the claimant.

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

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

9 768.73 Punitive damages; limitation.--

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

27 (b) An ~~if any~~ award for punitive damages may not  
28 exceed ~~exceeds~~ the limitations ~~limitation~~ specified in  
29 paragraph (a), ~~the award is presumed to be excessive and the~~  
30 ~~defendant is entitled to remittitur of the amount in excess of~~  
31 ~~the limitation unless the claimant demonstrates to the court~~

1 by clear and convincing evidence that the defendant engaged in  
2 intentional misconduct or gross negligence and that the award  
3 is not excessive in light of the facts and circumstances which  
4 were presented to the trier of fact.

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

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

22 (b) In subsequent civil actions involving the same act  
23 or single course of conduct for which punitive damages have  
24 already been awarded, if the court determines by clear and  
25 convincing evidence that the amount of prior punitive damages  
26 awarded was insufficient to punish that defendant's behavior,  
27 the court may permit a jury to consider an award of subsequent  
28 punitive damages. In permitting a jury to consider awarding  
29 subsequent punitive damages, the court shall make specific  
30 findings of fact in the record to support its conclusion. In  
31 addition, the court may consider whether the defendant's act

1 or course of conduct has ceased. Any subsequent punitive  
2 damage awards must be reduced by the amount of any earlier  
3 punitive damage awards rendered in state or federal court.

4 (3) 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 (4)~~(2)~~ The jury may neither be instructed nor informed  
11 as to the provisions of this section.

12 (5) 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  
31

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.  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31