

# AN ACT

To amend sections 2307.60, 2307.61, 2307.62, and 4399.18 of the Revised Code to specify the circumstances that would bar the recovery of damages in tort actions commenced by criminal offenders.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 2307.60, 2307.61, 2307.62, and 4399.18 of the Revised Code be amended to read as follows:

Sec. 2307.60. (A) Anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law, may recover the costs of maintaining the civil action and attorney's fees if authorized by any provision of the Rules of Civil Procedure or another section of the Revised Code or under the common law of this state, and may recover punitive or exemplary damages if authorized by section 2315.21 or another section of the Revised Code. No record of a conviction, unless obtained by confession in open court, shall be used as evidence in a civil action brought pursuant to division (A) of this section.

(B)(1) As used in division (B) of this section, "tort action" means a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or another agreement between persons. "Tort action" includes, but is not limited to, a product liability claim, an action for wrongful death under Chapter 2125, of the Revised Code, and an action based on derivative claims for relief.

(2) Recovery on a claim for relief in a tort action is barred to any person or the person's legal representative if the person has been convicted of or has pleaded guilty to a felony, or to a misdemeanor that is an offense of violence, arising out of criminal conduct that was a proximate cause of the injury or loss for which relief is claimed in the action.

(3) Division (B) of this section does not apply to civil claims based upon alleged intentionally tortious conduct, alleged violations of the United States Constitution, or alleged violations of statutes of the United States pertaining to civil rights.

Sec. 2307.61. (A) If a property owner brings a civil action pursuant to

division (A) of section 2307.60 of the Revised Code to recover damages from any person who willfully damages the owner's property or who commits a theft offense, as defined in section 2913.01 of the Revised Code, involving the owner's property, the property owner may recover as follows:

(1) In the civil action, the property owner may elect to recover moneys as described in division (A)(1)(a) or (b) of this section:

(a) Compensatory damages that may include, but are not limited to, the value of the property and liquidated damages in whichever of the following amounts applies:

(i) Fifty dollars, if the value of the property was fifty dollars or less at the time it was willfully damaged or was the subject of a theft offense;

(ii) One hundred dollars, if the value of the property was more than fifty dollars, but not more than one hundred dollars, at the time it was willfully damaged or was the subject of a theft offense;

(iii) One hundred fifty dollars, if the value of the property was more than one hundred dollars at the time it was willfully damaged or was the subject of a theft offense.

(b) Liquidated damages in whichever of the following amounts is greater:

(i) Two hundred dollars;

(ii) Three times the value of the property at the time it was willfully damaged or was the subject of a theft offense, irrespective of whether the property is recovered by way of replevin or otherwise, is destroyed or otherwise damaged, is modified or otherwise altered, or is resalable at its full market price. This division does not apply to a check, negotiable order of withdrawal, share draft, or other negotiable instrument that was returned or dishonored for insufficient funds by a financial institution if the check, negotiable order of withdrawal, share draft, or other negotiable instrument was presented by an individual borrower to a check-cashing business licensed pursuant to sections 1315.35 to 1315.44 of the Revised Code for a check-cashing loan transaction.

(2) In a civil action in which the value of the property that was willfully damaged or was the subject of a theft offense is less than five thousand dollars, the property owner may recover damages as described in division (A)(1)(a) or (b) of this section and additionally may recover the reasonable administrative costs, if any, of the property owner that were incurred in connection with actions taken pursuant to division (A)(2) of this section, the cost of maintaining the civil action, and reasonable attorney's fees, if all of the following apply:

(a) The property owner, at least thirty days prior to the filing of the civil

action, serves a written demand for payment of moneys as described in division (A)(1)(a) of this section and the reasonable administrative costs, if any, of the property owner that have been incurred in connection with actions taken pursuant to division (A)(2) of this section, upon the person who willfully damaged the property or committed the theft offense.

(b) The demand conforms to the requirements of division (C) of this section and is sent by certified mail, return receipt requested.

(c) Either the person who willfully damaged the property or committed the theft offense does not make payment to the property owner of the amount specified in the demand within thirty days after the date of its service upon that person and does not enter into an agreement with the property owner during that thirty-day period for that payment or the person who willfully damaged the property or committed the theft offense enters into an agreement with the property owner during that thirty-day period for that payment but does not make that payment in accordance with the agreement.

(B) If a property owner who brings a civil action pursuant to division (A) of section 2307.60 of the Revised Code to recover damages for willful damage to property or for a theft offense attempts to collect the reasonable administrative costs, if any, of the property owner that have been incurred in connection with actions taken pursuant to division (A)(2) of this section, the cost of maintaining the civil action, and reasonable attorney's fees under authority of that division and if the defendant prevails in the civil action, the defendant may recover from the property owner reasonable attorney's fees, the cost of defending the civil action, and any compensatory damages that may be proven.

(C) For purposes of division (A)(2) of this section, a written demand for payment shall include a conspicuous notice to the person upon whom the demand is to be served that indicates all of the following:

(1) The willful property damage or theft offense that the person allegedly committed;

(2) That, if the person makes payment of the amount specified in the demand within thirty days after its service upon the person or enters into an agreement with the property owner during that thirty-day period for that payment and makes that payment in accordance with the agreement, the person cannot be sued by the property owner in a civil action in relation to the willful property damage or theft offense;

(3) That, if the person fails to make payment of the amount specified in the demand within thirty days after the date of its service upon the person and fails to enter into an agreement for that payment with the property

owner during that thirty-day period or enters into an agreement for that payment with the property owner during that thirty-day period but does not make that payment in accordance with the agreement, the person may be sued in a civil action in relation to the willful property damage or theft offense;

(4) The potential judgment that the person may be required to pay if the person is sued in a civil action in relation to the willful property damage or theft offense and judgment is rendered against the person in that civil action;

(5) That, if the person is sued in a civil action by the property owner in relation to the willful property damage or theft offense, if the civil action requests that the person be required to pay the reasonable administrative costs, if any, of the property owner that have been incurred in connection with actions taken pursuant to division (A)(2) of this section, the cost of maintaining the action, and reasonable attorney's fees, and if the person prevails in the civil action, the person may recover from the property owner reasonable attorney's fees, the cost of defending the action, and any compensatory damages that can be proved.

(D) If a property owner whose property was willfully damaged or was the subject of a theft offense serves a written demand for payment upon a person who willfully damaged the property or committed the theft offense and if the person makes payment of the amount specified in the demand within thirty days after the date of its service upon the person or the person enters into an agreement with the property owner during that thirty-day period for that payment and makes payment in accordance with the agreement, the property owner shall not file a civil action against the person in relation to the willful property damage or theft offense.

(E) If a property owner whose property was willfully damaged or was the subject of a theft offense serves a written demand for payment upon a person who willfully damaged the property or committed the theft offense and if the person, within thirty days after the date of service of the demand upon the person, enters into an agreement with the property owner for the payment of the amount specified in the demand but does not make that payment in accordance with the agreement, the time between the entering of the agreement and the failure to make that payment shall not be computed as any part of the period within which a civil action based on the willful property damage or theft offense must be brought under the Revised Code.

(F) A civil action to recover damages for willful property damage or for a theft offense may be joined with a civil action that is brought pursuant to Chapter 2737. of the Revised Code to recover the property. If the two actions are joined, any compensatory damages recoverable by the property

owner shall be limited to the value of the property.

(G)(1) In a civil action to recover damages for willful property damage or for a theft offense, the trier of fact may determine that an owner's property was willfully damaged or that a theft offense involving the owner's property has been committed, whether or not any person has pleaded guilty to or has been convicted of any criminal offense or has been adjudicated a delinquent child in relation to any act involving the owner's property.

(2) This section does not affect the prosecution of any criminal action or proceeding or any action to obtain a delinquent child adjudication in connection with willful property damage or a theft offense.

(H) As used in this section:

(1) "Administrative costs" includes the costs of written demands for payment and associated postage under division (A)(2) of this section.

(2) "Value of the property" means one of the following:

(a) The retail value of any property that is offered for sale by a mercantile establishment, irrespective of whether the property is destroyed or otherwise damaged, is modified or otherwise altered, or otherwise is not resalable at its full market price;

(b) The face value of any check or other negotiable instrument that is not honored due to insufficient funds in the drawer's account, the absence of any drawer's account, or another reason, and all charges imposed by a bank, savings and loan association, credit union, or other financial institution upon the holder of the check or other negotiable instrument;

(c) The replacement value of any property not described in division (H)(1) or (2) of this section.

Sec. 2307.62. (A) As used in this section:

(1) "Trier of fact" means the jury or, in a nonjury trial, the court.

(2) "Profits" derived from a violation of division (A) or (B) of section 2913.041 of the Revised Code are equal to whichever of the following applies:

(a) The gross revenue derived from the violation by the persons who violated division (A) or (B) of section 2913.041 of the Revised Code, as established by a preponderance of the evidence by the owner or operator of the cable television system or other similar closed circuit coaxial cable communications system who is aggrieved by the violation;

(b) The gross revenue derived from the violation by the persons who violated division (A) or (B) of section 2913.041 of the Revised Code, as established by a preponderance of the evidence by the owner or operator of the cable television system or other similar closed circuit coaxial cable communications system who is aggrieved by the violation, minus deductible

expenses and other elements of profit that are not attributable to the violation of division (A) or (B) of section 2913.041 of the Revised Code, as established by a preponderance of the evidence by the persons who violated either or both of those divisions.

(B)(1) An owner or operator of a cable television system or other similar closed circuit coaxial cable communications system who is aggrieved by conduct that is prohibited by division (A) or (B) of section 2913.041 of the Revised Code may elect to commence a civil action for damages in accordance with division (A) of section 2307.60 or section 2307.61 of the Revised Code or to commence a civil action under this section in the appropriate municipal court, county court, or court of common pleas to recover damages and other specified moneys described in division (B)(1)(a), (b), or (c) of this section and, if applicable, damages described in division (B)(2) of this section from the persons who violated division (A) or (B) of section 2913.041 of the Revised Code. If the owner or operator elects to commence a civil action for damages and other specified moneys under this section, the owner or operator shall specify in its complaint which of the following categories of damages and other specified moneys the owner or operator seeks to recover from the persons who violated division (A) or (B) of section 2913.041 of the Revised Code:

(a) Full compensatory damages, punitive or exemplary damages if authorized by section 2315.21 of the Revised Code, and the reasonable attorney's fees, court costs, and other reasonable expenses incurred in maintaining the civil action under this section.

(b) Damages equal to the actual loss suffered by the owner or operator as a proximate result of the conduct that violated division (A) or (B) of section 2913.041 of the Revised Code and, in addition, damages equal to the profits derived by the persons who violated either or both of those divisions as a proximate result of the prohibited conduct.

(c) Liquidated damages in an amount of not less than two hundred fifty dollars and not more than ten thousand dollars, as determined by the trier of fact, for each separate violation of division (A) or (B) of section 2913.041 of the Revised Code as described in division (D) of that section.

(2) The trier of fact shall determine the amount of any compensatory damages to be awarded pursuant to division (B)(1)(a) of this section, and the court shall determine the amount of any punitive or exemplary damages authorized by section 2315.21 of the Revised Code and the amount of reasonable attorney's fees, court costs, and other reasonable expenses to be awarded pursuant to division (B)(1)(a) of this section. The trier of fact shall determine the amount of damages to be awarded to the owner or operator

under division (B)(1)(b) of this section.

(3) In a civil action under this section, if an owner or operator of a cable television system or other similar closed circuit coaxial cable communications system establishes by a preponderance of the evidence that the persons who violated division (A) or (B) of section 2913.041 of the Revised Code engaged in the prohibited conduct for the purpose of direct or indirect commercial advantage or private financial gain, the trier of fact may award to the owner or operator damages in an amount not to exceed fifty thousand dollars in addition to any amount recovered pursuant to division (B)(1)(a), (b), or (c) of this section, whichever of those divisions applies to the owner or operator.

(C) A person may join a civil action under this section with a civil action under Chapter 2737. of the Revised Code to recover any property of the owner or operator of a cable television system or other similar closed circuit coaxial cable communications system that was the subject of the violation of division (A) or (B) of section 2913.041 of the Revised Code. A person may commence a civil action under this section regardless of whether any person who allegedly violated either or both of those divisions has pleaded guilty to or has been convicted of a violation of either or both of those divisions or has been adjudicated a delinquent child for the commission of any act that constitutes a violation of either or both of those divisions.

Sec. 4399.18. Notwithstanding division (A) of section 2307.60 of the Revised Code and except as otherwise provided in this section and in section 4399.01 of the Revised Code, no person, and no executor or administrator of the person, who suffers personal injury, death, or property damage as a result of the actions of an intoxicated person has a cause of action against any liquor permit holder or an employee of a liquor permit holder who sold beer or intoxicating liquor to the intoxicated person unless the injury, death, or property damage occurred on the permit holder's premises or in a parking lot under the control of the permit holder and was proximately caused by the negligence of the permit holder or an employee of the permit holder. A person has a cause of action against a permit holder or an employee of a permit holder for personal injury, death, or property damage caused by the negligent actions of an intoxicated person occurring off the premises or away from a parking lot under the permit holder's control only when both of the following can be shown by a preponderance of the evidence:

(A) The permit holder or an employee of the permit holder knowingly sold an intoxicating beverage to at least one of the following:

(1) A noticeably intoxicated person in violation of division (B) of section 4301.22 of the Revised Code;

(2) A person in violation of division (C) of section 4301.22 of the Revised Code;

(3) A person in violation of section 4301.69 of the Revised Code.

(B) The person's intoxication proximately caused the personal injury, death, or property damage.

Notwithstanding sections 4399.02 and 4399.05 of the Revised Code, no person, and no executor or administrator of the person, who suffers personal injury, death, or property damage as a result of the actions of an intoxicated person has a cause of action against the owner of a building or premises who rents or leases the building or premises to a liquor permit holder against whom a cause of action may be brought under this section, except when the owner and the permit holder are the same person.

SECTION 2. That existing sections 2307.60, 2307.61, 2307.62, and 4399.18 of the Revised Code are hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Sub. S. B. No. 107

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the  
\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_