

Amendment No. 4b (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

11 Representative(s) Warner offered the following:

13 **Amendment (with title amendment)**

14 On page 25, line 10, through page 29, line 14,
15 remove from the bill:

16 All of said lines

18 and insert in lieu thereof:

19 Section 1. Section 768.725, Florida Statutes, is
20 created to read:

21 768.725 Punitive damages; burden of proof.--In all
22 civil actions a party seeking punitive damages must establish
23 at trial by clear and convincing evidence its entitlement to
24 an award of punitive damages and the amount of punitive
25 damages.

26 Section 2. Section 768.72, Florida Statutes, is
27 amended to read:

28 768.72 Pleading in civil actions; claim for punitive
29 damages.--

30 (1) In any civil action, no claim for punitive damages
31 shall be permitted unless there is a reasonable showing by

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1 evidence in the record or proffered by the claimant which
2 would provide a reasonable basis for recovery of such damages.
3 The claimant may move to amend her or his complaint to assert
4 a claim for punitive damages as allowed by the rules of civil
5 procedure. The rules of civil procedure shall be liberally
6 construed so as to allow the claimant discovery of evidence
7 which appears reasonably calculated to lead to admissible
8 evidence on the issue of punitive damages. No discovery of
9 financial worth shall proceed until after the pleading
10 concerning punitive damages is permitted.

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

16 (a) "Intentional misconduct" means that the defendant
17 had actual knowledge of the wrongfulness of the conduct and
18 the high probability that injury or damage to the claimant
19 would result and, despite that knowledge, intentionally
20 pursued that course of conduct, resulting in injury or damage.

21 (b) "Gross negligence" means that the defendant's
22 conduct was so reckless or wanting in care that it
23 demonstrates a conscious disregard or indifference to the
24 life, safety, or rights of persons exposed to such conduct.

25 (3) In the case of an employer, principal,
26 corporation, or other legal entity, punitive damages may be
27 imposed for the conduct of an employee or agent, only if the
28 conduct of the employee or agent meets the criteria specified
29 in subsection (2) and:

30 (a) The officers, directors, partners, or managers of
31 the employer, principal, corporation or other legal entity

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1 actively and knowingly participated in such conduct;

2 (b) The officers, directors, partners, or managers of
3 the employer, principal, corporation, or other legal entity
4 knowingly condoned, ratified, or consented to such conduct; or

5 (c) The employer, directors, partners, or managers of
6 the employer, principal, corporation or other legal entity
7 engaged in gross negligence that contributed to losses or
8 damages sustained by the claimant.

9 (4) For the purposes of subsection (3), a corporation
10 or other legal entity acts through one or more directors,
11 partners, managers, officers, or primary owners.

12 (5) The provisions of this section are remedial in
13 nature and shall 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 3. Section 768.73, Florida Statutes, is
17 amended to read:

18 768.73 Punitive damages; limitation.--

19 (1)(a) In any civil action in which the judgment for
20 compensatory damages is for \$50,000 or less, judgment for
21 punitive damages awarded to a claimant may not exceed
22 \$250,000, except as provided in paragraph (b). In any civil
23 action in which the judgment for compensatory damages exceeds
24 \$50,000, the judgment for punitive damages awarded to a
25 claimant may not exceed three times the amount of compensatory
26 damages or \$250,000, whichever is higher, except as provided
27 in paragraph (b)~~based on negligence, strict liability,~~
28 ~~products liability, misconduct in commercial transactions,~~
29 ~~professional liability, or breach of warranty, and involving~~
30 ~~willful, wanton, or gross misconduct, the judgment for the~~
31 ~~total amount of punitive damages awarded to a claimant may not~~

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1 ~~exceed three times the amount of compensatory damages awarded~~
2 ~~to each person entitled thereto by the trier of fact, except~~
3 ~~as provided in paragraph (b). However, this subsection does~~
4 ~~not apply to any class action.~~

5 (b) No award for punitive damages may exceed the
6 limitations ~~if any award for punitive damages exceeds the~~
7 ~~limitation~~ specified in paragraph (a), ~~the award is presumed~~
8 ~~to be excessive and the defendant is entitled to remittitur of~~
9 ~~the amount in excess of the limitation unless the claimant~~
10 ~~demonstrates to the court by clear and convincing evidence~~
11 ~~that the~~ defendant engaged in intentional misconduct and that
12 the award is not excessive in light of the facts and
13 circumstances which were presented to the trier of fact.

14 (c) This subsection is not intended to prohibit an
15 appropriate court from exercising its jurisdiction under s.
16 768.74 in determining the reasonableness of an award of
17 punitive damages that is less than three times the amount of
18 compensatory damages.

19 (2)(a) Except as provided in paragraph (b), punitive
20 damages shall not be awarded against a defendant in a civil
21 action if that defendant establishes, before trial, that
22 punitive damages have previously been awarded against that
23 defendant in any state or federal court in any action alleging
24 harm from the same act or single course of conduct for which
25 the claimant seeks compensatory damages. For purposes of a
26 civil action, the term "the same act or single course of
27 conduct" includes acts resulting in the same manufacturing
28 defects, acts resulting in the same defects in design, or
29 failure to warn of the same hazards, with respect to similar
30 units of a product.

31 (b) In subsequent civil actions involving the same act

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1 or single course of conduct for which punitive damages have
2 already been awarded, if the court determines by clear and
3 convincing evidence that the amount of prior punitive damages
4 awarded was insufficient to punish that defendant's behavior,
5 the court may permit an award of subsequent punitive damages.
6 In determining the sufficiency of prior punitive damages, the
7 court may consider whether the defendant's act or course of
8 conduct has ceased. If subsequent punitive damages are
9 permitted, the court shall make specific findings of fact in
10 the record to support its determination of the insufficiency
11 of prior punitive damages. If subsequent punitive damages are
12 awarded by the trier of fact, the court shall reduce the
13 subsequent punitive damage award by the amount of any punitive
14 damage awards previously collected through judgments rendered
15 in any state or federal court to punish the same act or single
16 course of conduct.

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

20 And the title is amended as follows:

21 On page 3, line 20 through line 22,

22 remove from the title of the bill:

23 All of said lines

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25 and insert in lieu thereof:

26 punitive damages awards; providing for the

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