

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 safeguards to minimize the risk of unjust punishment, and

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

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

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

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

27  
28 Be It Enacted by the Legislature of the State of Florida:

29  
30           Section 1. Section 768.733, Florida Statutes, is  
31 created to read:

1           768.733 Punitive damages and bonds in class actions;  
2 limitations.--

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

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

14           (3) The required bond or equivalent surety acceptable  
15 to the court for imposition of the stay shall be the lower of:

16           (a) The amount of the punitive-damages judgment, plus  
17 twice the statutory rate of interest; or

18           (b) Ten percent of the net worth of the defendant as  
19 determined by applying generally accepted accounting  
20 principles to the defendant's financial status as of December  
21 31 of the year prior to the judgment for punitive damages.

22  
23 Provided that in no case shall the amount of the required bond  
24 or equivalent surety exceed \$100 million, regardless of the  
25 amount of punitive damages.

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

1 If the defendant does not post the additional bond required by  
2 the court, the stay shall be revoked.

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

8           Section 3. This act shall take effect upon becoming a  
9 law.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31