

As Reported by the House Civil and Commercial Law Committee

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Sub. H. B. No. 350

**Representatives Gibbs, Wagner, Setzer, Seitz, Husted, Williams, Hollister,
Young, C. Evans, Webster, Hagan, Martin, Aslanides, McGregor, Collier,
Allen, Raussen, Faber, Schaffer, Seaver, Widener, Latta, Core, Willamowski,
Book**

A B I L L

To amend sections 1533.18 and 2323.51 and to enact 1
sections 901.52, 1519.07, and 2305.36 of the 2
Revised Code to provide qualified immunity from 3
civil damages for food manufacturers, sellers, and 4
trade associations for claims resulting from a 5
person's cumulative consumption, obesity, or 6
weight gain or any health condition related to 7
cumulative consumption, obesity, or weight gain; 8
to prohibit imputing any assurances or assumption 9
of liability regarding public access to premises 10
used for growing agricultural produce; to preclude 11
assumption of liability regarding the use of 12
recreational trails; and to modify the provisions 13
on frivolous conduct in filing civil actions. 14

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

Section 1. That sections 1533.18 and 2323.51 be amended and 15
sections 901.52, 1519.07, and 2305.36 of the Revised Code be 16
enacted to read as follows: 17

Sec. 901.52. (A) As used in this section, "tort action" has 18
the same meaning as in section 2305.35 of the Revised Code. 19

(B) In a tort action, in the absence of willful or wanton 20
misconduct or intentionally tortious conduct, no owner, lessee, 21
renter, or operator of premises that are open to the public for 22
direct access to growing agricultural produce shall be imputed to 23
do either of the following: 24

(1) Extend any assurance to a person that the premises are 25
safe from naturally occurring hazards merely by the act of giving 26
permission to the person to enter the premises or by receiving 27
consideration for the produce picked by the person; 28

(2) Assume responsibility or liability for injury, death, or 29
loss to person or property allegedly resulting from the natural 30
condition of the terrain of the premises or from the condition of 31
the terrain resulting from cultivation of soil. 32

Sec. 1519.07. (A) As used in this section: 33

(1) "Intentional tort" means an injury to person or property 34
that the tortfeasor intentionally caused, to which the tortfeasor 35
intentionally contributed, or that the tortfeasor knew or believed 36
was substantially certain to result from the tortfeasor's conduct. 37

(2) "Premises" means a parcel of land together with any 38
waters, buildings, or structures on it that is privately owned and 39
that is directly adjacent to a recreational trail. 40

(3) "Recreational trail" means a public trail that is used 41
for hiking, bicycling, horseback riding, ski touring, canoeing, or 42
other nonmotorized forms of recreational travel and that 43
interconnects state parks, forests, wildlife areas, nature 44
preserves, scenic rivers, or other places of scenic or historic 45
interest. 46

(4) "User of a recreational trail" means a person who, in the 47
course of using a recreational trail, enters on premises without 48
first obtaining express permission to be there from the owner, 49
lessee, or occupant of the premises. 50

(B)(1) An owner, lessee, or occupant of premises does not owe 51
any duty to a user of a recreational trail to keep the premises 52
safe for entry or use by a user of a recreational trail. 53

(2) An owner, lessee, or occupant of premises does not 54
assume, has no responsibility for, does not incur liability for, 55
and is not liable for any injury to person or property caused by 56
any act of a user of a recreational trail. 57

(C) This section does not apply to intentional torts. 58

Sec. 1533.18. As used in sections 1533.18 and 1533.181 of the 59
Revised Code: 60

(A) "Premises" means all privately-owned lands, ways, and 61
waters, and any buildings and structures thereon, and all 62
privately owned and state-owned lands, ways, and waters leased to 63
a private person, firm, or organization, including any buildings 64
and structures thereon. 65

(B) "Recreational user" means a person to whom permission has 66
been granted, without the payment of a fee or consideration to the 67
owner, lessee, or occupant of premises, other than a fee or 68
consideration paid to the state or any agency of the state, or a 69
lease payment paid to the owner of privately owned lands, to enter 70
upon premises to hunt, fish, trap, camp, hike, swim, operate a 71
snowmobile or all-purpose vehicle, or engage in other recreational 72
pursuits. 73

(C) "All-purpose vehicle" has the same meaning as in section 74
4519.01 of the Revised Code. 75

<u>Sec. 2305.36. (A) As used in this section:</u>	76
<u>(1) "Cumulative consumption" means, with respect to a health condition, any health condition, including, but not limited to, increased cholesterol, heart disease, or high blood pressure, that is caused by successive consumption of a qualified product.</u>	77 78 79 80
<u>(2) "Person engaged in the business" means a person who manufactures, markets, distributes, advertises, or sells a qualified product in the regular course of the person's trade or business.</u>	81 82 83 84
<u>(3) "Manufacturer" has the same meaning as in section 2307.71 of the Revised Code.</u>	85 86
<u>(4) "Qualified product" means all of the following:</u>	87
<u>(a) Articles used for food or drink for a human being or other animal;</u>	88 89
<u>(b) Chewing gum;</u>	90
<u>(c) Articles used for components of any article listed in division (A)(4)(a) or (b) of this section.</u>	91 92
<u>(5) "Seller" means, with respect to a qualified product, a person lawfully engaged in the business of marketing, distributing, advertising, or selling the product.</u>	93 94 95
<u>(6) "Trade association" means any association or business organization that is not operated for profit and in which two or more members of the trade association are manufacturers, marketers, distributors, advertisers, or sellers of a qualified product.</u>	96 97 98 99 100
<u>(B) Except as provided in division (D) of this section, no manufacturer or seller of a qualified product and no trade association is liable for injury, death, or loss to person or property for damages, is subject to an action for declaratory</u>	101 102 103 104

judgment, injunctive relief, or declaratory relief, or is 105
responsible for restitution, damages, or other relief arising out 106
of, resulting from, or related to cumulative consumption, weight 107
gain, obesity, or any health condition that is related to 108
cumulative consumption, weight gain, or obesity. 109

(C) A party that prevails on a motion to dismiss an action 110
under division (B) of this section may recover reasonable 111
attorney's fees and costs that the party incurred in connection 112
with the motion to dismiss. 113

(D) The immunity from liability provided in division (B) of 114
this section does not apply to any of the following: 115

(1) The misbranding of the qualified product involved; 116

(2) Any willful violation of state or federal law that 117
applies to the qualified product involved; 118

(3) Any breach of express contract or breach of express 119
warranty in connection with the purchase of the qualified product 120
involved. 121

Sec. 2323.51. (A) As used in this section: 122

(1) "Conduct" means any of the following: 123

(a) The filing of a civil action, the assertion of a claim, 124
defense, or other position in connection with a civil action, the 125
filing of a pleading, motion, or other paper in a civil action, 126
including, but not limited to, a motion or paper filed for 127
discovery purposes, or the taking of any other action in 128
connection with a civil action; 129

(b) The filing by an inmate of a civil action or appeal 130
against a government entity or employee, the assertion of a claim, 131
defense or other position in connection with a civil action of 132
that nature or the assertion of issues of law in an appeal of that 133

nature, or the taking of any other action in connection with a 134
civil action or appeal of that nature. 135

(2) "Frivolous conduct" means either of the following: 136

(a) Conduct of an inmate or other party to a civil action, of 137
an inmate who has filed an appeal of the type described in 138
division (A)(1)(b) of this section, or of the inmate's or other 139
party's counsel of record that satisfies ~~either~~ any of the 140
following: 141

(i) It obviously serves merely to harass or maliciously 142
injure another party to the civil action or appeal or is for 143
another improper purpose, including, but not limited to, causing 144
unnecessary delay or a needless increase in the cost of 145
litigation. 146

(ii) It is not warranted under existing law ~~and~~, cannot be 147
supported by a good faith argument for an extension, modification, 148
or reversal of existing law, or cannot be supported by a good 149
faith argument for the establishment of new law. 150

(iii) The conduct consists of allegations or other factual 151
contentions that have no evidentiary support or, if specifically 152
so identified, are not likely to have evidentiary support after a 153
reasonable opportunity for further investigation or discovery. 154

(iv) The conduct consists of denials or factual contentions 155
that are not warranted by the evidence or, if specifically so 156
identified, are not reasonably based on a lack of information or 157
belief. 158

(b) An inmate's commencement of a civil action or appeal 159
against a government entity or employee when any of the following 160
applies: 161

(i) The claim that is the basis of the civil action fails to 162
state a claim or the issues of law that are the basis of the 163

appeal fail to state any issues of law. 164

(ii) It is clear that the inmate cannot prove material facts 165
in support of the claim that is the basis of the civil action or 166
in support of the issues of law that are the basis of the appeal. 167

(iii) The claim that is the basis of the civil action is 168
substantially similar to a claim in a previous civil action 169
commenced by the inmate or the issues of law that are the basis of 170
the appeal are substantially similar to issues of law raised in a 171
previous appeal commenced by the inmate, in that the claim that is 172
the basis of the current civil action or the issues of law that 173
are the basis of the current appeal involve the same parties or 174
arise from the same operative facts as the claim or issues of law 175
in the previous civil action or appeal. 176

(3) "Civil action or appeal against a government entity or 177
employee," "inmate," "political subdivision," and "employee" have 178
the same meanings as in section 2969.21 of the Revised Code. 179

(4) "Reasonable attorney's fees" or "attorney's fees," when 180
used in relation to a civil action or appeal against a government 181
entity or employee, includes both of the following, as applicable: 182

(a) The approximate amount of the compensation, and the 183
fringe benefits, if any, of the attorney general, an assistant 184
attorney general, or special counsel appointed by the attorney 185
general that has been or will be paid by the state in connection 186
with the legal services that were rendered by the attorney 187
general, assistant attorney general, or special counsel in the 188
civil action or appeal against the government entity or employee, 189
including, but not limited to, a civil action or appeal commenced 190
pro se by an inmate, and that were necessitated by frivolous 191
conduct of an inmate represented by counsel of record, the counsel 192
of record of an inmate, or a pro se inmate. 193

(b) The approximate amount of the compensation, and the 194

fringe benefits, if any, of a prosecuting attorney or other chief 195
legal officer of a political subdivision, or an assistant to a 196
chief legal officer of those natures, who has been or will be paid 197
by a political subdivision in connection with the legal services 198
that were rendered by the chief legal officer or assistant in the 199
civil action or appeal against the government entity or employee, 200
including, but not limited to, a civil action or appeal commenced 201
pro se by an inmate, and that were necessitated by frivolous 202
conduct of an inmate represented by counsel of record, the counsel 203
of record of an inmate, or a pro se inmate. 204

(5) "State" has the same meaning as in section 2743.01 of the 205
Revised Code. 206

(6) "State correctional institution" has the same meaning as 207
in section 2967.01 of the Revised Code. 208

(B)(1) Subject to divisions (B)(2) and (3), (C), and (D) of 209
this section and except as otherwise provided in division 210
(E)(2)(b) of section 101.15 or division (I)(2)(b) of section 211
121.22 of the Revised Code, at any time ~~prior to the commencement~~ 212
~~of the trial in a civil action or within twenty one days after the~~ 213
~~entry of judgment in a civil action or at any time prior to the~~ 214
~~hearing in an appeal of the type described in division (A)(1)(b)~~ 215
~~of this section that is filed by an inmate or within twenty one~~ 216
~~days after the entry of judgment in an appeal of that nature, the~~ 217
~~court not more than thirty days after the entry of final judgment~~ 218
in a civil action or appeal, any party adversely affected by 219
frivolous conduct may file a motion for an award of court costs, 220
reasonable attorney's fees, and other reasonable expenses incurred 221
in connection with the civil action or appeal ~~to any party to the~~ 222
~~civil action or appeal who was adversely affected by frivolous~~ 223
~~conduct~~. The court may assess and make an award ~~may be assessed to~~ 224
any party to the civil action or appeal who was adversely affected 225
by frivolous conduct, as provided in division (B)(4) of this 226

section.	227
(2) An award may be made pursuant to division (B)(1) of this	228
section upon the motion of a party to a civil action or an appeal	229
of the type described in that division <u>or on the court's own</u>	230
<u>initiative</u> , but only after the court does all of the following:	231
(a) Sets a date for a hearing to be conducted in accordance	232
with division (B)(2)(c) of this section, to determine whether	233
particular conduct was frivolous, to determine, if the conduct was	234
frivolous, whether any party was adversely affected by it, and to	235
determine, if an award is to be made, the amount of that award;	236
(b) Gives notice of the date of the hearing described in	237
division (B)(2)(a) of this section to each party or counsel of	238
record who allegedly engaged in frivolous conduct and to each	239
party who allegedly was adversely affected by frivolous conduct;	240
(c) Conducts the hearing described in division (B)(2)(a) of	241
this section in accordance with this division, allows the parties	242
and counsel of record involved to present any relevant evidence at	243
the hearing, including evidence of the type described in division	244
(B)(5) of this section, determines that the conduct involved was	245
frivolous and that a party was adversely affected by it, and then	246
determines the amount of the award to be made. If any party or	247
counsel of record who allegedly engaged in or allegedly was	248
adversely affected by frivolous conduct is confined in a state	249
correctional institution or in a county, multicounty, municipal,	250
municipal-county, or multicounty-municipal jail or workhouse, the	251
court, if practicable, may hold the hearing by telephone or, in	252
the alternative, at the institution, jail, or workhouse in which	253
the party or counsel is confined.	254
(3) The amount of an award made pursuant to division (B)(1)	255
of this section that represents reasonable attorney's fees shall	256
not exceed, and may be equal to or less than, whichever of the	257

following is applicable:	258
(a) If the party is being represented on a contingent fee basis, an amount that corresponds to reasonable fees that would have been charged for legal services had the party been represented on an hourly fee basis or another basis other than a contingent fee basis;	259 260 261 262 263
(b) In all situations other than that described in division (B)(3)(a) of this section, the attorney's fees that were reasonably incurred by a party.	264 265 266
(4) An award made pursuant to division (B)(1) of this section may be made against a party, the party's counsel of record, or both.	267 268 269
(5)(a) In connection with the hearing described in division (B)(2)(a) of this section, each party who may be awarded reasonable attorney's fees and the party's counsel of record may submit to the court or be ordered by the court to submit to it, for consideration in determining the amount of the reasonable attorney's fees, an itemized list or other evidence of the legal services rendered, the time expended in rendering the services, and whichever of the following is applicable:	270 271 272 273 274 275 276 277
(i) If the party is being represented by that counsel on a contingent fee basis, the reasonable attorney's fees that would have been associated with those services had the party been represented by that counsel on an hourly fee basis or another basis other than a contingent fee basis;	278 279 280 281 282
(ii) In all situations other than those described in division (B)(5)(a)(i) of this section, the attorney's fees associated with those services.	283 284 285
(b) In connection with the hearing described in division (B)(2)(a) of this section, each party who may be awarded court costs and other reasonable expenses incurred in connection with	286 287 288

the civil action or appeal may submit to the court or be ordered 289
by the court to submit to it, for consideration in determining the 290
amount of the costs and expenses, an itemized list or other 291
evidence of the costs and expenses that were incurred in 292
connection with that action or appeal and that were necessitated 293
by the frivolous conduct, including, but not limited to, expert 294
witness fees and expenses associated with discovery. 295

(C) An award of reasonable attorney's fees under this section 296
does not affect or determine the amount of or the manner of 297
computation of attorney's fees as between an attorney and the 298
attorney's client. 299

(D) This section does not affect or limit the application of 300
any provision of the Rules of Civil Procedure, the Rules of 301
Appellate Procedure, or another court rule or section of the 302
Revised Code to the extent that the provision prohibits an award 303
of court costs, attorney's fees, or other expenses incurred in 304
connection with a particular civil action or appeal or authorizes 305
an award of court costs, attorney's fees, or other expenses 306
incurred in connection with a particular civil action or appeal in 307
a specified manner, generally, or subject to limitations. 308

Section 2. That existing sections 1533.18 and 2323.51 of the 309
Revised Code are hereby repealed. 310