

By the Committee on Governmental Oversight and Productivity;  
and Senator Latvala

302-2180A-00

1                                   A bill to be entitled  
2           An act relating to punitive damages in  
3           class-action suits; creating s. 768.733, F.S.;  
4           prescribing the amount of bond or equivalent  
5           surety required to stay the execution of  
6           punitive-damages judgments in class-action  
7           suits, pending appellate review; providing for  
8           application of the act to certain pending  
9           cases; providing an effective date.

10

11           WHEREAS, the State of Florida is reviewing options to  
12           protect its receipt of payments under the tobacco settlement  
13           agreement entered into by the state and participating  
14           manufacturers in settlement of "State of Florida et al. v.  
15           American Tobacco Co.," Case No. 95-1466AH (Fla. 15th Cir. Ct.,  
16           1996), and

17           WHEREAS, the action by the State of Florida which was  
18           the subject of the settlement agreement was brought to recover  
19           compensatory and punitive damages from the settling  
20           manufacturers, and all such claims were settled, and

21           WHEREAS, other claims have been filed and may be filed  
22           under the laws of this state for damages of injured  
23           individuals and for punitive damages to vindicate and punish  
24           the same or similar conduct that was the subject of the action  
25           by the State of Florida against the settling manufacturers,  
26           and

27           WHEREAS, the State of Florida itself would be at risk  
28           in its continued receipt of settlement payments if the ability  
29           of participating manufacturers to make the payments were  
30           threatened by a requirement that the manufacturers immediately  
31           pay massive awards of punitive damages, and

1           WHEREAS, the purpose of punitive damages is the  
2 punishment of each wrongdoer by exacting from his or her  
3 pocketbook a sum of money which, according to his or her  
4 financial ability, will hurt, but not bankrupt, and

5           WHEREAS, punitive damages require appropriate  
6 substantive and procedural safeguards to minimize the risk of  
7 unjust punishment, and

8           WHEREAS, while the amount of a punitive-damages  
9 judgment should provide retribution and deterrence, it should  
10 not financially destroy or bankrupt the defendant or  
11 constitute a "grossly excessive" punishment, and

12           WHEREAS, there is no statutorily articulated  
13 substantive standard for the courts of this state to apply in  
14 order to determine when a punitive-damages judgment is grossly  
15 excessive, and

16           WHEREAS, a plaintiff's right to punitive damages is  
17 subject to the plenary authority of the Legislature and the  
18 establishment or elimination of such a claim is clearly a  
19 substantive, rather than a procedural, decision of the  
20 Legislature, as recognized in *Alamo Rent-A-Car, Inc. v.*  
21 *Mancusi*, 632 So.2d 1352, 1358 (Fla. 1994), and

22           WHEREAS, cases involving punitive damages in class  
23 actions frequently involve significant contested legal issues,  
24 and parties should be afforded reasonable opportunity to fully  
25 pursue their rights in appellate courts without oppressive  
26 costs that would effectively eliminate or impair their  
27 due-process rights, NOW, THEREFORE,

28  
29 Be It Enacted by the Legislature of the State of Florida:  
30  
31

1           Section 1. Section 768.733, Florida Statutes, is  
2 created to read:

3           768.733 Punitive damages and bonds in class actions;  
4 limitations.--

5           (1) In any civil action that is brought as a certified  
6 class action, the court may not enter a judgment for punitive  
7 damages against a defendant in an amount that, if fully  
8 executed upon, would financially destroy or bankrupt the  
9 defendant.

10           (2) In any civil action that is brought as a certified  
11 class action, the trial court, upon the posting of a bond or  
12 equivalent surety as provided in this section, shall stay the  
13 execution of any judgment, or portion thereof, entered on  
14 account of punitive damages pending completion of any state  
15 appellate review of the judgment.

16           (3) The required bond or equivalent surety acceptable  
17 to the court for imposition of the stay shall be the lowest  
18 of:

19           (a) The amount of the punitive-damages judgment, plus  
20 twice the statutory rate of interest;

21           (b) One hundred million dollars, regardless of the  
22 amount of punitive damages; or

23           (c) Ten percent of the net worth of the defendant as  
24 determined by applying generally accepted accounting  
25 principles to the defendant's financial status as of December  
26 31 of the year prior to the judgment for punitive damages.

27           (4) If, at any time after notice and hearing, the  
28 court finds that a defendant who has posted a bond or  
29 equivalent surety pursuant to paragraph (3)(b) or paragraph  
30 (3)(c) is purposefully moving assets with the intent to avoid  
31 the punitive-damages judgment, the court shall increase the

1 bond or equivalent surety to the amount determined pursuant to  
2 paragraph (3)(a). If the defendant does not post the  
3 additional bond required by the court, the stay shall be  
4 revoked.

5 Section 2. This act applies to all cases pending on  
6 the effective date of this act in which an award for punitive  
7 damages has not been finally reduced to judgment through trial  
8 and subsequent appeals and to all cases commenced on or after  
9 the effective date of this act.

10 Section 3. This act shall take effect upon becoming a  
11 law.

12  
13 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
14 COMMITTEE SUBSTITUTE FOR  
15 SB 1720

16 Provides that in any civil action that is a certified class  
17 action, the court may not enter a judgment for punitive  
18 damages against a defendant in an amount that, if fully  
executed upon, would destroy or bankrupt the defendant.

19 Requires the trial court to stay the execution of any  
20 judgment, or portion thereof, on account of punitive damages  
pending completion of any state appellate review of the  
judgment if a bond or equivalent surety is posted as provided.

21 Provides that the bond must be the lowest of: (a) the amount  
22 of the punitive damages plus twice the statutory rate of  
interest; (b) one hundred million dollars; or (c) ten percent  
23 of the defendant's net worth.

24 Provides that the provisions apply to all cases pending on the  
effective date of the bill.