

As Reported by the House Civil and Commercial Law Committee

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Sub. S. B. No. 107

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A B I L L

To amend sections 2307.60, 2307.61, 2307.62, and 1
4399.18 of the Revised Code to specify the 2
circumstances that would bar the recovery of 3
damages in tort actions commenced by criminal 4
offenders. 5

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

Section 1. That sections 2307.60, 2307.61, 2307.62, and 6
4399.18 of the Revised Code be amended to read as follows: 7

Sec. 2307.60. (A) Anyone injured in person or property by a 8
criminal act has, and may recover full damages in, a civil action 9
unless specifically excepted by law, may recover the costs of 10
maintaining the civil action and attorney's fees if authorized by 11
any provision of the Rules of Civil Procedure or another section 12
of the Revised Code or under the common law of this state, and may 13
recover punitive or exemplary damages if authorized by section 14
2315.21 or another section of the Revised Code. No record of a 15
conviction, unless obtained by confession in open court, shall be 16
used as evidence in a civil action brought pursuant to division 17
(A) of this section. 18

(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. 19 20 21 22 23 24 25

(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. 26 27 28 29 30 31

(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. 32 33 34 35 36

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: 37 38 39 40 41 42

(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: 43 44 45

(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: 46 47 48

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(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 80
with actions taken pursuant to division (A)(2) of this section, 81
the cost of maintaining the civil action, and reasonable 82
attorney's fees, if all of the following apply: 83

(a) The property owner, at least thirty days prior to the 84
filing of the civil action, serves a written demand for payment of 85
moneys as described in division (A)(1)(a) of this section and the 86
reasonable administrative costs, if any, of the property owner 87
that have been incurred in connection with actions taken pursuant 88
to division (A)(2) of this section, upon the person who willfully 89
damaged the property or committed the theft offense. 90

(b) The demand conforms to the requirements of division (C) 91
of this section and is sent by certified mail, return receipt 92
requested. 93

(c) Either the person who willfully damaged the property or 94
committed the theft offense does not make payment to the property 95
owner of the amount specified in the demand within thirty days 96
after the date of its service upon that person and does not enter 97
into an agreement with the property owner during that thirty-day 98
period for that payment or the person who willfully damaged the 99
property or committed the theft offense enters into an agreement 100
with the property owner during that thirty-day period for that 101
payment but does not make that payment in accordance with the 102
agreement. 103

(B) If a property owner who brings a civil action pursuant to 104
division (A) of section 2307.60 of the Revised Code to recover 105
damages for willful damage to property or for a theft offense 106
attempts to collect the reasonable administrative costs, if any, 107
of the property owner that have been incurred in connection with 108
actions taken pursuant to division (A)(2) of this section, the 109
cost of maintaining the civil action, and reasonable attorney's 110
fees under authority of that division and if the defendant 111

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prevails in the civil action, the defendant may recover from the 112
property owner reasonable attorney's fees, the cost of defending 113
the civil action, and any compensatory damages that may be proven. 114

(C) For purposes of division (A)(2) of this section, a 115
written demand for payment shall include a conspicuous notice to 116
the person upon whom the demand is to be served that indicates all 117
of the following: 118

(1) The willful property damage or theft offense that the 119
person allegedly committed; 120

(2) That, if the person makes payment of the amount specified 121
in the demand within thirty days after its service upon the person 122
or enters into an agreement with the property owner during that 123
thirty-day period for that payment and makes that payment in 124
accordance with the agreement, the person cannot be sued by the 125
property owner in a civil action in relation to the willful 126
property damage or theft offense; 127

(3) That, if the person fails to make payment of the amount 128
specified in the demand within thirty days after the date of its 129
service upon the person and fails to enter into an agreement for 130
that payment with the property owner during that thirty-day period 131
or enters into an agreement for that payment with the property 132
owner during that thirty-day period but does not make that payment 133
in accordance with the agreement, the person may be sued in a 134
civil action in relation to the willful property damage or theft 135
offense; 136

(4) The potential judgment that the person may be required to 137
pay if the person is sued in a civil action in relation to the 138
willful property damage or theft offense and judgment is rendered 139
against the person in that civil action; 140

(5) That, if the person is sued in a civil action by the 141
property owner in relation to the willful property damage or theft 142

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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 206
association, credit union, or other financial institution upon the 207
holder of the check or other negotiable instrument; 208

(c) The replacement value of any property not described in 209
division (H)(1) or (2) of this section. 210

Sec. 2307.62. (A) As used in this section: 211

(1) "Trier of fact" means the jury or, in a nonjury trial, 212
the court. 213

(2) "Profits" derived from a violation of division (A) or (B) 214
of section 2913.041 of the Revised Code are equal to whichever of 215
the following applies: 216

(a) The gross revenue derived from the violation by the 217
persons who violated division (A) or (B) of section 2913.041 of 218
the Revised Code, as established by a preponderance of the 219
evidence by the owner or operator of the cable television system 220
or other similar closed circuit coaxial cable communications 221
system who is aggrieved by the violation; 222

(b) The gross revenue derived from the violation by the 223
persons who violated division (A) or (B) of section 2913.041 of 224
the Revised Code, as established by a preponderance of the 225
evidence by the owner or operator of the cable television system 226
or other similar closed circuit coaxial cable communications 227
system who is aggrieved by the violation, minus deductible 228
expenses and other elements of profit that are not attributable to 229
the violation of division (A) or (B) of section 2913.041 of the 230
Revised Code, as established by a preponderance of the evidence by 231
the persons who violated either or both of those divisions. 232

(B)(1) An owner or operator of a cable television system or 233
other similar closed circuit coaxial cable communications system 234
who is aggrieved by conduct that is prohibited by division (A) or 235

(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) 268
of this section, and the court shall determine the amount of any 269
punitive or exemplary damages authorized by section 2315.21 of the 270
Revised Code and the amount of reasonable attorney's fees, court 271
costs, and other reasonable expenses to be awarded pursuant to 272
division (B)(1)(a) of this section. The trier of fact shall 273
determine the amount of damages to be awarded to the owner or 274
operator under division (B)(1)(b) of this section. 275

(3) In a civil action under this section, if an owner or 276
operator of a cable television system or other similar closed 277
circuit coaxial cable communications system establishes by a 278
preponderance of the evidence that the persons who violated 279
division (A) or (B) of section 2913.041 of the Revised Code 280
engaged in the prohibited conduct for the purpose of direct or 281
indirect commercial advantage or private financial gain, the trier 282
of fact may award to the owner or operator damages in an amount 283
not to exceed fifty thousand dollars in addition to any amount 284
recovered pursuant to division (B)(1)(a), (b), or (c) of this 285
section, whichever of those divisions applies to the owner or 286
operator. 287

(C) A person may join a civil action under this section with 288
a civil action under Chapter 2737. of the Revised Code to recover 289
any property of the owner or operator of a cable television system 290
or other similar closed circuit coaxial cable communications 291
system that was the subject of the violation of division (A) or 292
(B) of section 2913.041 of the Revised Code. A person may commence 293
a civil action under this section regardless of whether any person 294
who allegedly violated either or both of those divisions has 295
pleaded guilty to or has been convicted of a violation of either 296
or both of those divisions or has been adjudicated a delinquent 297
child for the commission of any act that constitutes a violation 298
of either or both of those divisions. 299

Sec. 4399.18. Notwithstanding division (A) of section 2307.60 300
of the Revised Code and except as otherwise provided in this 301
section and in section 4399.01 of the Revised Code, no person, and 302
no executor or administrator of the person, who suffers personal 303
injury, death, or property damage as a result of the actions of an 304
intoxicated person has a cause of action against any liquor permit 305
holder or an employee of a liquor permit holder who sold beer or 306
intoxicating liquor to the intoxicated person unless the injury, 307
death, or property damage occurred on the permit holder's premises 308
or in a parking lot under the control of the permit holder and was 309
proximately caused by the negligence of the permit holder or an 310
employee of the permit holder. A person has a cause of action 311
against a permit holder or an employee of a permit holder for 312
personal injury, death, or property damage caused by the negligent 313
actions of an intoxicated person occurring off the premises or 314
away from a parking lot under the permit holder's control only 315
when both of the following can be shown by a preponderance of the 316
evidence: 317

(A) The permit holder or an employee of the permit holder 318
knowingly sold an intoxicating beverage to at least one of the 319
following: 320

(1) A noticeably intoxicated person in violation of division 321
(B) of section 4301.22 of the Revised Code; 322

(2) A person in violation of division (C) of section 4301.22 323
of the Revised Code; 324

(3) A person in violation of section 4301.69 of the Revised 325
Code. 326

(B) The person's intoxication proximately caused the personal 327
injury, death, or property damage. 328

Notwithstanding sections 4399.02 and 4399.05 of the Revised 329

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Code, no person, and no executor or administrator of the person, 330
who suffers personal injury, death, or property damage as a result 331
of the actions of an intoxicated person has a cause of action 332
against the owner of a building or premises who rents or leases 333
the building or premises to a liquor permit holder against whom a 334
cause of action may be brought under this section, except when the 335
owner and the permit holder are the same person. 336

Section 2. That existing sections 2307.60, 2307.61, 2307.62, 337
and 4399.18 of the Revised Code are hereby repealed. 338