

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1067 Punitive Damages  
**SPONSOR(S):** Santiago and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 978

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Civil Justice Subcommittee		Malcolm	Bond
2) Judiciary Committee			

**SUMMARY ANALYSIS**

Punitive damages are damages awarded in a civil case as an enhancement of actual damages when a defendant's wrongful conduct was intentional, malicious, or reckless. Current law places caps on punitive damages that apply to any cause of action that arose after October 1, 1999. The bill makes the cap on punitive damages applicable to any case in which a judgment has not been entered.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides that it is effective upon becoming law

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Punitive damages are damages awarded in a civil case as an enhancement of actual damages when a defendant's wrongful conduct was intentional, malicious, or reckless. They are imposed as a punishment of the defendant and as a deterrent to others.<sup>1</sup>

Section 768.73(1), F.S., currently provides a general cap on punitive damages of three times the amount of compensatory damages or \$500,000, whichever is greater. This cap may be exceeded where the trier of fact finds that the defendant's wrongful conduct was motivated by a desire for unreasonable financial gain and the defendant knew of the unreasonably dangerous nature of the conduct and the high likelihood of injury. In such cases, the cap on punitive damages increases to four times the amount of compensatory damages or \$2,000,000, whichever is greater. However, there is no cap on punitive damages in cases where the defendant had a specific intent to harm the claimant and the defendant's conduct actually harmed the claimant.

Section 768.73(2), F.S., also restricts multiple awards of punitive damages. A defendant in a civil action may avoid subsequent punitive damages if the defendant can establish that punitive damages have previously been awarded against the defendant in any state or federal court for harm from the same act or course of conduct for which the claimant seeks damages. However, subsequent punitive damages may be awarded if the court determines by clear and convincing evidence that the amount of prior punitive damages awarded was insufficient to punish the defendant's behavior. The wrongdoer's cessation of the wrongful conduct may be considered in making this determination. If a subsequent award is permitted, the finder of fact will determine the total punitive damages appropriate to punish the conduct. The court will then enter judgment for that amount less any prior punitive damages awards.

These limits only apply to causes of action that arose after October 1, 1999.

##### **Effect of the Bill**

The bill amends s. 768.73, F.S., to provide that the cap on punitive damages applies to any civil action in which judgment has not been entered, regardless of when the cause of action arose.

#### B. SECTION DIRECTORY:

Section 1 amends s. 768.73, F.S., related to punitive damages and limitations.

Section 2 provides that the act will take effect upon becoming law.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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<sup>1</sup> 17 Fla. Jur 2d Damages §§ 122 and 123.

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may impact litigants in older cases that are pending today.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The Florida Supreme Court has held that the existence of a claim for punitive damages is subject to the authority of the legislature who "may place conditions upon such a recovery or even abolish it altogether."<sup>2</sup>

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

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<sup>2</sup> *Gordon v. State*, 585 So. 2d 1033, 1035-36 (Fla. 1991); see also, *Ross v. Gore*, 48 So. 2d 412 (Fla. 1950).