

As Introduced

**124th General Assembly
Regular Session
2001-2002**

S. B. No. 107

SENATOR Armbruster

A B I L L

To amend sections 2307.60 and 2307.61 of the Revised Code to reenact the changes to section 2307.60 of the Revised Code that were enacted by Am. Sub. H.B. 350 of the 121st General Assembly and amended by Sub. H.B. 547 of the 122nd General Assembly, to reenact the changes to section 2307.61 of the Revised Code that were enacted by Am. Sub. H.B. 350 of the 121st General Assembly, and to retain the amendments to that section as made by Sub. H.B. 294 of the 123rd General Assembly.

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

Section 1. That sections 2307.60 and 2307.61 of the Revised Code be amended to read as follows:

Sec. 2307.60. ~~(A)~~ (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. ~~A~~ A record

of a conviction, unless obtained by confession in open court, 21
shall ~~not~~ not be used as evidence in a civil action brought 22
pursuant to ~~division (A) of~~ division (A) of this section. 23

~~(B)(1) As used in division (B) of this section:~~ 24

~~(a) "Harm" means injury, death, or loss to person or 25
property. 26~~

~~(b) "Tort action" means a civil action for damages for 27
injury, death, or loss to person or property other than a civil 28
action for damages for a breach of contract or another agreement 29
between persons "Tort action" includes, but is not limited to, a 30
product liability claim, an action for wrongful death under 31
Chapter 2125. of the Revised Code, and an action based on 32
derivative claims for relief. 33~~

~~(2) Recovery on a claim for relief in a tort action is barred 34
to any person or the person's legal representative if the person 35
has been convicted of or has pleaded guilty to a felony, or to a 36
misdemeanor that is an offense of violence, arising out of 37
criminal conduct that was a proximate cause of the injury or loss 38
for which relief is claimed in the action. 39~~

~~(3) Division (B) of this section does not apply to civil 40
claims based upon alleged intentionally tortious conduct, alleged 41
violations of the United States Constitution, or alleged 42
violations of statutes of the United States pertaining to civil 43
rights. 44~~

(B)(1) As used in division (B) of this section: 45

(a) "Harm" means injury, death, or loss to person or 46
property. 47

(b) "Tort action" means a civil action for damages for 48
injury, death, or loss to person or property other than a civil 49
action for damages for a breach of contract or another agreement 50
between persons. "Tort action" includes, but is not limited to, a 51

product liability claim, an action for wrongful death under 52
Chapter 2125. of the Revised Code, and an action based on 53
derivative claims for relief. 54

(2) Recovery on a claim for relief in a tort action is barred 55
to any person or the person's legal representative if the person 56
has been convicted of or has pleaded guilty to a felony, or to a 57
misdemeanor that is an offense of violence, arising out of 58
criminal conduct that was a proximate cause of the injury or loss 59
for which relief is claimed in the action. 60

(3) Division (B) of this section does not apply to civil 61
claims based upon alleged intentionally tortious conduct, alleged 62
violations of the United States Constitution, or alleged 63
violations of statutes of the United States pertaining to civil 64
rights. 65

Sec. 2307.61. (A) If a property owner brings a civil action 66
pursuant to ~~division (A)~~ of division (A) of section 2307.60 of the 67
Revised Code to recover damages from any person who willfully 68
damages the owner's property or who commits a theft offense, as 69
defined in section 2913.01 of the Revised Code, involving the 70
owner's property, the property owner may recover as follows: 71

(1) In the civil action, the property owner may elect to 72
recover moneys as described in division (A)(1)(a) or (b) of this 73
section: 74

(a) Compensatory damages that may include, but are not 75
limited to, the value of the property and liquidated damages in 76
whichever of the following amounts applies: 77

(i) Fifty dollars, if the value of the property was fifty 78
dollars or less at the time it was willfully damaged or was the 79
subject of a theft offense; 80

(ii) One hundred dollars, if the value of the property was 81

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:

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(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~~ 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 176
maintaining the action, and reasonable attorney's fees, and if the 177
person prevails in the civil action, the person may recover from 178
the property owner reasonable attorney's fees, the cost of 179
defending the action, and any compensatory damages that can be 180
proved. 181

(D) If a property owner whose property was willfully damaged 182
or was the subject of a theft offense serves a written demand for 183
payment upon a person who willfully damaged the property or 184
committed the theft offense and if the person makes payment of the 185
amount specified in the demand within thirty days after the date 186
of its service upon the person or the person enters into an 187
agreement with the property owner during that thirty-day period 188
for that payment and makes payment in accordance with the 189
agreement, the property owner shall not file a civil action 190
against the person in relation to the willful property damage or 191
theft offense. 192

(E) If a property owner whose property was willfully damaged 193
or was the subject of a theft offense serves a written demand for 194
payment upon a person who willfully damaged the property or 195
committed the theft offense and if the person, within thirty days 196
after the date of service of the demand upon the person, enters 197
into an agreement with the property owner for the payment of the 198
amount specified in the demand but does not make that payment in 199
accordance with the agreement, the time between the entering of 200
the agreement and the failure to make that payment shall not be 201
computed as any part of the period within which a civil action 202
based on the willful property damage or theft offense must be 203
brought under the Revised Code. 204

(F) A civil action to recover damages for willful property 205
damage or for a theft offense may be joined with a civil action 206
that is brought pursuant to Chapter 2737. of the Revised Code to 207

recover the property. If the two actions are joined, any 208
compensatory damages recoverable by the property owner shall be 209
limited to the value of the property. 210

(G)(1) In a civil action to recover damages for willful 211
property damage or for a theft offense, the trier of fact may 212
determine that an owner's property was willfully damaged or that a 213
theft offense involving the owner's property has been committed, 214
whether or not any person has pleaded guilty to or has been 215
convicted of any criminal offense or has been adjudicated a 216
delinquent child in relation to any act involving the owner's 217
property. 218

(2) This section does not affect the prosecution of any 219
criminal action or proceeding or any action to obtain a delinquent 220
child adjudication in connection with willful property damage or a 221
theft offense. 222

(H) As used in this section: 223

(1) "Administrative costs" includes the costs of written 224
demands for payment and associated postage under division (A)(2) 225
of this section. 226

(2) "Value of the property" means one of the following: 227

(a) The retail value of any property that is offered for sale 228
by a mercantile establishment, irrespective of whether the 229
property is destroyed or otherwise damaged, is modified or 230
otherwise altered, or otherwise is not resalable at its full 231
market price; 232

(b) The face value of any check or other negotiable 233
instrument that is not honored due to insufficient funds in the 234
drawer's account, the absence of any drawer's account, or another 235
reason, and all charges imposed by a bank, savings and loan 236
association, credit union, or other financial institution upon the 237
holder of the check or other negotiable instrument; 238

(c) The replacement value of any property not described in 239
division (H)(1) or (2) of this section. 240

Section 2. That all existing versions of sections 2307.60 and 241
2307.61 of the Revised Code are hereby repealed. 242

Section 3. It is the intent of this act to reenact the 243
changes to section 2307.60 of the Revised Code that were enacted 244
by Am. Sub. H.B. 350 of the 121st General Assembly, 146 Ohio Laws 245
3867, and amended by Sub. H.B. 547 of the 122nd General Assembly, 246
147 Ohio Laws 4392. It is also the intent of this act to reenact 247
the changes to section 2307.61 of the Revised Code that were 248
enacted by Am. Sub. H.B. 350 of the 121st General Assembly, 146 249
Ohio Laws 3867, and retain the amendments to that section as made 250
by Sub. H.B. 294 of the 123rd General Assembly, 148 Ohio Laws 251
_____. This action is in conformity with the Supreme Court of 252
Ohio's decisions in *State, ex rel. Ohio Academy of Trial Lawyers* 253
v. Sheward (1999), 86 Ohio St.3d 451, and *Stevens v. Ackman* 254
(2001), 91 Ohio St.3d 182, and is intended to clarify the status 255
of the law. 256