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A B I L L

To amend sections 2305.10, 2315.21, 3721.02, and 1
3721.17 and to enact section 5111.411 of the 2
Revised Code relative to the results of a home 3
inspection or nursing facility survey, liability of 4
a residential care facility or a home for punitive 5
damages, and to the statute of limitations for home 8
or residential facility care.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2305.10, 2315.21, 3721.02, and 9
3721.17 be amended and section 5111.411 of the Revised Code be 10
enacted to read as follows: 11

Sec. 2305.10. An action for bodily injury or injuring 5
personal property shall be brought within two years after the 6
cause thereof arose. 7

An action upon a claim that is asserted in any civil action 8
against a home or residential facility or against any employee or 9
agent of a home or residential facility, shall be commenced within 10
two years after the cause of action arose, including, but not 11
limited to: claims resulting from acts or omissions in providing 12
health care or from the hiring, training, supervision, retention, 13
or termination of health careqivers; or claims brought under 14
section 3721.17 of the Revised Code. 15

For purposes of this section, a cause of action for bodily 16
injury caused by exposure to asbestos or to chromium in any of its 17
chemical forms arises upon the date on which the plaintiff is 18
informed by competent medical authority that the plaintiff has 19
been injured by such exposure, or upon the date on which, by the 20
exercise of reasonable diligence, the plaintiff should have become 21
aware that the plaintiff had been injured by the exposure, 22
whichever date occurs first. 23

For purposes of this section, a cause of action for bodily 24
injury incurred by a veteran through exposure to chemical 25
defoliants or herbicides or other causative agents, including 26
agent orange, arises upon the date on which the plaintiff is 27
informed by competent medical authority that the plaintiff has 28
been injured by such exposure. 29

As used in this section, ~~"agent:~~ 30

(A) "Agent orange," "causative agent," and "veteran" have the 31
same meanings as in section 5903.21 of the Revised Code. 32

(B) "Home" has the same meaning as in section 3721.10 of the 33
Revised Code. 34

(C) "Residential facility" means a facility licensed under 35
section 5123.19 of the Revised Code. 36

For purposes of this section, a cause of action for bodily 37
injury which may be caused by exposure to diethylstilbestrol or 38

other nonsteroidal synthetic estrogens, including exposure before 39
birth, upon the date on which the plaintiff learns from a licensed 40
physician that the plaintiff has an injury which may be related to 41
such exposure, or upon the date on which by the exercise of 42
reasonable diligence the plaintiff should have become aware that 43
the plaintiff has an injury which may be related to such exposure, 44
whichever date occurs first. 45

Sec. 2315.21. (A) As used in this section: 154

(1) "Tort action" means a civil action for damages for injury 155
or loss to person or property. "Tort action" includes a product 156
liability claim for damages for injury or loss to person or 157
property that is subject to sections 2307.71 to 2307.80 of the 158
Revised Code, but does not include a civil action for damages for 159
a breach of contract or another agreement between persons. 160

(2) "Trier of fact" means the jury or, in a nonjury action, 161
the court. 162

(3) "Home" has the same meaning as in section 3721.10 of the 163
Revised Code. 164

(B) Subject to division (D) of this section, punitive or 165
exemplary damages are not recoverable from a defendant in question 166
in a tort action unless both of the following apply: 167

(1) The actions or omissions of that defendant demonstrate 168
malice, aggravated or egregious fraud, oppression, or insult, or 169
that defendant as principal or master authorized, participated in, 170
or ratified actions or omissions of an agent or servant that so 171
demonstrate. 172

(2) The plaintiff in question has adduced proof of actual 173
damages that resulted from actions or omissions as described in 174
division (B)(1) of this section. 175

(C)(1) In a tort action, the trier of fact shall determine 176

the liability of any defendant for punitive or exemplary damages 177
and the amount of those damages. 178

(2) In a tort action, the burden of proof shall be upon a 179
plaintiff in question, by clear and convincing evidence, to 180
establish that the plaintiff is entitled to recover punitive or 181
exemplary damages. 182

(D) This section does not apply to tort actions against the 183
state in the court of claims or to the extent that another section 184
of the Revised Code expressly provides any of the following: 185

(1) Punitive or exemplary damages are recoverable from a 186
defendant in question in a tort action on a basis other than that 187
the actions or omissions of that defendant demonstrate malice, 188
aggravated or egregious fraud, oppression, or insult, or on a 189
basis other than that the defendant in question as principal or 190
master authorized, participated in, or ratified actions or 191
omissions of an agent or servant that so demonstrate. 192

(2) Punitive or exemplary damages are recoverable from a 193
defendant in question in a tort action irrespective of whether the 194
plaintiff in question has adduced proof of actual damages. 195

(3) The burden of proof upon a plaintiff in question to 196
recover punitive or exemplary damages from a defendant in question 197
in a tort action is one other than clear and convincing evidence. 198

(4) Punitive or exemplary damages are not recoverable from a 199
defendant in question in a tort action. 200

(E) When determining the amount of an award of punitive or 201
exemplary damages against either a home or a residential facility 202
licensed under section 5123.19 of the Revised Code, the trier of 203
fact shall consider all of the following: 204

(1) The ability of the home or residential facility to pay 205
the award of punitive or exemplary damages based on the home's or 206

<u>residential facility's assets, income, and net worth;</u>	207
<u>(2) Whether the amount of punitive or exemplary damages is sufficient to deter future tortious conduct;</u>	208
<u>(3) The financial ability of the home or residential facility, both currently and in the future, to provide accommodations, personal care services, and skilled nursing care.</u>	210
Sec. 3721.02. (A) The director of health shall license homes and establish procedures to be followed in inspecting and licensing homes. The director may inspect a home at any time. Each home shall be inspected by the director at least once prior to the issuance of a license and at least once every fifteen months thereafter. The state fire marshal or a township, municipal, or other legally constituted fire department approved by the marshal shall also inspect a home prior to issuance of a license, at least once every fifteen months thereafter, and at any other time requested by the director. A home does not have to be inspected prior to issuance of a license by the director, state fire marshal, or a fire department if ownership of the home is assigned or transferred to a different person and the home was licensed under this chapter immediately prior to the assignment or transfer. The director may enter at any time, for the purposes of investigation, any institution, residence, facility, or other structure which <u>that</u> has been reported to the director or that the director has reasonable cause to believe is operating as a nursing home, residential care facility, or home for the aging without a valid license required by section 3721.05 of the Revised Code or, in the case of a county home or district home, is operating despite the revocation of its residential care facility license. The director may delegate the director's authority and duties under this chapter to any division, bureau, agency, or official of the department of health.	360
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(B) A single facility may be licensed both as a nursing home 385
pursuant to this chapter and as an adult care facility pursuant to 386
Chapter 3722. of the Revised Code if the director determines that 387
the part or unit to be licensed as a nursing home can be 388
maintained separate and discrete from the part or unit to be 389
licensed as an adult care facility. 390

(C) In determining the number of residents in a home for the 391
purpose of licensing, the director shall consider all the 392
individuals for whom the home provides accommodations as one group 393
unless one of the following is the case: 394

~~(A)~~(1) The home is a home for the aging, in which case all 395
the individuals in the part or unit licensed as a nursing home 396
shall be considered as one group, and all the individuals in the 397
part or unit licensed as a rest home shall be considered as 398
another group. 399

~~(B)~~(2) The home is both a nursing home and an adult care 400
facility. In that case, all the individuals in the part or unit 401
licensed as a nursing home shall be considered as one group, and 402
all the individuals in the part or unit licensed as an adult care 403
facility shall be considered as another group. 404

~~(C)~~(3) The home maintains, in addition to a nursing home or 405
residential care facility, a separate and discrete part or unit 406
that provides accommodations to individuals who do not require or 407
receive skilled nursing care and do not receive personal care 408
services from the home, in which case the individuals in the 409
separate and discrete part or unit shall not be considered in 410
determining the number of residents in the home if the separate 411
and discrete part or unit is in compliance with the Ohio basic 412
building code established by the board of building standards under 413
Chapters 3781. and 3791. of the Revised Code and the home permits 414
the director, on request, to inspect the separate and discrete 415
part or unit and speak with the individuals residing there, if 416

they consent, to determine whether the separate and discrete part 417
or unit meets the requirements of this division. 418

(D) The director of health shall charge an application fee 419
and an annual renewal licensing and inspection fee of one hundred 420
dollars for each fifty persons or part thereof of a home's 421
licensed capacity. All fees collected by the director for the 422
issuance or renewal of licenses shall be deposited into the state 423
treasury to the credit of the general operations fund created in 424
section 3701.83 of the Revised Code for use only in administering 425
and enforcing this chapter and rules adopted under it. 426

(E) (1) Except as otherwise provided in this section, the 427
results of an inspection or investigation of a home that is 428
conducted under this section, including any statement of 429
deficiencies and all findings and deficiencies cited in the 430
statement on the basis of the inspection or investigation, shall 431
be used solely to determine the home's compliance with this 432
chapter or another chapter of the Revised Code in any action or 433
proceeding other than an action commenced under division (I) of 434
section 3721.17 of the Revised Code. Those results of an 435
inspection or investigation, that statement of deficiencies, and 436
the findings and deficiencies cited in that statement shall not be 437
used in any court or in any action or proceeding that is pending 438
in any court and are not admissible in evidence in any action or 439
proceeding unless that action or proceeding is an appeal of an 440
action by the department of health under this chapter or is an 441
action by any department or agency of the state to enforce this 442
chapter or another chapter of the Revised Code. 443

(2) Nothing in division (E)(1) of this section prohibits the 444
results of an inspection or investigation conducted under this 445
section from being used in a criminal investigation or 446
prosecution. 447

Sec. 3721.17. (A) Any resident who believes that the 448
resident's rights under sections 3721.10 to 3721.17 of the Revised 449
Code have been violated may file a grievance under procedures 450
adopted pursuant to division (A)(2) of section 3721.12 of the 451
Revised Code. 452

When the grievance committee determines a violation of 453
sections 3721.10 to 3721.17 of the Revised Code has occurred, it 454
shall notify the administrator of the home. If the violation 455
cannot be corrected within ten days, or if ten days have elapsed 456
without correction of the violation, the grievance committee shall 457
refer the matter to the department of health. 458

(B) Any person who believes that a resident's rights under 459
sections 3721.10 to 3721.17 of the Revised Code have been violated 460
may report or cause reports to be made of the information directly 461
to the department of health. No person who files a report is 462
liable for civil damages resulting from the report. 463

(C)(1) Within thirty days of receiving a complaint under this 464
section, the department of health shall investigate any complaint 465
referred to it by a home's grievance committee and any complaint 466
from any source that alleges that the home provided substantially 467
less than adequate care or treatment, or substantially unsafe 468
conditions, or, within seven days of receiving a complaint, refer 469
it to the attorney general, if the attorney general agrees to 470
investigate within thirty days. 471

(2) Within thirty days of receiving a complaint under this 472
section, the department of health may investigate any alleged 473
violation of sections 3721.10 to 3721.17 of the Revised Code, or 474
of rules, policies, or procedures adopted pursuant to those 475
sections, not covered by division (C)(1) of this section, or it 476
may, within seven days of receiving a complaint, refer the 477
complaint to the grievance committee at the home where the alleged 478

violation occurred, or to the attorney general if the attorney
general agrees to investigate within thirty days.

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(D) If, after an investigation, the department of health
finds probable cause to believe that a violation of sections
3721.10 to 3721.17 of the Revised Code, or of rules, policies, or
procedures adopted pursuant to those sections, has occurred at a
home that is certified under the medicare or medicaid program, it
shall cite one or more findings or deficiencies under sections
5111.35 to 5111.62 of the Revised Code. If the home is not so
certified, the department shall hold an adjudicative hearing
within thirty days under Chapter 119. of the Revised Code.

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(E) Upon a finding at an adjudicative hearing under division
(D) of this section that a violation of sections 3721.10 to
3721.17 of the Revised Code, or of rules, policies, or procedures
adopted pursuant thereto, has occurred, the department of health
shall make an order for compliance, set a reasonable time for
compliance, and assess a fine pursuant to division (F) of this
section. The fine shall be paid to the general revenue fund only
if compliance with the order is not shown to have been made within
the reasonable time set in the order. The department of health may
issue an order prohibiting the continuation of any violation of
sections 3721.10 to 3721.17 of the Revised Code.

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Findings at the hearings conducted under this section may be
appealed pursuant to Chapter 119. of the Revised Code, except that
an appeal may be made to the court of common pleas of the county
in which the home is located.

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The department of health shall initiate proceedings in court
to collect any fine assessed under this section ~~which~~ that is
unpaid thirty days after the violator's final appeal is exhausted.

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(F) Any home found, pursuant to an adjudication hearing under
division (D) of this section, to have violated sections 3721.10 to

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3721.17 of the Revised Code, or rules, policies, or procedures 510
adopted pursuant to those sections may be fined not less than one 511
hundred nor more than five hundred dollars for a first offense. 512
For each subsequent offense, the home may be fined not less than 513
two hundred nor more than one thousand dollars. 514

A violation of sections 3721.10 to 3721.17 of the Revised 515
Code is a separate offense for each day of the violation and for 516
each resident who claims the violation. 517

(G) No home or employee of a home shall retaliate against any 518
person who: 519

(1) Exercises any right set forth in sections 3721.10 to 520
3721.17 of the Revised Code, including, but not limited to, filing 521
a complaint with the home's grievance committee or reporting an 522
alleged violation to the department of health; 523

(2) Appears as a witness in any hearing conducted under this 524
section or section 3721.162 of the Revised Code; 525

(3) Files a civil action alleging a violation of sections 526
3721.10 to 3721.17 of the Revised Code, or notifies a county 527
prosecuting attorney or the attorney general of a possible 528
violation of sections 3721.10 to 3721.17 of the Revised Code. 529

If, under the procedures outlined in this section, a home or 530
its employee is found to have retaliated, the violator may be 531
fined up to one thousand dollars. 532

(H) When legal action is indicated, any evidence of criminal 533
activity found in an investigation under division (C) of this 534
section shall be given to the prosecuting attorney in the county 535
in which the home is located for investigation. 536

(I)(1)(a) Any resident whose rights under sections 3721.10 to 537
3721.17 of the Revised Code are violated has a cause of action 538
against any person or home committing the violation. ~~The action~~ 539

~~may be commenced by the resident or by the resident's sponsor on behalf of the resident.~~ 540
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(b) An action under division (I)(1)(a) of this section may be commenced by the resident or by the resident's legal guardian or other legally authorized representative on behalf of the resident or the resident's estate. If the resident or the resident's legal guardian or other legally authorized representative is unable to commence an action under that division on behalf of the resident, the following persons in the following order of priority have the right to and may commence an action under that division on behalf of the resident or the resident's estate: 542
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(i) The resident's spouse; 551
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(ii) The resident's parent or adult child; 553

(iii) The resident's guardian if the resident is a minor child; 554
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(iv) The resident's brother or sister; 556

(v) The resident's niece, nephew, aunt, or uncle. 557

(c) Notwithstanding any law as to priority of persons entitled to commence an action, if more than one eligible person within the same level of priority seeks to commence an action on behalf of a resident or the resident's estate, the court shall determine, in the best interest of the resident or the resident's estate, the individual to commence the action. A court's determination under this division as to the person to commence an action on behalf of a resident or the resident's estate shall bar another person from commencing the action on behalf of the resident or the resident's estate. 558
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(d) The result of an action commenced pursuant to division (I)(1)(a) of this section by a person authorized under division (I)(1)(b) of this section shall bind the resident or the 568
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resident's estate that is the subject of the action. 571

(2)(a) The plaintiff in an action filed under division (I)(1) 572
of this section may obtain injunctive relief against the violation 573
of the resident's rights. The plaintiff also may recover 574
compensatory damages based upon a showing, by a preponderance of 575
the evidence, that the violation of the resident's rights resulted 576
from a negligent act or omission of the person or home and that 577
the violation was the proximate cause of the resident's injury, 578
death, or loss to person or property. 579

(b) If compensatory damages are awarded for a violation of 580
the resident's rights, section 2315.21 of the Revised Code, ~~except~~ 581
~~divisions (E)(1) and (2) of that section,~~ shall apply to an award 582
of punitive or exemplary damages for the violation. 583

~~(b)~~ (c) The court, in a case in which only injunctive relief 584
is granted, may award to the prevailing party reasonable 585
attorney's fees limited to the work reasonably performed. 586

(3) Division (I)(2)~~(a)~~ (b) of this section shall be 587
considered to be purely remedial in operation and shall be applied 588
in a remedial manner in any civil action in which this section is 589
relevant, whether the action is pending in court or commenced on 590
or after July 9, 1998. 591

(4) Within thirty days after the filing of a complaint in an 592
action for damages brought against a home under division (I)(1)(a) 593
of this section by or on behalf of a resident or former resident 594
of the home, the plaintiff or plaintiff's counsel shall send 595
written notice of the filing of the complaint to the department of 596
job and family services if the department has a right of recovery 597
under section 5101.58 of the Revised Code against the liability of 598
the home for the cost of medical services and care arising out of 599
injury, disease, or disability of the resident or former resident. 600

Sec. 5111.411. The results of a survey of a nursing facility 601
that is conducted under section 5111.39 of the Revised Code, 602
including any statement of deficiencies and all findings and 603
deficiencies cited in the statement on the basis of the survey, 604
shall be used solely to determine the nursing facility's 605
compliance with certification requirements or with this chapter or 606
another chapter of the Revised Code. Those results of a survey, 607
that statement of deficiencies, and the findings and deficiencies 608
cited in that statement shall not be used in any court or in any 609
action or proceeding that is pending in any court and are not 610
admissible in evidence in any action or proceeding unless that 611
action or proceeding is an appeal of an administrative action by 612
the department of job and family services or contracting agency 613
under this chapter or is an action by any department or agency of 614
the state to enforce this chapter or another chapter of the 615
Revised Code. 616

Nothing in this section prohibits the results of a survey, a 617
statement of deficiencies, or the findings and deficiencies cited 618
in that statement on the basis of the survey under this section 619
from being used in a criminal investigation or prosecution. 620

Section 2. That existing sections 2305.10, 2315.21, 3721.02, 621
and 3721.17 of the Revised Code are hereby repealed. 622
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Section 3. Nothing in this act applies to proceedings or 624
appeals involving workers' compensation claims under Chapter 4121. 625
or 4123. of the Revised Code. 626

Section 4. If any provision of section 2305.10, 2315.21, 627
3721.02, or 3721.17 of the Revised Code, as amended by this act, 628
any provision of section 5111.411 of the Revised Code, as enacted 629
by this act, or the application of any provision of those sections 630

to any person or circumstance is held invalid, the invalidity does 631
not affect other provisions or applications of the particular 632
section or related sections that can be given effect without the 633
invalid provision or application, and to this end the provisions 634
of the particular section are severable. 635
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