

As Reported by the House Judiciary Committee

125th General Assembly

Regular Session

2003-2004

Sub. S. B. No. 80

Senators Stivers, Hottinger, Goodman, Wachtmann, Amstutz,
Randy Gardner, Austria, Nein, Schuring, Armbruster, Coughlin, Carey,
Harris, Mumper, Schuler

—

A BILL

To amend sections 1775.14, 2117.06, 2125.02, 2125.04, 1
2305.01, 2305.03, 2305.10, 2305.25, 2307.011, 2
2307.23, 2307.29, 2307.60, 2307.71, 2307.75, 3
2307.80, 2315.01, 2315.21, 2315.32, 2315.33, 4
2315.34, 2315.36, 2323.51, 2505.02, 4507.07, and 5
4513.263; to enact sections 2305.131, 2307.711, 6
2315.19, 2315.20, and 2323.44; and to repeal 7
sections 2315.41, 2315.42, 2315.43, 2315.44, 8
2315.45, and 2315.46 of the Revised Code to make 9
changes related to the award of certain damages, 10
collateral benefits evidence, and contributory 11
fault in tort actions; to establish a statute of 12
repose for certain product liability claims and 13
claims based on unsafe conditions of real property 14
improvements and to make other changes related to 15
product liability claims; to provide that the 16
product liability statutes are intended to 17
abrogate common law product liability causes of 18
action; to enact a conflicts of law provision for 19
statutes of limitation in civil actions; to modify 20
the provisions on frivolous conduct in filing 21
civil actions; and to make other changes related 22
to civil actions. 23

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

Section 1. That sections 1775.14, 2117.06, 2125.02, 2125.04, 24
2305.01, 2305.03, 2305.10, 2305.25, 2307.011, 2307.23, 2307.29, 25
2307.60, 2307.71, 2307.75, 2307.80, 2315.01, 2315.21, 2315.32, 26
2315.33, 2315.34, 2315.36, 2323.51, 2505.02, 4507.07, and 4513.263 27
be amended and sections 2305.131, 2307.711, 2315.19, 2315.20, and 28
2323.44 of the Revised Code be enacted to read as follows: 29

Sec. 1775.14. (A) Subject to section 1339.65 of the Revised 30
Code and except as provided in division (B) of this section, all 31
partners are liable as follows: 32

(1) Jointly and severally for everything chargeable to the 33
partnership under sections 1775.12 and 1775.13 of the Revised 34
Code. This joint and several liability is not subject to section 35
2307.22, or 2315.36, ~~or 2315.46~~ of the Revised Code with respect 36
to a ~~negligence or other~~ tort claim that otherwise is subject to 37
~~any~~ either of those sections. 38

(2) Jointly for all other debts and obligations of the 39
partnership, but any partner may enter into a separate obligation 40
to perform a partnership contract. 41

(B) Subject to divisions (C)(1) and (2) of this section or as 42
otherwise provided in a written agreement between the partners of 43
a registered limited liability partnership, a partner in a 44
registered limited liability partnership is not liable, directly 45
or indirectly, by way of indemnification, contribution, 46
assessment, or otherwise, for debts, obligations, or other 47
liabilities of any kind of, or chargeable to, the partnership or 48
another partner or partners arising from negligence or from 49
wrongful acts, errors, omissions, or misconduct, whether or not 50
intentional or characterized as tort, contract, or otherwise, 51

committed or occurring while the partnership is a registered
limited liability partnership and committed or occurring in the
course of the partnership business by another partner or an
employee, agent, or representative of the partnership.

(C)(1) Division (B) of this section does not affect the
liability of a partner in a registered limited liability
partnership for that partner's own negligence, wrongful acts,
errors, omissions, or misconduct, including that partner's own
negligence, wrongful acts, errors, omissions, or misconduct in
directly supervising any other partner or any employee, agent, or
representative of the partnership.

(2) Division (B) of this section shall not affect the
liability of a partner for liabilities imposed by Chapters 5735.,
5739., 5743., and 5747. and section 3734.908 of the Revised Code.

(D) A partner in a registered limited liability partnership
is not a proper party to an action or proceeding by or against a
registered limited liability partnership with respect to any debt,
obligation, or other liability of any kind described in division
(B) of this section, unless the partner is liable under divisions
(C)(1) and (2) of this section.

Sec. 2117.06. (A) All creditors having claims against an
estate, including claims arising out of contract, out of tort, on
cognovit notes, or on judgments, whether due or not due, secured
or unsecured, liquidated or unliquidated, shall present their
claims in one of the following manners:

(1) After the appointment of an executor or administrator and
prior to the filing of a final account or a certificate of
termination, in one of the following manners:

(a) To the executor or administrator in a writing;

(b) To the executor or administrator in a writing, and to the

probate court by filing a copy of the writing with it; 82

(c) In a writing that is sent by ordinary mail addressed to 83
the decedent and that is actually received by the executor or 84
administrator within the appropriate time specified in division 85
(B) of this section. For purposes of this division, if an executor 86
or administrator is not a natural person, the writing shall be 87
considered as being actually received by the executor or 88
administrator only if the person charged with the primary 89
responsibility of administering the estate of the decedent 90
actually receives the writing within the appropriate time 91
specified in division (B) of this section. 92

(2) If the final account or certificate of termination has 93
been filed, in a writing to those distributees of the decedent's 94
estate who may share liability for the payment of the claim. 95

(B) Except as provided in section 2117.061 of the Revised 96
Code, all claims shall be presented within six months after the 97
death of the decedent, whether or not the estate is released from 98
administration or an executor or administrator is appointed during 99
that six-month period. Every claim presented shall set forth the 100
claimant's address. 101

(C) Except as provided in section 2117.061 of the Revised 102
Code, a claim that is not presented within six months after the 103
death of the decedent shall be forever barred as to all parties, 104
including, but not limited to, devisees, legatees, and 105
distributees. No payment shall be made on the claim and no action 106
shall be maintained on the claim, except as otherwise provided in 107
sections 2117.37 to 2117.42 of the Revised Code with reference to 108
contingent claims. 109

(D) In the absence of any prior demand for allowance, the 110
executor or administrator shall allow or reject all claims, except 111
tax assessment claims, within thirty days after their 112

presentation, provided that failure of the executor or 113
administrator to allow or reject within that time shall not 114
prevent the executor or administrator from doing so after that 115
time and shall not prejudice the rights of any claimant. Upon the 116
allowance of a claim, the executor or the administrator, on demand 117
of the creditor, shall furnish the creditor with a written 118
statement or memorandum of the fact and date of the allowance. 119

(E) If the executor or administrator has actual knowledge of 120
a pending action commenced against the decedent prior to the 121
decedent's death in a court of record in this state, the executor 122
or administrator shall file a notice of the appointment of the 123
executor or administrator in the pending action within ten days 124
after acquiring that knowledge. If the administrator or executor 125
is not a natural person, actual knowledge of a pending suit 126
against the decedent shall be limited to the actual knowledge of 127
the person charged with the primary responsibility of 128
administering the estate of the decedent. Failure to file the 129
notice within the ten-day period does not extend the claim period 130
established by this section. 131

(F) This section applies to any person who is required to 132
give written notice to the executor or administrator of a motion 133
or application to revive an action pending against the decedent at 134
the date of the death of the decedent. 135

(G) Nothing in this section or in section 2117.07 of the 136
Revised Code shall be construed to reduce the ~~time mentioned~~ 137
periods of limitation or periods prior to repose in section 138
2125.02, 2305.09, 2305.10, 2305.11, 2305.113, or 2305.12 Chapter 139
2305. of the Revised Code, provided that no portion of any 140
recovery on a claim brought pursuant to that section or any ~~of~~ 141
~~those sections~~ section in that chapter shall come from the assets 142
of an estate unless the claim has been presented against the 143
estate in accordance with Chapter 2117. of the Revised Code. 144

(H) Any person whose claim has been presented and has not
been rejected after presentment is a creditor as that term is used
in Chapters 2113. to 2125. of the Revised Code. Claims that are
contingent need not be presented except as provided in sections
2117.37 to 2117.42 of the Revised Code, but, whether presented
pursuant to those sections or this section, contingent claims may
be presented in any of the manners described in division (A) of
this section.

(I) If a creditor presents a claim against an estate in
accordance with division (A)(1)(b) of this section, the probate
court shall not close the administration of the estate until that
claim is allowed or rejected.

(J) The probate court shall not require an executor or
administrator to make and return into the court a schedule of
claims against the estate.

(K) If the executor or administrator makes a distribution of
the assets of the estate pursuant to section 2113.53 of the
Revised Code and prior to the expiration of the time for the
presentation of claims as set forth in this section, the executor
or administrator shall provide notice on the account delivered to
each distributee that the distributee may be liable to the estate
if a claim is presented prior to the filing of the final account
and may be liable to the claimant if the claim is presented after
the filing of the final account up to the value of the
distribution and may be required to return all or any part of the
value of the distribution if a valid claim is subsequently made
against the estate within the time permitted under this section.

Sec. 2125.02. (A)(1) Except as provided in this division, ~~an~~
a civil action for wrongful death shall be brought in the name of
the personal representative of the decedent for the exclusive
benefit of the surviving spouse, the children, and the parents of

the decedent, all of whom are rebuttably presumed to have suffered 176
damages by reason of the wrongful death, and for the exclusive 177
benefit of the other next of kin of the decedent. A parent who 178
abandoned a minor child who is the decedent shall not receive ~~any~~ 179
a benefit in a ~~wrongful death~~ civil action for wrongful death 180
brought under this division. 181

(2) The jury, or the court if the civil action for wrongful 182
death is not tried to a jury, may award damages authorized by 183
division (B) of this section, as it determines are proportioned to 184
the injury and loss resulting to the beneficiaries described in 185
division (A)(1) of this section by reason of the wrongful death 186
and may award the reasonable funeral and burial expenses incurred 187
as a result of the wrongful death. In its verdict, the jury or 188
court shall set forth separately the amount, if any, awarded for 189
the reasonable funeral and burial expenses incurred as a result of 190
the wrongful death. 191

(3)(a) The date of the decedent's death fixes, subject to 192
division (A)(3)(b)(iii) of this section, the status of all 193
beneficiaries of the civil action for wrongful death for purposes 194
of determining the damages suffered by them and the amount of 195
damages to be awarded. A person who is conceived prior to the 196
decedent's death and who is born alive after the decedent's death 197
is a beneficiary of the action. 198

(b)(i) In determining the amount of damages to be awarded, 199
the jury or court may consider all factors existing at the time of 200
the decedent's death that are relevant to a determination of the 201
damages suffered by reason of the wrongful death. 202

(ii) Consistent with the Rules of Evidence, ~~any~~ a party to ~~an~~ 203
a civil action for wrongful death may present evidence of the cost 204
of an annuity in connection with ~~any~~ an issue of recoverable 205
future damages. If ~~such~~ that evidence is presented, then, in 206

addition to the factors described in division (A)(3)(b)(i) of this 207
section and, if applicable, division (A)(3)(b)(iii) of this 208
section, the jury or court may consider that evidence in 209
determining the future damages suffered by reason of the wrongful 210
death. If ~~such~~ that evidence is presented, the present value in 211
dollars of ~~any~~ an annuity is its cost. 212

(iii) Consistent with the Rules of Evidence, ~~any~~ a party to 213
~~an~~ a civil action for wrongful death may present evidence that the 214
surviving spouse of the decedent is remarried. If ~~such~~ that 215
evidence is presented, then, in addition to the factors described 216
in divisions (A)(3)(b)(i) and (ii) of this section, the jury or 217
court may consider that evidence in determining the damages 218
suffered by the surviving spouse by reason of the wrongful death. 219

(B) Compensatory damages may be awarded in ~~an~~ a civil action 220
for wrongful death and may include damages for the following: 221

(1) Loss of support from the reasonably expected earning 222
capacity of the decedent; 223

(2) Loss of services of the decedent; 224

(3) Loss of the society of the decedent, including loss of 225
companionship, consortium, care, assistance, attention, 226
protection, advice, guidance, counsel, instruction, training, and 227
education, suffered by the surviving spouse, ~~minor~~ dependent 228
children, parents, or next of kin of the decedent; 229

(4) Loss of prospective inheritance to the decedent's heirs 230
at law at the time of the decedent's death; 231

(5) The mental anguish incurred by the surviving spouse, 232
~~minor~~ dependent children, parents, or next of kin of the decedent. 233

(C) A personal representative appointed in this state, with 234
the consent of the court making the appointment and at any time 235
before or after the commencement of ~~an~~ a civil action for wrongful 236

death, may settle with the defendant the amount to be paid. 237

(D) An (1) Except as provided in division (D)(2) of this 238
section, a civil action for wrongful death shall be commenced 239
within two years after the decedent's death. 240

(2)(a) Except as otherwise provided in divisions (D)(2)(b), 241
(c), (d), (e), (f), and (g) of this section or in section 2125.04 242
of the Revised Code, no cause of action for wrongful death 243
involving a product liability claim shall accrue against the 244
manufacturer or supplier of a product later than ten years from 245
the date that the product was delivered to its first purchaser or 246
first lessee who was not engaged in a business in which the 247
product was used as a component in the production, construction, 248
creation, assembly, or rebuilding of another product. 249

(b) Division (D)(2)(a) of this section does not apply if the 250
manufacturer or supplier of a product engaged in fraud in regard 251
to information about the product and the fraud contributed to the 252
harm that is alleged in a product liability claim involving that 253
product. 254

(c) Division (D)(2)(a) of this section does not bar a civil 255
action for wrongful death involving a product liability claim 256
against a manufacturer or supplier of a product who made an 257
express, written warranty as to the safety of the product that was 258
for a period longer than ten years and that, at the time of the 259
decedent's death, has not expired in accordance with the terms of 260
that warranty. 261

(d) If the decedent's death occurs during the ten-year period 262
described in division (D)(2)(a) of this section but less than two 263
years prior to the expiration of that period, a civil action for 264
wrongful death involving a product liability claim may be 265
commenced within two years after the decedent's death. 266

(e) If the decedent's death occurs during the ten-year period 267

described in division (D)(2)(a) of this section and the claimant 268
cannot commence an action during that period due to a disability 269
described in section 2305.16 of the Revised Code, a civil action 270
for wrongful death involving a product liability claim may be 271
commenced within two years after the disability is removed. 272

(f)(i) Division (D)(2)(a) of this section does not bar a 273
civil action for wrongful death based on a product liability claim 274
against a manufacturer or supplier of a product if the product 275
involved is a substance or device described in division (B)(1), 276
(2), (3), or (4) of section 2305.10 of the Revised Code and the 277
decedent's death resulted from exposure to the product during the 278
ten-year period described in division (D)(2)(a) of this section. 279

(ii) If division (D)(2)(f)(i) of this section applies 280
regarding a civil action for wrongful death, the cause of action 281
that is the basis of the action accrues upon the date on which the 282
claimant is informed by competent medical authority that the 283
decedent's death was related to the exposure to the product or 284
upon the date on which by the exercise of reasonable diligence the 285
claimant should have known that the decedent's death was related 286
to the exposure to the product, whichever date occurs first. A 287
civil action for wrongful death based on a cause of action 288
described in division (D)(2)(f)(i) of this section shall be 289
commenced within two years after the cause of action accrues and 290
shall not be commenced more than two years after the cause of 291
action accrues. 292

(g) Division (D)(2)(a) of this section does not bar a civil 293
action for wrongful death based on a product liability claim 294
against a manufacturer or supplier of a product if the product 295
involved is a substance or device described in division (B)(5) of 296
section 2315.10 of the Revised Code. If division (D)(2)(g) of this 297
section applies regarding a civil action for wrongful death, the 298
cause of action that is the basis of the action accrues upon the 299

date on which the claimant is informed by competent medical 300
authority that the decedent's death was related to the exposure to 301
the product or upon the date on which by the exercise of 302
reasonable diligence the claimant should have known that the 303
decedent's death was related to the exposure to the product, 304
whichever date occurs first. A civil action for wrongful death 305
based on a cause of action described in division (D)(2)(g) of this 306
section shall be commenced within two years after the cause of 307
action accrues and shall not be commenced more than two years 308
after the cause of action accrues. 309

(E)(1) If the personal representative of a deceased minor has 310
actual knowledge or reasonable cause to believe that the minor was 311
abandoned by a parent seeking to benefit from ~~the~~ a civil action 312
for wrongful death ~~action~~ or if any person listed in division 313
(A)(1) of this section who is permitted to benefit ~~in~~ from a civil 314
action for wrongful death ~~action~~ filed commenced in relation to a 315
deceased minor has actual knowledge or reasonable cause to believe 316
that the minor was abandoned by a parent seeking to benefit from 317
the ~~wrongful death~~ action, the personal representative or the 318
person may file a motion in the court in which the ~~wrongful death~~ 319
action is ~~filed~~ commenced requesting the court to issue an order 320
finding that the parent abandoned the ~~child~~ minor and is not 321
entitled to recover damages in the ~~wrongful death~~ action based on 322
the death of the ~~deceased~~ minor ~~child~~. 323

(2) The movant who files a motion described in division 324
(E)(1) of this section shall name the parent who abandoned the 325
~~child~~ deceased minor and, whether or not that parent is a resident 326
of this state, the parent shall be served with a summons and a 327
copy of the motion in accordance with the Rules of Civil 328
Procedure. Upon the filing of the motion, the court shall conduct 329
a hearing. In the hearing on the motion, the movant has the burden 330
of proving, by a preponderance of the evidence, that the parent 331

abandoned the ~~deceased~~ minor ~~child~~. If, at the hearing, the court 332
finds that the movant has sustained that burden of proof, the 333
court shall issue an order that includes its ~~finding~~ findings that 334
the parent abandoned the ~~deceased~~ minor ~~child~~ and that, because of 335
the prohibition set forth in division (A)(1) of this section, the 336
parent is not entitled to recover damages in the ~~wrongful-death~~ 337
action based on the death of the ~~deceased~~ minor ~~child~~. 338

(3) A motion requesting a court to issue an order finding 339
that ~~the~~ a specified parent abandoned ~~the~~ a minor child and is not 340
entitled to recover damages in ~~the~~ a civil action for wrongful 341
death ~~action~~ based on the death of the ~~deceased~~ minor ~~child~~ may be 342
filed at any time during the pendency of the ~~wrongful-death~~ 343
action. 344

(F) This section does not create a new cause of action or 345
substantive legal right against any person involving a product 346
liability claim. 347

(G) As used in this section: 348

(1) "Annuity" means an annuity that would be purchased from 349
either of the following types of insurance companies: 350

(a) An insurance company that the A. M. Best Company, in its 351
most recently published rating guide of life insurance companies, 352
has rated A or better and has rated XII or higher as to financial 353
size or strength; 354

(b)(i) An insurance company that the superintendent of 355
insurance, under rules adopted pursuant to Chapter 119. of the 356
Revised Code for purposes of implementing this division, 357
determines is licensed to do business in this state and, 358
considering the factors described in division ~~(F)~~(G)(1)(b)(ii) of 359
this section, is a stable insurance company that issues annuities 360
that are safe and desirable. 361

(ii) In making determinations as described in division 362

(1)(b)(i) of this section, the superintendent shall be guided by 363
the principle that the jury or court in ~~an~~ a civil action for 364
wrongful death should be presented only with evidence as to the 365
cost of annuities that are safe and desirable for the 366
beneficiaries of ~~such an~~ the action who are awarded compensatory 367
damages under this section. In making ~~such~~ the determinations, the 368
superintendent shall consider the financial condition, general 369
standing, operating results, profitability, leverage, liquidity, 370
amount and soundness of reinsurance, adequacy of reserves, and the 371
management of ~~any a particular~~ insurance company ~~in question~~ 372
involved and also may consider ratings, grades, and 373
classifications of any nationally recognized rating services of 374
insurance companies and any other factors relevant to the making 375
of ~~such~~ the determinations. 376

(2) "Future damages" means damages that result from the 377
wrongful death and that will accrue after the verdict or 378
determination of liability by the jury or court is rendered in the 379
civil action for wrongful death. 380

(3) "Abandoned" means that a parent of a minor failed without 381
justifiable cause to communicate with the minor, care for the 382
minor, and provide for the maintenance or support of the minor as 383
required by law or judicial decree for a period of at least one 384
year immediately prior to the date of the death of the minor. 385

(4) "Minor" means a person who is less than eighteen years of 386
age. 387

(5) "Harm" means death. 388

(6) "Manufacturer," "product," "product liability claim," and 389
"supplier" have the same meanings as in section 2307.71 of the 390
Revised Code. 391

(H) Divisions (D), (G)(5), and (G)(6) of this section shall 392
be considered to be purely remedial in operation and shall be 393

applied in a remedial manner in any civil action commenced on or 394
after the effective date of this amendment, in which those 395
divisions are relevant, regardless of when the cause of action 396
accrued and notwithstanding any other section of the Revised Code 397
or prior rule of law of this state, but shall not be construed to 398
apply to any civil action pending prior to the effective date of 399
this amendment. 400

Sec. 2125.04. In every civil action for wrongful death 401
commenced or attempted to be commenced within the time specified 402
by division (D)(1) or (D)(2)(c), (d), (e), (f), or (g) of section 403
2125.02 of the Revised Code, if a judgment for the plaintiff is 404
reversed or ~~if~~ the plaintiff fails otherwise than upon the merits, 405
and if the time limited by ~~such section~~ any of those divisions for 406
the commencement of ~~such~~ the action has expired at the date of 407
~~such~~ the reversal or failure, the plaintiff or, if the plaintiff 408
dies and the cause of action survives, the personal representative 409
of the plaintiff may commence a new civil action for wrongful 410
death within one year after ~~such~~ that date. 411

Sec. 2305.01. The Except as otherwise provided by this 412
section or section 2305.03 of the Revised Code, the court of 413
common pleas has original jurisdiction in all civil cases in which 414
the sum or matter in dispute exceeds the exclusive original 415
jurisdiction of county courts and appellate jurisdiction from the 416
decisions of boards of county commissioners. The court of common 417
pleas shall not have jurisdiction, in any tort action to which the 418
amounts apply, to award punitive or exemplary damages that exceed 419
the amounts set forth in section 2315.21 of the Revised Code. 420

The court of common pleas may on its own motion transfer for 421
trial any action in the court to any municipal court in the county 422
having concurrent jurisdiction of the subject matter of, and the 423

parties to, the action, if the amount sought by the plaintiff does 424
not exceed one thousand dollars and if the judge or presiding 425
judge of the municipal court concurs in the proposed transfer. 426
Upon the issuance of an order of transfer, the clerk of courts 427
shall remove to the designated municipal court the entire case 428
file. Any untaxed portion of the common pleas deposit for court 429
costs shall be remitted to the municipal court by the clerk of 430
courts to be applied in accordance with section 1901.26 of the 431
Revised Code, and the costs taxed by the municipal court shall be 432
added to any costs taxed in the common pleas court. 433

The court of common pleas has jurisdiction in any action 434
brought pursuant to division (I) of section 3733.11 of the Revised 435
Code if the residential premises that are the subject of the 436
action are located within the territorial jurisdiction of the 437
court. 438

The courts of common pleas of Adams, Athens, Belmont, Brown, 439
Clermont, Columbiana, Gallia, Hamilton, Jefferson, Lawrence, 440
Meigs, Monroe, Scioto, and Washington counties have jurisdiction 441
beyond the north or northwest shore of the Ohio river extending to 442
the opposite shore line, between the extended boundary lines of 443
any adjacent counties or adjacent state. Each of those courts of 444
common pleas has concurrent jurisdiction on the Ohio river with 445
any adjacent court of common pleas that borders on that river and 446
with any court of Kentucky or of West Virginia that borders on the 447
Ohio river and that has jurisdiction on the Ohio river under the 448
law of Kentucky or the law of West Virginia, whichever is 449
applicable, or under federal law. 450

Sec. 2305.03. ~~A civil action,~~ (A) Except as provided in 451
division (B) of this section and unless a different limitation is 452
prescribed by statute, ~~can~~ a civil action may be commenced only 453
within the period prescribed in sections ~~2305.03~~ 2305.04 to 454

2305.22, ~~inclusive,~~ of the Revised Code. ~~When~~ If interposed by 455
proper plea by a party to an action mentioned in ~~such~~ any of those 456
sections, lapse of time shall be a bar ~~thereto~~ to the action. 457

(B) No civil action that is based upon a cause of action that 458
accrued in any other state, territory, district, or foreign 459
jurisdiction may be commenced and maintained in this state if the 460
period of limitation that applies to that action under the laws of 461
that other state, territory, district, or foreign jurisdiction has 462
expired or the period of limitation that applies to that action 463
under the laws of this state has expired. 464

Sec. 2305.10. ~~An~~ (A) Except as provided in division (C) of 465
this section, an action based on a product liability claim and an 466
action for bodily injury or injuring personal property shall be 467
brought within two years after the cause thereof ~~arose~~ of action 468
accrues. Except as provided in divisions (B)(1), (2), (3), (4), 469
and (5) of this section, a cause of action accrues under this 470
division when the injury or loss to person or property occurs. 471

(B)(1) For purposes of division (A) of this section, a cause 472
of action for bodily injury that is not described in division 473
(B)(2), (3), (4), or (5) of this section and that is caused by 474
exposure to hazardous or toxic chemicals, ethical drugs, or 475
ethical medical devices accrues upon the date on which the 476
plaintiff is informed by competent medical authority that the 477
plaintiff has an injury that is related to the exposure, or upon 478
the date on which by the exercise of reasonable diligence the 479
plaintiff should have known that the plaintiff has an injury that 480
is related to the exposure, whichever date occurs first. 481

(2) For purposes of division (A) of this section, a cause of 482
action for bodily injury caused by exposure to ~~asbestos or to~~ 483
chromium in any of its chemical forms ~~arises~~ accrues upon the date 484
on which the plaintiff is informed by competent medical authority 485

that the plaintiff has ~~been injured by such an injury that is~~ 486
related to the exposure, or upon the date on which, by the 487
exercise of reasonable diligence, the plaintiff should have ~~become~~ 488
~~aware~~ known that the plaintiff ~~had been injured by~~ has an injury 489
that is related to the exposure, whichever date occurs first. 490

(3) For purposes of division (A) of this section, a cause of 491
action for bodily injury incurred by a veteran through exposure to 492
chemical defoliants or herbicides or other causative agents, 493
including agent orange, ~~arises~~ accrues upon the date on which the 494
plaintiff is informed by competent medical authority that the 495
plaintiff has ~~been injured by such an injury that is related to~~ 496
the exposure, or upon the date on which by the exercise of 497
reasonable diligence the plaintiff should have known that the 498
plaintiff has an injury that is related to the exposure, whichever 499
date occurs first. 500

~~As used in this section, "agent orange," "causative agent,"~~ 501
~~and "veteran" have the same meanings as in section 5903.21 of the~~ 502
~~Revised Code.~~ 503

(4) For purposes of division (A) of this section, a cause of 504
action for bodily injury ~~which may be~~ caused by exposure to 505
diethylstilbestrol or other nonsteroidal synthetic estrogens, 506
including exposure before birth, accrues upon the date on which 507
the plaintiff ~~learns from a licensed physician~~ is informed by 508
competent medical authority that the plaintiff has an injury ~~which~~ 509
~~may be~~ that is related to ~~such the~~ exposure, or upon the date on 510
which by the exercise of reasonable diligence the plaintiff should 511
have ~~become aware~~ known that the plaintiff has an injury ~~which may~~ 512
~~be~~ that is related to ~~such the~~ exposure, whichever date occurs 513
first. 514

(5) For purposes of division (A) of this section, a cause of 515
action for bodily injury caused by exposure to asbestos accrues 516
upon the date on which the plaintiff is informed by competent 517

medical authority that the plaintiff has an injury that is related to the exposure, or upon the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff has an injury that is related to the exposure, whichever date occurs first.

518
519
520
521
522

(C)(1) Except as otherwise provided in divisions (C)(2), (3), (4), (5), (6), and (7) of this section or in section 2305.19 of the Revised Code, no cause of action based on a product liability claim shall accrue against the manufacturer or supplier of a product later than ten years from the date that the product was delivered to its first purchaser or first lessee who was not engaged in a business in which the product was used as a component in the production, construction, creation, assembly, or rebuilding of another product.

523
524
525
526
527
528
529
530
531

(2) Division (C)(1) of this section does not apply if the manufacturer or supplier of a product engaged in fraud in regard to information about the product and the fraud contributed to the harm that is alleged in a product liability claim involving that product.

532
533
534
535
536

(3) Division (C)(1) of this section does not bar an action based on a product liability claim against a manufacturer or supplier of a product who made an express, written warranty as to the safety of the product that was for a period longer than ten years and that, at the time of the accrual of the cause of action, has not expired in accordance with the terms of that warranty.

537
538
539
540
541
542

(4) If the cause of action relative to a product liability claim accrues during the ten-year period described in division (C)(1) of this section but less than two years prior to the expiration of that period, an action based on the product liability claim may be commenced within two years after the cause of action accrues.

543
544
545
546
547
548

(5) If a cause of action relative to a product liability claim accrues during the ten-year period described in division (C)(1) of this section and the claimant cannot commence an action during that period due to a disability described in section 2305.16 of the Revised Code, an action based on the product liability claim may be commenced within two years after the disability is removed. 549
550
551
552
553
554
555

(6) Division (C)(1) of this section does not bar an action for bodily injury caused by exposure to asbestos if the cause of action that is the basis of the action accrues upon the date on which the plaintiff is informed by competent medical authority that the plaintiff has an injury that is related to the exposure, or upon the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff has an injury that is related to the exposure, whichever date occurs first. 556
557
558
559
560
561
562
563

(7)(a) Division (C)(1) of this section does not bar an action based on a product liability claim against a manufacturer or supplier of a product if all of the following apply: 564
565
566

(i) The action is for bodily injury. 567

(ii) The product involved is a substance or device described in division (B)(1), (2), (3), or (4) of this section. 568
569

(iii) The bodily injury results from exposure to the product during the ten-year period described in division (C)(1) of this section. 570
571
572

(b) If division (C)(7)(a) of this section applies regarding an action, the cause of action accrues upon the date on which the claimant is informed by competent medical authority that the bodily injury was related to the exposure to the product, or upon the date on which by the exercise of reasonable diligence the claimant should have known that the bodily injury was related to the exposure to the product, whichever date occurs first. The 573
574
575
576
577
578
579

action based on the product liability claim shall be commenced 580
within two years after the cause of action accrues and shall not 581
be commenced more than two years after the cause of action 582
accrues. 583

(D) This section does not create a new cause of action or 584
substantive legal right against any person involving a product 585
liability claim. 586

(E) As used in this section: 587

(1) "Agent orange," "causative agent," and "veteran" have the 588
same meanings as in section 5903.21 of the Revised Code. 589

(2) "Ethical drug," "ethical medical device," "manufacturer," 590
"product," "product liability claim," and "supplier" have the same 591
meanings as in section 2307.71 of the Revised Code. 592

(3) "Harm" means injury, death, or loss to person or 593
property. 594

(F) This section shall be considered to be purely remedial in 595
operation and shall be applied in a remedial manner in any civil 596
action commenced on or after the effective date of this amendment, 597
in which this section is relevant, regardless of when the cause of 598
action accrued and notwithstanding any other section of the 599
Revised Code or prior rule of law of this state, but shall not be 600
construed to apply to any civil action pending prior to the 601
effective date of this amendment. 602

Sec. 2305.131. (A)(1) Notwithstanding an otherwise applicable 603
period of limitations specified in this chapter or in section 604
2125.02 of the Revised Code and except as otherwise provided in 605
divisions (A)(2), (A)(3), (C), and (D) of this section, no cause 606
of action to recover damages for bodily injury, an injury to real 607
or personal property, or wrongful death that arises out of a 608
defective and unsafe condition of an improvement to real property 609

and no cause of action for contribution or indemnity for damages 610
sustained as a result of bodily injury, an injury to real or 611
personal property, or wrongful death that arises out of a 612
defective and unsafe condition of an improvement to real property 613
shall accrue against a person who performed services for the 614
improvement to real property or a person who furnished the design, 615
planning, supervision of construction, or construction of the 616
improvement to real property later than ten years from the date of 617
substantial completion of such improvement. 618

(2) Notwithstanding an otherwise applicable period of 619
limitations specified in this chapter or in section 2125.02 of the 620
Revised Code, a claimant who discovers a defective and unsafe 621
condition of an improvement to real property during the ten-year 622
period specified in division (A)(1) of this section but less than 623
two years prior to the expiration of that period may commence a 624
civil action to recover damages as described in that division 625
within two years from the date of the discovery of that defective 626
and unsafe condition. 627

(3) Notwithstanding an otherwise applicable period of 628
limitations specified in this chapter or in section 2125.02 of the 629
Revised Code, if a cause of action that arises out of a defective 630
and unsafe condition of an improvement to real property accrues 631
during the ten-year period specified in division (A)(1) of this 632
section and the plaintiff cannot commence an action during that 633
period due to a disability described in section 2305.16 of the 634
Revised Code, the plaintiff may commence a civil action to recover 635
damages as described in that division within two years from the 636
removal of that disability. 637

(B) Division (A) of this section does not apply to a civil 638
action commenced against a person who is an owner of, tenant of, 639
landlord of, or other person in possession and control of an 640

improvement to real property and who is in actual possession and control of the improvement to real property at the time that the defective and unsafe condition of the improvement to real property constitutes the proximate cause of the bodily injury, injury to real or personal property, or wrongful death that is the subject matter of the civil action.

641
642
643
644
645
646

(C) Division (A)(1) of this section is not available as an affirmative defense to a defendant in a civil action described in that division if the defendant engages in fraud in regard to furnishing the design, planning, supervision of construction, or construction of an improvement to real property or in regard to any relevant fact or other information that pertains to the act or omission constituting the alleged basis of the bodily injury, injury to real or personal property, or wrongful death or to the defective and unsafe condition of the improvement to real property.

647
648
649
650
651
652
653
654
655
656

(D) Division (A)(1) of this section does not prohibit the commencement of a civil action for damages against a person who has expressly warranted or guaranteed an improvement to real property for a period longer than the period described in division (A)(1) of this section and whose warranty or guarantee has not expired as of the time of the alleged bodily injury, injury to real or personal property, or wrongful death in accordance with the terms of that warranty or guarantee.

657
658
659
660
661
662
663
664

(E) This section does not create a new cause of action or substantive legal right against any person resulting from the design, planning, supervision of construction, or construction of an improvement to real property.

665
666
667
668

(F) This section shall be considered to be purely remedial in operation and shall be applied in a remedial manner in any civil action commenced on or after the effective date of this section,

669
670
671

in which this section is relevant, regardless of when the cause of
action accrued and notwithstanding any other section of the
Revised Code or prior rule of law of this state, but shall not be
construed to apply to any civil action pending prior to the
effective date of this section.

672
673
674
675
676

(G) As used in this section, "substantial completion" means
the date the improvement to real property is first used by the
owner or tenant of the real property or when the real property is
first available for use after having the improvement completed in
accordance with the contract or agreement covering the
improvement, including any agreed changes to the contract or
agreement, whichever occurs first.

677
678
679
680
681
682
683

Sec. 2305.25. As used in this section and sections 2305.251
to 2305.253 of the Revised Code:

684
685

(A)(1) "Health care entity" means an entity, whether acting
on its own behalf or on behalf of or in affiliation with other
health care entities, that conducts as part of its regular
business activities professional credentialing or quality review
activities involving the competence of, professional conduct of,
or quality of care provided by health care providers, including
both individuals who provide health care and entities that provide
health care.

686
687
688
689
690
691
692
693

(2) "Health care entity" includes any entity described in
division (A)(1) of this section, regardless of whether it is a
government entity; for-profit or nonprofit corporation; limited
liability company; partnership; professional corporation; state or
local society composed of physicians, dentists, optometrists,
psychologists, or pharmacists; or other health care organization.

694
695
696
697
698
699

(B) "Health insuring corporation" means an entity that holds
a certificate of authority under Chapter 1751. of the Revised

700
701

Code. "Health insuring corporation" includes wholly owned 702
subsidiaries of a health insuring corporation. 703

(C) "Hospital" means either of the following: 704

(1) An institution that has been registered or licensed by 705
the department of health as a hospital; 706

(2) An entity, other than an insurance company authorized to 707
do business in this state, that owns, controls, or is affiliated 708
with an institution that has been registered or licensed by the 709
department of health as a hospital. 710

(D) "Incident report or risk management report" means a 711
report of an incident involving injury or potential injury to a 712
patient as a result of patient care provided by health care 713
providers, including both individuals who provide health care and 714
entities that provide health care, that is prepared by or for the 715
use of a peer review committee of a health care entity and is 716
within the scope of the functions of that committee. 717

(E)(1) "Peer review committee" means a utilization review 718
committee, quality assessment committee, performance improvement 719
committee, tissue committee, credentialing committee, or other 720
committee that does either of the following: 721

(a) Conducts professional credentialing or quality review 722
activities involving the competence of, professional conduct of, 723
or quality of care provided by health care providers, including 724
both individuals who provide health care and entities that provide 725
health care; 726

(b) Conducts any other attendant hearing process initiated as 727
a result of a peer review committee's recommendations or actions. 728

(2) "Peer review committee" includes all of the following: 729

(a) A peer review committee of a hospital or long-term care 730
facility or a peer review committee of a nonprofit health care 731

corporation that is a member of the hospital or long-term care	732
facility or of which the hospital or facility is a member;	733
(b) A peer review committee of a community mental health	734
center;	735
(c) A board or committee of a hospital, a long-term care	736
facility, or other health care entity when reviewing professional	737
qualifications or activities of health care providers, including	738
both individuals who provide health care and entities that provide	739
health care;	740
(d) A peer review committee, professional standards review	741
committee, or arbitration committee of a state or local society	742
composed of members who are in active practice as physicians,	743
dentists, optometrists, psychologists, or pharmacists;	744
(e) A peer review committee of a health insuring corporation	745
that has at least a two-thirds majority of member physicians in	746
active practice and that conducts professional credentialing and	747
quality review activities involving the competence or professional	748
conduct of health care providers that adversely affects or could	749
adversely affect the health or welfare of any patient;	750
(f) A peer review committee of a health insuring corporation	751
that has at least a two-thirds majority of member physicians in	752
active practice and that conducts professional credentialing and	753
quality review activities involving the competence or professional	754
conduct of a health care facility that has contracted with the	755
health insuring corporation to provide health care services to	756
enrollees, which conduct adversely affects, or could adversely	757
affect, the health or welfare of any patient;	758
(g) A peer review committee of a sickness and accident	759
insurer that has at least a two-thirds majority of physicians in	760
active practice and that conducts professional credentialing and	761
quality review activities involving the competence or professional	762

conduct of health care providers that adversely affects or could 763
adversely affect the health or welfare of any patient; 764

(h) A peer review committee of a sickness and accident 765
insurer that has at least a two-thirds majority of physicians in 766
active practice and that conducts professional credentialing and 767
quality review activities involving the competence or professional 768
conduct of a health care facility that has contracted with the 769
insurer to provide health care services to insureds, which conduct 770
adversely affects, or could adversely affect, the health or 771
welfare of any patient; 772

(i) A peer review committee of any insurer authorized under 773
Title XXXIX of the Revised Code to do the business of medical 774
professional liability insurance in this state that conducts 775
professional quality review activities involving the competence or 776
professional conduct of health care providers that adversely 777
affects or could affect the health or welfare of any patient; 778

(j) A peer review committee of the bureau of workers' 779
compensation responsible for reviewing the professional 780
qualifications and the performance of providers conducting medical 781
examinations or file reviews for the bureau; 782

(k) Any other peer review committee of a health care entity. 783

(F) "Physician" means an individual authorized to practice 784
medicine and surgery, osteopathic medicine and surgery, or 785
podiatric medicine and surgery. 786

(G) "Sickness and accident insurer" means an entity 787
authorized under Title XXXIX of the Revised Code to do the 788
business of sickness and accident insurance in this state. 789

(H) "Tort action" means a civil action for damages for 790
injury, death, or loss to a patient of a health care entity. "Tort 791
action" includes a product liability claim, as defined in section 792

2307.71 of the Revised Code, and an asbestos claim, as defined in 793
section 2307.91 of the Revised Code, but does not include a civil 794
action for a breach of contract or another agreement between 795
persons. 796

Sec. 2307.011. As used in Chapters 2307. and 2315. of the 797
Revised Code: 798

(A) "Conduct" means actions or omissions. 799

(B) "Contributory fault" means contributory negligence, other 800
contributory tortious conduct, ~~comparative negligence,~~ or, except 801
as provided with respect to product liability claims in section 802
2307.711 of the Revised Code, express or implied assumption of the 803
risk. 804

(C) "Economic loss" means any of the following types of 805
pecuniary harm: 806

(1) All wages, salaries, or other compensation lost as a 807
result of an injury, death, or loss to person or property that is 808
a subject of a tort action, including wages, salaries, or other 809
compensation lost as of the date of a judgment and future expected 810
lost earnings; 811

(2) All expenditures for medical care or treatment, 812
rehabilitation services, or other care, treatment, services, 813
products, or accommodations incurred as a result of an injury, 814
death, or loss to person that is a subject of a tort action, 815
including expenditures for those purposes that were incurred as of 816
the date of a judgment and expenditures for those purposes that, 817
in the determination of the trier of fact, will be incurred in the 818
future because of the injury, whether paid by the injured person 819
or by another person on behalf of the injured person; 820

(3) All expenditures of a person whose property was injured 821
or destroyed or of another person on behalf of the person whose 822

property was injured or destroyed in order to repair or replace 823
the property; 824

(4) Any other expenditures incurred as a result of an injury, 825
death, or loss to person or property that is a subject of a tort 826
action, except expenditures of the injured person, the person 827
whose property was injured or destroyed, or another person on 828
behalf of the injured person or the person whose property was 829
injured or destroyed in relation to the actual preparation or 830
presentation of the claim involved. 831

(D) "Intentional tort claim" means a claim alleging that a 832
tortfeasor intentionally caused or intentionally contributed to 833
the injury or loss to person or property or the wrongful death or 834
that a tortfeasor knew or believed that the injury or loss to 835
person or property or the wrongful death was substantially certain 836
to result from the tortfeasor's conduct. As used in sections 837
2307.22, 2307.711, and 2315.32, ~~and 2315.42~~ of the Revised Code, 838
"intentional tort claim" does not include an intentional tort 839
claim alleged by an employee or the employee's legal 840
representative against the employee's employer and that arises 841
from the tortfeasor's conduct that occurs on premises owned, 842
leased, or supervised by the employer. 843

~~(E) "Negligence claim" means a civil action for damages for 844
injury, death, or loss to person or property to the extent that 845
the damages are sought or recovered based on allegation or proof 846
of negligence. 847~~

~~(F)~~ "Noneconomic loss" means nonpecuniary harm that results 848
from an injury, death, or loss to person that is a subject of a 849
tort action, including, but not limited to, pain and suffering; 850
loss of society, consortium, companionship, care, assistance, 851
attention, protection, advice, guidance, counsel, instruction, 852
training, or education; mental anguish; and any other intangible 853

loss. 854

~~(G)~~(F) "Person" has the same meaning as in division (C) of 855
section 1.59 of the Revised Code and additionally includes a 856
political subdivision and the state. 857

~~(H)~~(G) "Persons from whom the plaintiff does not seek 858
recovery in this action" includes, but is not limited to, the 859
following: 860

(1) Persons who have entered into a settlement agreement with 861
the plaintiff; 862

(2) Persons whom the plaintiff has dismissed from the tort 863
action without prejudice; 864

(3) Persons whom the plaintiff has dismissed from the tort 865
action with prejudice; 866

(4) Persons who are not a party to the tort action whether or 867
not that person was or could have been a party to the tort action 868
if the name of the person has been disclosed prior to trial. 869

~~(I)~~(H) "Plaintiff" includes the person for whom the plaintiff 870
is legal representative. 871

~~(J)~~(I) "Political subdivision" and "state" have the same 872
meanings as in section 2744.01 of the Revised Code. 873

~~(K)~~(J) "Tort action" means a civil action for damages for 874
injury, death, or loss to person or property. "Tort action" 875
includes a product liability claim, as defined in section 2307.71 876
of the Revised Code, and an asbestos claim, as defined in section 877
2307.91 of the Revised Code, but does not include a civil action 878
for damages for a breach of contract or another agreement between 879
persons. 880

~~(L)~~(K) "Trier of fact" means the jury or, in a nonjury 881
action, the court. 882

Sec. 2307.23. (A) In determining the percentage of tortious 883
conduct attributable to a party in a tort action under section 884
2307.22, or sections 2315.32 to 2315.36, ~~or sections 2315.41 to~~ 885
~~2315.46~~ of the Revised Code, the court in a nonjury action shall 886
make findings of fact, and the jury in a jury action shall return 887
a general verdict accompanied by answers to interrogatories, that 888
shall specify all of the following: 889

(1) The percentage of tortious conduct that proximately 890
caused the injury or loss to person or property or the wrongful 891
death that is attributable to the plaintiff and to each party to 892
the tort action from whom the plaintiff seeks recovery in this 893
action; 894

(2) The percentage of tortious conduct that proximately 895
caused the injury or loss to person or property or the wrongful 896
death that is attributable to each person from whom the plaintiff 897
does not seek recovery in this action. 898

(B) The sum of the percentages of tortious conduct as 899
determined pursuant to division (A) of this section shall equal 900
one hundred per cent. 901

(C) For purposes of division (A)(2) of this section, it is an 902
affirmative defense for each party to the tort action from whom 903
the plaintiff seeks recovery in this action that a specific 904
percentage of the tortious conduct that proximately caused the 905
injury or loss to person or property or the wrongful death is 906
attributable to one or more persons from whom the plaintiff does 907
not seek recovery in this action. Any party to the tort action 908
from whom the plaintiff seeks recovery in this action may raise an 909
affirmative defense under this division at any time before the 910
trial of the action. 911

Sec. 2307.29. No provision of sections 2307.25 to 2307.28 of 912

the Revised Code applies to a ~~negligence or other~~ tort claim to 913
the extent that sections 2307.22 to 2307.24, or sections 2315.32 914
to 2315.36, ~~or sections 2315.41 to 2315.46~~ of the Revised Code 915
make a party against whom a judgment is entered liable to the 916
plaintiff only for the proportionate share of that party as 917
described in those sections. 918

Sec. 2307.60. (A) Anyone injured in person or property by a 919
criminal act has, and may recover full damages in, a civil action 920
unless specifically excepted by law, may recover the costs of 921
maintaining the civil action and attorney's fees if authorized by 922
any provision of the Rules of Civil Procedure or another section 923
of the Revised Code or under the common law of this state, and may 924
recover punitive or exemplary damages if authorized by section 925
2315.21 or another section of the Revised Code. No record of a 926
conviction, unless obtained by confession in open court, shall be 927
used as evidence in a civil action brought pursuant to division 928
(A) of this section. 929

(B)(1) As used in division (B) of this section, "tort action" 930
means a civil action for damages for injury, death, or loss to 931
person or property other than a civil action for damages for a 932
breach of contract or another agreement between persons. "Tort 933
action" includes, but is not limited to, a product liability 934
claim, as defined in section 2307.71 of the Revised Code, and an 935
asbestos claim, as defined in section 2307.91 of the Revised Code, 936
an action for wrongful death under Chapter 2125. of the Revised 937
Code, and an action based on derivative claims for relief. 938

(2) Recovery on a claim for relief in a tort action is barred 939
to any person or the person's legal representative if the person 940
has been convicted of or has pleaded guilty to a felony, or to a 941
misdemeanor that is an offense of violence, arising out of 942
criminal conduct that was a proximate cause of the injury or loss 943

for which relief is claimed in the action. 944

(3) Division (B) of this section does not apply to civil 945
claims based upon alleged intentionally tortious conduct, alleged 946
violations of the United States Constitution, or alleged 947
violations of statutes of the United States pertaining to civil 948
rights. 949

Sec. 2307.71. (A) As used in sections 2307.71 to 2307.80 of 950
the Revised Code: 951

~~(A)(1)~~ "Claimant" means either of the following: 952

~~(1)(a)~~ A person who asserts a product liability claim or on 953
whose behalf such a claim is asserted; 954

~~(2)(b)~~ If a product liability claim is asserted on behalf of 955
the surviving spouse, children, parents, or other next of kin of a 956
decedent or on behalf of the estate of a decedent, whether as a 957
claim in a wrongful death action under Chapter 2125. of the 958
Revised Code or as a survivorship claim, whichever of the 959
following is appropriate: 960

~~(a)(i)~~ The decedent, if the reference is to the person who 961
allegedly sustained harm or economic loss for which, or in 962
connection with which, compensatory damages or punitive or 963
exemplary damages are sought to be recovered; 964

~~(b)(ii)~~ The personal representative of the decedent or the 965
estate of the decedent, if the reference is to the person who is 966
asserting or has asserted the product liability claim. 967

~~(B)(2)~~ "Economic loss" means direct, incidental, or 968
consequential pecuniary loss, including, but not limited to, 969
damage to the product in question, and nonphysical damage to 970
property other than that product. Harm is not "economic loss." 971

~~(C)(3)~~ "Environment" means navigable waters, surface water, 972

ground water, drinking water supplies, land surface, subsurface 973
strata, and air. 974

~~(D)~~(4) "Ethical drug" means a prescription drug that is 975
prescribed or dispensed by a physician or any other person who is 976
legally authorized to prescribe or dispense a prescription drug. 977

~~(E)~~(5) "Ethical medical device" means a medical device that 978
is prescribed, dispensed, or implanted by a physician or any other 979
person who is legally authorized to prescribe, dispense, or 980
implant a medical device and that is regulated under the "Federal 981
Food, Drug, and Cosmetic Act," 52 Stat. 1040, 21 U.S.C. 301-392, 982
as amended. 983

~~(F)~~(6) "Foreseeable risk" means a risk of harm that satisfies 984
both of the following: 985

~~(1)~~(a) It is associated with an intended or reasonably 986
foreseeable use, modification, or alteration of a product in 987
question. 988

~~(2)~~(b) It is a risk that the manufacturer in question should 989
recognize while exercising both of the following: 990

~~(a)~~(i) The attention, perception, memory, knowledge, and 991
intelligence that a reasonable manufacturer should possess; 992

~~(b)~~(ii) Any superior attention, perception, memory, 993
knowledge, or intelligence that the manufacturer in question 994
possesses. 995

~~(G)~~(7) "Harm" means death, physical injury to person, serious 996
emotional distress, or physical damage to property other than the 997
product in question. Economic loss is not "harm." 998

~~(H)~~(8) "Hazardous or toxic substances" include, but are not 999
limited to, hazardous waste as defined in section 3734.01 of the 1000
Revised Code, hazardous waste as specified in the rules of the 1001
director of environmental protection pursuant to division (A) of 1002

section 3734.12 of the Revised Code, hazardous substances as 1003
defined in section 3716.01 of the Revised Code, and hazardous 1004
substances, pollutants, and contaminants as defined in or by 1005
regulations adopted pursuant to the "Comprehensive Environmental 1006
Response, Compensation, and Liability Act of 1980," 94 Stat. 2767, 1007
42 U.S.C. 9601, as amended. 1008

~~(I)~~(9) "Manufacturer" means a person engaged in a business to 1009
design, formulate, produce, create, make, construct, assemble, or 1010
rebuild a product or a component of a product. 1011

~~(J)~~(10) "Person" has the same meaning as in division (C) of 1012
section 1.59 of the Revised Code and also includes governmental 1013
entities. 1014

~~(K)~~(11) "Physician" means a person who is licensed to 1015
practice medicine and surgery or osteopathic medicine and surgery 1016
by the state medical board. 1017

~~(L)~~~~(1)~~(12)(a) "Product" means, subject to division 1018
~~(L)~~~~(2)~~(A)(12)(b) of this section, any object, substance, mixture, 1019
or raw material that constitutes tangible personal property and 1020
that satisfies all of the following: 1021

~~(a)~~(i) It is capable of delivery itself, or as an assembled 1022
whole in a mixed or combined state, or as a component or 1023
ingredient~~+~~. 1024

~~(b)~~(ii) It is produced, manufactured, or supplied for 1025
introduction into trade or commerce~~+~~. 1026

~~(c)~~(iii) It is intended for sale or lease to persons for 1027
commercial or personal use. 1028

~~(2)~~(b) "Product" does not include human tissue, blood, or 1029
organs. 1030

~~(M)~~(13) "Product liability claim" means a claim that is 1031
asserted in a civil action pursuant to sections 2307.71 to 2307.80 1032

of the Revised Code and that seeks to recover compensatory damages 1033
from a manufacturer or supplier for death, physical injury to 1034
person, emotional distress, or physical damage to property other 1035
than the product in question, that allegedly arose from any of the 1036
following: 1037

~~(1)~~(a) The design, formulation, production, construction, 1038
creation, assembly, rebuilding, testing, or marketing of that 1039
product; 1040

~~(2)~~(b) Any warning or instruction, or lack of warning or 1041
instruction, associated with that product; 1042

~~(3)~~(c) Any failure of that product to conform to any relevant 1043
representation or warranty. 1044

~~(N)~~(14) "Representation" means an express representation of a 1045
material fact concerning the character, quality, or safety of a 1046
product. 1047

~~(O)~~~~(1)~~(15)(a) "Supplier" means, subject to division 1048
~~(O)~~~~(2)~~(A)(15)(b) of this section, either of the following: 1049

~~(a)~~(i) A person that, in the course of a business conducted 1050
for the purpose, sells, distributes, leases, prepares, blends, 1051
packages, labels, or otherwise participates in the placing of a 1052
product in the stream of commerce; 1053

~~(b)~~(ii) A person that, in the course of a business conducted 1054
for the purpose, installs, repairs, or maintains any aspect of a 1055
product that allegedly causes harm. 1056

~~(2)~~(b) "Supplier" does not include any of the following: 1057

~~(a)~~(i) A manufacturer; 1058

~~(b)~~(ii) A seller of real property; 1059

~~(e)~~(iii) A provider of professional services who, incidental 1060
to a professional transaction the essence of which is the 1061
furnishing of judgment, skill, or services, sells or uses a 1062

product; 1063

~~(d)~~(iv) Any person who acts only in a financial capacity with 1064
respect to the sale of a product, or who leases a product under a 1065
lease arrangement in which the selection, possession, maintenance, 1066
and operation of the product are controlled by a person other than 1067
the lessor. 1068

~~(P)~~(16) "Unavoidably unsafe" means that, in the state of 1069
technical, scientific, and medical knowledge at the time a product 1070
in question left the control of its manufacturer, an aspect of 1071
that product was incapable of being made safe. 1072

(B) Sections 2307.71 to 2307.80 of the Revised Code are 1073
intended to abrogate all common law product liability causes of 1074
action. 1075

Sec. 2307.711. (A) Subject to divisions (B)(1), (2), and (3) 1076
of this section, sections 2315.32 to 2315.36 of the Revised Code 1077
apply to a product liability claim that is asserted pursuant to 1078
sections 2307.71 to 2307.80 of the Revised Code. 1079

(B)(1) Express or implied assumption of the risk may be 1080
asserted as an affirmative defense to a product liability claim 1081
under sections 2307.71 to 2307.80 of the Revised Code, except that 1082
express or implied assumption of the risk may not be asserted as 1083
an affirmative defense to an intentional tort claim. 1084

(2) Subject to division (B)(3) of this section, if express or 1085
implied assumption of the risk is asserted as an affirmative 1086
defense to a product liability claim under sections 2307.71 to 1087
2307.80 of the Revised Code and if it is determined that the 1088
claimant expressly or impliedly assumed a risk and that the 1089
express or implied assumption of the risk was a direct and 1090
proximate cause of harm for which the claimant seeks to recover 1091
damages, the express or implied assumption of the risk is a 1092

complete bar to the recovery of those damages. 1093

(3) If implied assumption of the risk is asserted as an 1094
affirmative defense to a product liability claim against a 1095
supplier under division (A)(1) of section 2307.78 of the Revised 1096
Code, sections 2315.32 to 2315.36 of the Revised Code are 1097
applicable to that affirmative defense and shall be used to 1098
determine whether the claimant is entitled to recover compensatory 1099
damages based on that claim and the amount of any recoverable 1100
compensatory damages. 1101

Sec. 2307.75. (A) Subject to divisions (D), (E), and (F) of 1102
this section, a product is defective in design or formulation if 1103
~~either of the following applies:~~ 1104

~~(1) When, at the time it left the control of its~~ 1105
~~manufacturer, the foreseeable risks associated with its design or~~ 1106
~~formulation as determined pursuant to division (B) of this section~~ 1107
~~exceeded the benefits associated with that design or formulation~~ 1108
~~as determined pursuant to division (C) of this section:~~ 1109

~~(2) It is more dangerous than an ordinary consumer would~~ 1110
~~expect when used in an intended or reasonably foreseeable manner.~~ 1111

(B) The foreseeable risks associated with the design or 1112
formulation of a product shall be determined by considering 1113
factors including, but not limited to, the following: 1114

(1) The nature and magnitude of the risks of harm associated 1115
with that design or formulation in light of the intended and 1116
reasonably foreseeable uses, modifications, or alterations of the 1117
product; 1118

(2) The likely awareness of product users, whether based on 1119
warnings, general knowledge, or otherwise, of those risks of harm; 1120

(3) The likelihood that that design or formulation would 1121
cause harm in light of the intended and reasonably foreseeable 1122

uses, modifications, or alterations of the product; 1123

(4) The extent to which that design or formulation conformed 1124
to any applicable public or private product standard that was in 1125
effect when the product left the control of its manufacturer. 1126

(C) The benefits associated with the design or formulation of 1127
a product shall be determined by considering factors including, 1128
but not limited to, the following: 1129

(1) The intended or actual utility of the product, including 1130
any performance or safety advantages associated with that design 1131
or formulation; 1132

(2) The technical and economic feasibility, when the product 1133
left the control of its manufacturer, of using an alternative 1134
design or formulation; 1135

(3) The nature and magnitude of any foreseeable risks 1136
associated with ~~such~~ an alternative design or formulation. 1137

(D) An ethical drug or ethical medical device is not 1138
defective in design or formulation because some aspect of it is 1139
unavoidably unsafe, if the manufacturer of the ethical drug or 1140
ethical medical device provides adequate warning and instruction 1141
under section 2307.76 of the Revised Code concerning that 1142
unavoidably unsafe aspect. 1143

(E) A product is not defective in design or formulation if 1144
the harm for which the claimant seeks to recover compensatory 1145
damages was caused by an inherent characteristic of the product 1146
which is a generic aspect of the product that cannot be eliminated 1147
without substantially compromising the product's usefulness or 1148
desirability and which is recognized by the ordinary person with 1149
the ordinary knowledge common to the community. 1150

(F) A product is not defective in design or formulation if, 1151
at the time the product left the control of its manufacturer, a 1152

practical and technically feasible alternative design or 1153
formulation was not available that would have prevented the harm 1154
for which the claimant seeks to recover compensatory damages 1155
without substantially impairing the usefulness or intended purpose 1156
of the product, unless the manufacturer acted unreasonably in 1157
introducing the product into trade or commerce. 1158

Sec. 2307.80. (A) Subject to ~~division~~ divisions (C) and (D) 1159
of this section, punitive or exemplary damages shall not be 1160
awarded against a manufacturer or supplier in question in 1161
connection with a product liability claim unless the claimant 1162
establishes, by clear and convincing evidence, that harm for which 1163
the claimant is entitled to recover compensatory damages in 1164
accordance with section 2307.73 or 2307.78 of the Revised Code was 1165
the result of misconduct of the manufacturer or supplier in 1166
question that manifested a flagrant disregard of the safety of 1167
persons who might be harmed by the product in question. The fact 1168
by itself that a product is defective does not establish a 1169
flagrant disregard of the safety of persons who might be harmed by 1170
that product. 1171

(B) Whether the trier of fact is a jury or the court, if the 1172
trier of fact determines that a manufacturer or supplier in 1173
question is liable for punitive or exemplary damages in connection 1174
with a product liability claim, the amount of those damages shall 1175
be determined by the court. In determining the amount of punitive 1176
or exemplary damages, the court shall consider factors including, 1177
but not limited to, the following: 1178

(1) The likelihood that serious harm would arise from the 1179
misconduct of the manufacturer or supplier in question; 1180

(2) The degree of the awareness of the manufacturer or 1181
supplier in question of that likelihood; 1182

(3) The profitability of the misconduct to the manufacturer 1183
or supplier in question; 1184

(4) The duration of the misconduct and any concealment of it 1185
by the manufacturer or supplier in question; 1186

(5) The attitude and conduct of the manufacturer or supplier 1187
in question upon the discovery of the misconduct and whether the 1188
misconduct has terminated; 1189

(6) The financial condition of the manufacturer or supplier 1190
in question; 1191

(7) The total effect of other punishment imposed or likely to 1192
be imposed upon the manufacturer or supplier in question as a 1193
result of the misconduct, including awards of punitive or 1194
exemplary damages to persons similarly situated to the claimant 1195
and the severity of criminal penalties to which the manufacturer 1196
or supplier in question has been or is likely to be subjected. 1197

(C) ~~If~~ (1) Except as provided in division (C)(2) of this 1198
section, if a claimant alleges in a product liability claim that a 1199
drug or device caused harm to the claimant, the manufacturer of 1200
the drug or device shall not be liable for punitive or exemplary 1201
damages in connection with that product liability claim if the 1202
drug or device that allegedly caused the harm satisfies either of 1203
the following: 1204

(a) It was manufactured and labeled in relevant and material 1205
respects in accordance with the terms of an approval or license 1206
issued by the federal food and drug administration under the 1207
"Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 1208
U.S.C. 301-392, as amended, or the "Public Health Service Act," 58 1209
Stat. 682 (1944), 42 U.S.C. 201-300cc-15, as amended, ~~unless it is~~ 1210
established. 1211

(b) It was an over-the-counter drug marketed pursuant to 1212

federal regulations, was generally recognized as safe and 1213
effective and as not being misbranded pursuant to the applicable 1214
federal regulations, and satisfied in relevant and material 1215
respects each of the conditions contained in the applicable 1216
regulations and each of the conditions contained in an applicable 1217
monograph. 1218

(2) Division (C)(1) of this section does not apply if the 1219
claimant establishes, by a preponderance of the evidence, that the 1220
manufacturer fraudulently and in violation of applicable 1221
regulations of the food and drug administration withheld from the 1222
food and drug administration information known to be material and 1223
relevant to the harm that the claimant allegedly suffered or 1224
misrepresented to the food and drug administration information of 1225
that type. ~~For~~ 1226

As used in this division, "fraudulently" means when the 1227
sponsor of the drug or medical device approval had not disclosed 1228
to the food and drug administration, in the premarket approval 1229
application or new drug application and related submissions, that 1230
which was required to be disclosed in order to secure the approval 1231
from the food and drug administration, which data came into the 1232
actual or constructive possession of the sponsor or its agents 1233
during the pendency of the investigational device exemption, 1234
investigational new drug expectation, new drug application, or 1235
premarket approval application or prior to or subsequent to the 1236
date of the actual approval of the new drug application. 1237

(3) For purposes of this division, "drug divisions (C) and 1238
(D) of this section: 1239

(a) "Drug" has the same meaning given to that term as in the 1240
"Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040, 1041 1241
(1938), 21 U.S.C. 321(g)(1), as amended. 1242

(b) "Device" has the same meaning as in the "Federal Food, 1243

Drug, and Cosmetic Act," 52 Stat. 1040, 1041 (1938), 21 U.S.C. 1244
321(h), as amended. 1245

(D)(1) If a claimant alleges in a product liability claim 1246
that a product other than a drug or device caused harm to the 1247
claimant, the manufacturer or supplier of the product shall not be 1248
liable for punitive or exemplary damages in connection with the 1249
claim if the manufacturer or supplier fully complied with all 1250
applicable government safety and performance standards, whether or 1251
not designated as such by the government, relative to the 1252
product's manufacture or construction, the product's design or 1253
formulation, adequate warnings or instructions, and 1254
representations when the product left the control of the 1255
manufacturer or supplier, and the claimant's injury results from 1256
an alleged defect of a product's manufacture or construction, the 1257
product's design or formulation, adequate warnings or 1258
instructions, and representations for which there is an applicable 1259
government safety or performance standard. 1260

(2) Division (D)(1) of this section does not apply if the 1261
claimant establishes, by a preponderance of the evidence, that the 1262
manufacturer or supplier of the product other than a drug or 1263
device fraudulently and in violation of applicable government 1264
safety and performance standards withheld from an applicable 1265
government agency information known to be material and relevant to 1266
the harm that the claimant allegedly suffered or misrepresented to 1267
an applicable government agency information of that type. 1268

(E) The bifurcated trial provisions of division (B) of 1269
section 2315.21 of the Revised Code, the ceiling on recoverable 1270
punitive or exemplary damages specified in division (D)(1) of that 1271
section, and the provisions of division (D)(3) of that section 1272
apply to awards of punitive or exemplary damages under this 1273
section. 1274

Sec. 2315.01. (A) When the jury is sworn, unless for special 1275
reasons the court otherwise directs, the trial shall proceed in 1276
the following order except as provided in section 2315.02 of the 1277
Revised Code: 1278

~~(A)~~(1) The plaintiff concisely ~~must~~ shall state the 1279
plaintiff's claim, and briefly may state the plaintiff's evidence 1280
to sustain it. 1281

~~(B)~~(2) The defendant ~~must then~~ briefly shall state the 1282
defendant's defense, and briefly may state the defendant's 1283
evidence in support of it. 1284

~~(C)~~(3) The party who would be defeated if no evidence were 1285
offered on either side, first, ~~must~~ shall produce that party's 1286
evidence, and the adverse party ~~must~~ shall then produce the 1287
adverse party's evidence. 1288

~~(D)~~(4) The parties then shall be confined to rebutting 1289
evidence, unless the court for good reasons, and in the 1290
furtherance of justice, permits them to offer evidence in their 1291
original cases. 1292

~~(E)~~(5) When the evidence is concluded, either party may 1293
present written instructions to the court on matters of law and 1294
request them to be given to the jury, ~~which instructions shall be~~ 1295
~~given or refused by the.~~ The court shall give or refuse to give 1296
the written instructions to the jury before the argument to the 1297
jury is commenced. 1298

~~(F)~~(6) The parties then may submit or argue the case to the 1299
jury. The party required first to produce that party's evidence 1300
shall have the opening and closing arguments. If several 1301
defendants, ~~having~~ have separate defenses, ~~and~~ appear by different 1302
counsel, the court shall arrange their relative order. 1303

~~(G)~~(7) The court, after the argument is concluded, and before 1304

proceeding with other business, shall charge the jury. ~~Any charge~~ 1305
~~shall be reduced to writing by the~~ The court shall reduce a charge 1306
to writing if either party, before the argument to the jury is 1307
commenced, requests it. ~~Such charge may be examined by the~~ The 1308
~~parties may examine that charge~~ before any closing argument is 1309
made by any of the parties. ~~A~~ If a charge or instruction, ~~when so~~ 1310
is written and given, ~~as prescribed in this division,~~ the court 1311
shall not be orally ~~qualified, modified~~ qualify, modify, or in any 1312
manner ~~explained~~ explain the charge or instruction to the jury ~~by~~ 1313
~~the court~~. All written charges and instructions shall be taken by 1314
the jurors in their retirement, shall be returned with their 1315
verdict into court, and shall remain on file with the papers of 1316
the case. 1317

(B) In all tort actions, the court shall instruct the jury 1318
regarding the extent to which an award of compensatory damages or 1319
punitive or exemplary damages is or is not subject to taxation 1320
under federal or state income tax laws. 1321

As used in this division, "tort action" means a civil action 1322
for damages for injury, death, or loss to person or property. 1323
"Tort action" includes a product liability claim, as defined in 1324
section 2307.71 of the Revised Code, and an asbestos claim, as 1325
defined in section 2307.91 of the Revised Code, but does not 1326
include a civil action for damages for breach of contract or 1327
another agreement between persons. 1328

Division (B) of this section shall be considered to be purely 1329
remedial in operation and shall be applied in a remedial manner in 1330
any civil action commenced on or after the effective date of this 1331
amendment, in which division (B) of this section is relevant, 1332
regardless of when the cause of action accrued and notwithstanding 1333
any other section of the Revised Code or prior rule of law of this 1334
state, but shall not be construed to apply to any civil action 1335
pending prior to the effective date of this amendment. 1336

<u>Sec. 2315.19. (A) As used in this section:</u>	1337
<u>(1) "Medical claim," "dental claim," "optometric claim," and</u>	1338
<u>"chiropractic claim" have the same meanings as in section 2305.113</u>	1339
<u>of the Revised Code.</u>	1340
<u>(2) "Noneconomic loss" means nonpecuniary harm that results</u>	1341
<u>from an injury or loss to person or property that is a subject of</u>	1342
<u>a tort action, including, but not limited to, pain and suffering,</u>	1343
<u>loss of society, consortium, companionship, care, assistance,</u>	1344
<u>attention, protection, advice, guidance, counsel, instruction,</u>	1345
<u>training, or education, disfigurement, mental anguish, and any</u>	1346
<u>other intangible loss.</u>	1347
<u>(3) "Product liability claim" has the same meaning as in</u>	1348
<u>section 2307.71 of the Revised Code.</u>	1349
<u>(4) "Tort action" means a civil action for damages for</u>	1350
<u>injury, death, or loss to person or property. "Tort action"</u>	1351
<u>includes a civil action upon a product liability claim or an</u>	1352
<u>asbestos claim. "Tort action" does not include a civil action upon</u>	1353
<u>a medical claim, dental claim, optometric claim, or chiropractic</u>	1354
<u>claim or a civil action for damages for a breach of contract or</u>	1355
<u>another agreement between persons.</u>	1356
<u>(5) "Trier of fact" means the jury or, in a nonjury action,</u>	1357
<u>the court.</u>	1358
<u>(6) "Asbestos claim" has the same meaning as in section</u>	1359
<u>2307.91 of the Revised Code.</u>	1360
<u>(B) In determining an award of compensatory damages for</u>	1361
<u>noneconomic loss in a tort action, the trier of fact shall not</u>	1362
<u>consider any of the following:</u>	1363
<u>(1) Evidence of a defendant's alleged wrongdoing, misconduct,</u>	1364
<u>or guilt;</u>	1365

<u>(2) Evidence of the defendant's wealth or financial resources;</u>	1366
	1367
<u>(3) All other evidence that is offered for the purpose of punishing the defendant, rather than offered for a compensatory purpose.</u>	1368
	1369
	1370
<u>(C)(1) Upon a post-judgment motion, a trial court in a tort action shall review the evidence supporting an award of compensatory damages for noneconomic loss that is challenged as inadequate or excessive. That review shall include, but is not limited to, the following factors:</u>	1371
	1372
	1373
	1374
	1375
<u>(a) Whether the evidence presented or the arguments of the attorneys resulted in one or more of the following events in the determination of an award of compensatory damages for noneconomic loss:</u>	1376
	1377
	1378
	1379
<u>(i) It inflamed the passion or prejudice of the trier of fact.</u>	1380
	1381
<u>(ii) It resulted in the improper consideration of the wealth or lack of wealth of the defendant.</u>	1382
	1383
<u>(iii) It resulted in the improper consideration of the misconduct of a party so as to punish that party improperly or in circumvention of the limitation on punitive or exemplary damages as provided in section 2315.21 of the Revised Code.</u>	1384
	1385
	1386
	1387
<u>(b) Whether the verdict is less than or in excess of verdicts involving comparable injuries to similarly situated plaintiffs;</u>	1388
	1389
<u>(c) Whether there were any extraordinary circumstances in the record to account for an award of compensatory damages for noneconomic loss less than or in excess of what was granted by courts to similarly situated plaintiffs, with consideration given to the type of injury, the severity of the injury, and the plaintiff's age at the time of the injury.</u>	1390
	1391
	1392
	1393
	1394
	1395

(2) The party that has challenged an award of compensatory damages for noneconomic loss as inadequate or excessive has the burden of proof to show that the award for damages for noneconomic loss is inadequate or excessive. 1396
1397
1398
1399

(D) A trial court upholding an award of compensatory damages for noneconomic loss that a party has challenged as inadequate or excessive shall set forth in writing its reasons for upholding the award. 1400
1401
1402
1403

(E) An appellate court shall use a de novo standard of review when considering an appeal of an award of compensatory damages for noneconomic loss on the grounds that the award is inadequate or excessive. 1404
1405
1406
1407

Sec. 2315.20. (A) In any tort action, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the damages that result from an injury, death, or loss to person or property that is the subject of the claim upon which the action is based, except if the source of collateral benefits has a mandatory self-effectuating federal right of subrogation, a contractual right of subrogation, or a statutory right of subrogation or if the source pays the plaintiff a benefit that is in the form of a life insurance payment or a disability payment. 1408
1409
1410
1411
1412
1413
1414
1415
1416
1417

(B) If the defendant elects to introduce evidence described in division (A) of this section, the plaintiff may introduce evidence of any amount that the plaintiff has paid or contributed to secure the plaintiff's right to receive the benefits of which the defendant has introduced evidence. 1418
1419
1420
1421
1422

(C) A source of collateral benefits of which evidence is introduced pursuant to division (A) of this section shall not recover any amount against the plaintiff nor shall it be 1423
1424
1425

<u>subrogated to the rights of the plaintiff against a defendant.</u>	1426
<u>(D) As used in this section:</u>	1427
<u>(1) "Tort action" means a civil action for damages for injury, death, or loss to person or property. "Tort action" includes a civil action upon a product liability claim and an asbestos claim. "Tort action" does not include a civil action upon a medical claim, dental claim, optometric claim, or chiropractic claim or a civil action for damages for a breach of contract or another agreement between persons.</u>	1428 1429 1430 1431 1432 1433 1434
<u>(2) "Medical claim," "dental claim," "optometric claim," and "chiropractic claim" have the same meanings as in section 2305.113 of the Revised Code.</u>	1435 1436 1437
<u>(3) "Product liability claim" has the same meaning as in section 2307.71 of the Revised Code.</u>	1438 1439
<u>(4) "Asbestos claim" has the same meaning as in section 2307.91 of the Revised Code.</u>	1440 1441
Sec. 2315.21. (A) As used in this section:	1442
<u>(1) "Tort action" means a civil action for damages for injury or loss to person or property. "Tort action" includes a product liability claim for damages for injury or loss to person or property that is subject to sections 2307.71 to 2307.80 of the Revised Code, but does not include a civil action for damages for a breach of contract or another agreement between persons.</u>	1443 1444 1445 1446 1447 1448
<u>(2) "Trier of fact" means the jury or, in a nonjury action, the court.</u>	1449 1450
<u>(3) "Home" has the same meaning as in section 3721.10 of the Revised Code.</u>	1451 1452
<u>(4) "Employer" includes, but is not limited to, a parent, subsidiary, affiliate, division, or department of the employer. If</u>	1453 1454

the employer is an individual, the individual shall be considered 1455
an employer under this section only if the subject of the tort 1456
action is related to the individual's capacity as an employer. 1457

(5) "Small employer" means an employer who employs not more 1458
than one hundred persons on a full-time permanent basis, or, if 1459
the employer is classified as being in the manufacturing sector by 1460
the North American industrial classification system, "small 1461
employer" means an employer who employs not more than five hundred 1462
persons on a full-time permanent basis. 1463

(B)(1) In a tort action that is tried to a jury and in which 1464
a plaintiff makes a claim for compensatory damages and a claim for 1465
punitive or exemplary damages, upon the motion of any party, the 1466
trial of the tort action shall be bifurcated as follows: 1467

(a) The initial stage of the trial shall relate only to the 1468
presentation of evidence, and a determination by the jury, with 1469
respect to whether the plaintiff is entitled to recover 1470
compensatory damages for the injury or loss to person or property 1471
from the defendant. During this stage, no party to the tort action 1472
shall present, and the court shall not permit a party to present, 1473
evidence that relates solely to the issue of whether the plaintiff 1474
is entitled to recover punitive or exemplary damages for the 1475
injury or loss to person or property from the defendant. 1476

(b) If the jury determines in the initial stage of the trial 1477
that the plaintiff is entitled to recover compensatory damages for 1478
the injury or loss to person or property from the defendant, 1479
evidence may be presented in the second stage of the trial, and a 1480
determination by that jury shall be made, with respect to whether 1481
the plaintiff additionally is entitled to recover punitive or 1482
exemplary damages for the injury or loss to person or property 1483
from the defendant. 1484

(2) In a tort action that is tried to a jury and in which a 1485

plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, the court shall instruct the jury to return, and the jury shall return, a general verdict and, if that verdict is in favor of the plaintiff, answers to an interrogatory that specifies the total compensatory damages recoverable by the plaintiff from each defendant. 1486
1487
1488
1489
1490
1491

(3) In a tort action that is tried to a court and in which a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, the court shall make its determination with respect to whether the plaintiff is entitled to recover compensatory damages for the injury or loss to person or property from the defendant and, if that determination is in favor of the plaintiff, shall make findings of fact that specify the total compensatory damages recoverable by the plaintiff from the defendant. 1492
1493
1494
1495
1496
1497
1498
1499
1500

(C) Subject to division ~~(D)~~(E) of this section, punitive or exemplary damages are not recoverable from a defendant in question in a tort action unless both of the following apply: 1501
1502
1503

(1) The actions or omissions of that defendant demonstrate malice, or aggravated or egregious fraud, ~~oppression, or insult,~~ or that defendant as principal or master knowingly authorized, participated in, or ratified actions or omissions of an agent or servant that so demonstrate. 1504
1505
1506
1507
1508

(2) The trier of fact has returned a verdict or has made a determination pursuant to division (B)(2) or (3) of this section of the total compensatory damages recoverable by the plaintiff in question has adduced proof of actual damages that resulted from actions or omissions as described in division (B)(1) of this section from that defendant. 1509
1510
1511
1512
1513
1514

~~(C)~~(D)(1) In a tort action, the trier of fact shall determine the liability of any defendant for punitive or exemplary damages 1515
1516

and the amount of those damages. 1517

(2) Except as provided in division (D)(6) of this section, 1518
all of the following apply regarding any award of punitive or 1519
exemplary damages in a tort action: 1520

(a) The court shall not enter judgment for punitive or 1521
exemplary damages in excess of two times the amount of the 1522
compensatory damages awarded to the plaintiff from that defendant, 1523
as determined pursuant to division (B)(2) or (3) of this section. 1524

(b) If the defendant is a small employer or individual, the 1525
court shall not enter judgment for punitive or exemplary damages 1526
in excess of the lesser of two times the amount of the 1527
compensatory damages awarded to the plaintiff from the defendant 1528
or ten percent of the employer's or individual's net worth when 1529
the tort was committed up to a maximum of three hundred fifty 1530
thousand dollars, as determined pursuant to division (B)(2) or (3) 1531
of this section. 1532

(c) Any attorneys fees awarded as a result of a claim for 1533
punitive or exemplary damages shall not be considered for purposes 1534
of determining the cap on punitive damages. 1535

(3) No award of prejudgment interest under division (C)(1) of 1536
section 1343.03 of the Revised Code shall include any prejudgment 1537
interest on punitive or exemplary damages found by the trier of 1538
fact. 1539

(4) In a tort action, the burden of proof shall be upon a 1540
plaintiff in question, by clear and convincing evidence, to 1541
establish that the plaintiff is entitled to recover punitive or 1542
exemplary damages. 1543

(5)(a) In any tort action, except as provided in division 1544
(D)(5)(b) or (6) of this section, punitive or exemplary damages 1545
shall not be awarded against a defendant if that defendant files 1546
with the court a certified judgment, judgment entries, or other 1547

evidence showing that punitive or exemplary damages have already 1548
been awarded and have been collected, in any state or federal 1549
court, against that defendant based on the same act or course of 1550
conduct that is alleged to have caused the injury or loss to 1551
person or property for which the plaintiff seeks compensatory 1552
damages and that the aggregate of those previous punitive or 1553
exemplary damage awards exceeds the maximum amount of punitive or 1554
exemplary damages that may be awarded under division (D)(2) of 1555
this section against that defendant in the tort action. 1556

(b) Notwithstanding division (D)(5)(a) of this section and 1557
except as provided in division (D)(6) of this section, punitive or 1558
exemplary damages may be awarded against a defendant in either of 1559
the following types of tort actions: 1560

(i) In subsequent tort actions involving the same act or 1561
course of conduct for which punitive or exemplary damages have 1562
already been awarded, if the court determines by clear and 1563
convincing evidence that the plaintiff will offer new and 1564
substantial evidence of previously undiscovered, additional 1565
behavior of a type described in division (C) of this section on 1566
the part of that defendant, other than the injury or loss for 1567
which the plaintiff seeks compensatory damages. In that case, the 1568
court shall make specific findings of fact in the record to 1569
support its conclusion. The court shall reduce the amount of any 1570
punitive or exemplary damages otherwise awardable pursuant to this 1571
section by the sum of the punitive or exemplary damages awards 1572
previously rendered against that defendant in any state or federal 1573
court. The court shall not inform the jury about the court's 1574
determination and action under division (D)(5)(b)(i) of this 1575
section. 1576

(ii) In subsequent tort actions involving the same act or 1577
course of conduct for which punitive or exemplary damages have 1578
already been awarded, if the court determines by clear and 1579

convincing evidence that the total amount of prior punitive or 1580
exemplary damages awards was totally insufficient to punish that 1581
defendant's behavior of a type described in division (C) of this 1582
section and to deter that defendant and others from similar 1583
behavior in the future. In that case, the court shall make 1584
specific findings of fact in the record to support its conclusion. 1585
The court shall reduce the amount of any punitive or exemplary 1586
damages otherwise awardable pursuant to this section by the sum of 1587
the punitive or exemplary damages awards previously rendered 1588
against that defendant in any state or federal court. The court 1589
shall not inform the jury about the court's determination and 1590
action under division (D)(5)(b)(ii) of this section. 1591

(6) Division (D)(2) of this section does not apply to a tort 1592
action where the alleged injury, death, or loss to person or 1593
property resulted from the defendant acting with one or more of 1594
the culpable mental states of purposely and knowingly as described 1595
in section 2901.22 of the Revised Code and when the defendant has 1596
been convicted of or pleaded guilty to a criminal offense that is 1597
a felony that had as an element of the offense one or more of the 1598
culpable mental states of purposely and knowingly as described in 1599
that section. 1600

~~(D)~~(E) This section does not apply to tort actions against 1601
the state in the court of claims, including, but not limited to, 1602
tort actions against a state university or college that are 1603
subject to division (B)(1) of section 3345.40 of the Revised Code, 1604
to tort actions against political subdivisions of this state that 1605
are commenced under or are subject to Chapter 2744. of the Revised 1606
Code, or to the extent that another section of the Revised Code 1607
expressly provides any of the following: 1608

(1) Punitive or exemplary damages are recoverable from a 1609
defendant in question in a tort action on a basis other than that 1610
the actions or omissions of that defendant demonstrate malice, or 1611

aggravated or egregious fraud, ~~oppression, or insult~~, or on a 1612
basis other than that the defendant in question as principal or 1613
master knowingly authorized, participated in, or ratified actions 1614
or omissions of an agent or servant that so demonstrate. 1615

(2) Punitive or exemplary damages are recoverable from a 1616
defendant in question in a tort action irrespective of whether the 1617
plaintiff in question has adduced proof of actual damages. 1618

(3) The burden of proof upon a plaintiff in question to 1619
recover punitive or exemplary damages from a defendant in question 1620
in a tort action is one other than clear and convincing evidence. 1621

(4) Punitive or exemplary damages are not recoverable from a 1622
defendant in question in a tort action. 1623

~~(E)~~(F) If the trier of fact is a jury, the court shall not 1624
instruct the jury with respect to the limits on punitive or 1625
exemplary damages pursuant to division (D) of this section, and 1626
neither counsel for any party or a witness shall inform the jury 1627
or potential jurors of those limits. 1628

(G) When determining the amount of an award of punitive or 1629
exemplary damages against either a home or a residential facility 1630
licensed under section 5123.19 of the Revised Code, the trier of 1631
fact shall consider all of the following: 1632

(1) The ability of the home or residential facility to pay 1633
the award of punitive or exemplary damages based on the home's or 1634
residential facility's assets, income, and net worth; 1635

(2) Whether the amount of punitive or exemplary damages is 1636
sufficient to deter future tortious conduct; 1637

(3) The financial ability of the home or residential 1638
facility, both currently and in the future, to provide 1639
accommodations, personal care services, and skilled nursing care. 1640

Sec. 2315.32. (A) Sections 2315.32 to 2315.36 of the Revised 1641

Code do not apply to ~~tort~~ actions based on a product liability
claim described in section 4113.03 of the Revised Code. 1642
1643

(B) The contributory fault of the plaintiff may be asserted 1644
as an affirmative defense to a ~~negligence claim or to a~~ tort claim 1645
~~other than a negligence claim~~, except that the contributory fault 1646
of the plaintiff may not be asserted as an affirmative defense to 1647
an intentional tort claim. 1648

Sec. 2315.33. The contributory fault of a person does not bar 1649
the person as plaintiff from recovering damages that have directly 1650
and proximately resulted from the tortious conduct of one or more 1651
other persons, if the contributory fault of the plaintiff was not 1652
greater than the combined tortious conduct of all other persons 1653
from whom the plaintiff seeks recovery in this action and of all 1654
other persons from whom the plaintiff does not seek recovery in 1655
this action. The court shall diminish any compensatory damages 1656
recoverable by the plaintiff by an amount that is proportionately 1657
equal to the percentage of tortious conduct of the plaintiff as 1658
determined pursuant to section 2315.34 of the Revised Code. ~~This~~ 1659
~~section does not apply to actions described in section 4113.03 of~~ 1660
~~the Revised Code.~~ 1661

Sec. 2315.34. If contributory fault is asserted and 1662
established as an affirmative defense to a ~~negligence~~ tort claim, 1663
the court in a nonjury action shall make findings of fact, and the 1664
jury in a jury action shall return a general verdict accompanied 1665
by answers to interrogatories, that shall specify the following: 1666

(A) The total amount of the compensatory damages that would 1667
have been recoverable on that ~~negligence~~ tort claim but for the 1668
tortious conduct of the plaintiff; 1669

(B) The portion of the compensatory damages specified under 1670
division (A) of this section that represents economic loss; 1671

(C) The portion of the compensatory damages specified under 1672
division (A) of this section that represents noneconomic loss; 1673

(D) The percentage of tortious conduct attributable to all 1674
persons as determined pursuant to section 2307.23 of the Revised 1675
Code. 1676

Sec. 2315.36. If contributory fault is asserted as an 1677
affirmative defense to a ~~negligence~~ tort claim, if it is 1678
determined that the plaintiff was contributorily at fault and that 1679
contributory fault was a direct and proximate cause of the injury, 1680
death, or loss to person or property that is the subject of the 1681
tort action, and if the plaintiff is entitled to recover 1682
compensatory damages pursuant to section 2315.33 of the Revised 1683
Code from more than one party, after it makes findings of fact or 1684
after the jury returns its general verdict accompanied by answers 1685
to interrogatories as described in section 2315.34 of the Revised 1686
Code, the court shall enter a judgment that is in favor of the 1687
plaintiff and that imposes liability pursuant to section 2307.22 1688
of the Revised Code. 1689

Sec. 2323.44. (A) As used in this section: 1690

(1) "Asbestos claim" has the same meaning as in section 1691
2307.91 of the Revised Code. 1692

(2) "Claimant" means a person, or the person's spouse, next 1693
of kin, or estate, who is eligible to receive compensation, 1694
medical benefits, or lost wage benefits under any health insurance 1695
plan, reimbursement plan, or wage continuation plan that is 1696
purchased by or on behalf of the claimant or is purchased, paid 1697
for, or purchased and paid for by the claimant's employer. 1698

(3) "Medical claim," "dental claim," "optometric claim," and 1699
"chiropractic claim" have the same meanings as in section 2305.113 1700
of the Revised Code. 1701

(4) "Net amount recovered" means the amount of any award, settlement, compromise, or recovery by a claimant against a third party, minus attorney fees, costs, or other expenses incurred by the claimant in securing the award, settlement, compromise, or recovery. "Net amount recovered" does not include any punitive damages that may be awarded by a judge or jury.

(5) "Product liability claim" has the same meaning as in section 2307.71 of the Revised Code.

(6) "Subrogation interest" includes past, present, and estimated future payments of compensation, medical benefits, or lost wage or wage continuation benefits paid or payable to or on behalf of the claimant by the subrogee.

(7) "Subrogee" means the source of payment of compensation, medical benefits, or lost wage benefits payable to or on behalf of a claimant as a result of a health insurance plan, reimbursement plan, or lost wage payment or wage continuation plan that is purchased by or on behalf of a claimant or is purchased, paid for, or purchased and paid for by the claimant's employer.

(8) "Third party" means an individual, private insurer, or public or private entity that is or may be liable to make payments to a claimant as a result of a civil action for damages for injury, death, or loss to person or property.

(9) "Tort action" means a civil action for damages for injury, death, or loss to person or property. "Tort action" includes a civil action upon a product liability claim, a civil action upon a medical claim, dental claim, optometric claim, or chiropractic claim, or an asbestos claim. "Tort action" does not include a civil action for damages for a breach of contract or another agreement between persons.

(10) "Uncompensated damages" means the claimant's demonstrated or proven damages as a result of a tort action for

injury, death, or loss to person or property minus the subrogee's 1733
subrogation interest. 1734

(B) Notwithstanding any contract or policy language to the 1735
contrary, a subrogee shall have the right to recover its 1736
subrogation interest against a third party and is subrogated to 1737
the rights of a claimant against that third party only as follows: 1738

(1) The claimant shall receive an amount equal to the 1739
uncompensated damages divided by the sum of the subrogation 1740
interest plus the uncompensated damages, multiplied by the net 1741
amount recovered. 1742

(2) The subrogee shall receive an amount equal to the 1743
subrogation interest divided by the sum of the subrogation 1744
interest plus the uncompensated damages, multiplied by the net 1745
amount recovered. 1746

Sec. 2323.51. (A) As used in this section: 1747

(1) "Conduct" means any of the following: 1748

(a) The filing of a civil action, the assertion of a claim, 1749
defense, or other position in connection with a civil action, the 1750
filing of a pleading, motion, or other paper in a civil action, 1751
including, but not limited to, a motion or paper filed for 1752
discovery purposes, or the taking of any other action in 1753
connection with a civil action; 1754

(b) The filing by an inmate of a civil action or appeal 1755
against a government entity or employee, the assertion of a claim, 1756
defense or other position in connection with a civil action of 1757
that nature or the assertion of issues of law in an appeal of that 1758
nature, or the taking of any other action in connection with a 1759
civil action or appeal of that nature. 1760

(2) "Frivolous conduct" means either of the following: 1761

(a) Conduct of an inmate or other party to a civil action, of 1762
an inmate who has filed an appeal of the type described in 1763
division (A)(1)(b) of this section, or of the inmate's or other 1764
party's counsel of record that satisfies ~~either~~ any of the 1765
following: 1766

(i) It obviously serves merely to harass or maliciously 1767
injure another party to the civil action or appeal or is for 1768
another improper purpose, including, but not limited to, causing 1769
unnecessary delay or a needless increase in the cost of 1770
litigation. 1771

(ii) It is not warranted under existing law ~~and~~, cannot be 1772
supported by a good faith argument for an extension, modification, 1773
or reversal of existing law, or cannot be supported by a good 1774
faith argument for the establishment of new law. 1775

(iii) The conduct consists of allegations or other factual 1776
contentions that have no evidentiary support or, if specifically 1777
so identified, are not likely to have evidentiary support after a 1778
reasonable opportunity for further investigation or discovery. 1779

(iv) The conduct consists of denials or factual contentions 1780
that are not warranted by the evidence or, if specifically so 1781
identified, are not reasonably based on a lack of information or 1782
belief. 1783

(b) An inmate's commencement of a civil action or appeal 1784
against a government entity or employee when any of the following 1785
applies: 1786

(i) The claim that is the basis of the civil action fails to 1787
state a claim or the issues of law that are the basis of the 1788
appeal fail to state any issues of law. 1789

(ii) It is clear that the inmate cannot prove material facts 1790
in support of the claim that is the basis of the civil action or 1791

in support of the issues of law that are the basis of the appeal. 1792

(iii) The claim that is the basis of the civil action is 1793
substantially similar to a claim in a previous civil action 1794
commenced by the inmate or the issues of law that are the basis of 1795
the appeal are substantially similar to issues of law raised in a 1796
previous appeal commenced by the inmate, in that the claim that is 1797
the basis of the current civil action or the issues of law that 1798
are the basis of the current appeal involve the same parties or 1799
arise from the same operative facts as the claim or issues of law 1800
in the previous civil action or appeal. 1801

(3) "Civil action or appeal against a government entity or 1802
employee," "inmate," "political subdivision," and "employee" have 1803
the same meanings as in section 2969.21 of the Revised Code. 1804

(4) "Reasonable attorney's fees" or "attorney's fees," when 1805
used in relation to a civil action or appeal against a government 1806
entity or employee, includes both of the following, as applicable: 1807

(a) The approximate amount of the compensation, and the 1808
fringe benefits, if any, of the attorney general, an assistant 1809
attorney general, or special counsel appointed by the attorney 1810
general that has been or will be paid by the state in connection 1811
with the legal services that were rendered by the attorney 1812
general, assistant attorney general, or special counsel in the 1813
civil action or appeal against the government entity or employee, 1814
including, but not limited to, a civil action or appeal commenced 1815
pro se by an inmate, and that were necessitated by frivolous 1816
conduct of an inmate represented by counsel of record, the counsel 1817
of record of an inmate, or a pro se inmate. 1818

(b) The approximate amount of the compensation, and the 1819
fringe benefits, if any, of a prosecuting attorney or other chief 1820
legal officer of a political subdivision, or an assistant to a 1821
chief legal officer of those natures, who has been or will be paid 1822

by a political subdivision in connection with the legal services 1823
that were rendered by the chief legal officer or assistant in the 1824
civil action or appeal against the government entity or employee, 1825
including, but not limited to, a civil action or appeal commenced 1826
pro se by an inmate, and that were necessitated by frivolous 1827
conduct of an inmate represented by counsel of record, the counsel 1828
of record of an inmate, or a pro se inmate. 1829

(5) "State" has the same meaning as in section 2743.01 of the 1830
Revised Code. 1831

(6) "State correctional institution" has the same meaning as 1832
in section 2967.01 of the Revised Code. 1833

(B)(1) Subject to divisions (B)(2) and (3), (C), and (D) of 1834
this section and except as otherwise provided in division 1835
(E)(2)(b) of section 101.15 or division (I)(2)(b) of section 1836
121.22 of the Revised Code, at any time ~~prior to the commencement~~ 1837
~~of the trial in a civil action or within twenty one days after the~~ 1838
~~entry of judgment in a civil action or at any time prior to the~~ 1839
~~hearing in an appeal of the type described in division (A)(1)(b)~~ 1840
~~of this section that is filed by an inmate or within twenty one~~ 1841
~~days after the entry of judgment in an appeal of that nature, the~~ 1842
~~court~~ not more than thirty days after the entry of final judgment 1843
in a civil action or appeal, any party adversely affected by 1844
frivolous conduct may file a motion for an award of court costs, 1845
reasonable attorney's fees, and other reasonable expenses incurred 1846
in connection with the civil action or appeal ~~to any party to the~~ 1847
~~civil action or appeal who was adversely affected by frivolous~~ 1848
~~conduct~~. The court may assess and make an award ~~may be assessed to~~ 1849
any party to the civil action or appeal who was adversely affected 1850
by frivolous conduct, as provided in division (B)(4) of this 1851
section. 1852

(2) An award may be made pursuant to division (B)(1) of this 1853

section upon the motion of a party to a civil action or an appeal 1854
of the type described in that division or on the court's own 1855
initiative, but only after the court does all of the following: 1856

(a) Sets a date for a hearing to be conducted in accordance 1857
with division (B)(2)(c) of this section, to determine whether 1858
particular conduct was frivolous, to determine, if the conduct was 1859
frivolous, whether any party was adversely affected by it, and to 1860
determine, if an award is to be made, the amount of that award; 1861

(b) Gives notice of the date of the hearing described in 1862
division (B)(2)(a) of this section to each party or counsel of 1863
record who allegedly engaged in frivolous conduct and to each 1864
party who allegedly was adversely affected by frivolous conduct; 1865

(c) Conducts the hearing described in division (B)(2)(a) of 1866
this section in accordance with this division, allows the parties 1867
and counsel of record involved to present any relevant evidence at 1868
the hearing, including evidence of the type described in division 1869
(B)(5) of this section, determines that the conduct involved was 1870
frivolous and that a party was adversely affected by it, and then 1871
determines the amount of the award to be made. If any party or 1872
counsel of record who allegedly engaged in or allegedly was 1873
adversely affected by frivolous conduct is confined in a state 1874
correctional institution or in a county, multicounty, municipal, 1875
municipal-county, or multicounty-municipal jail or workhouse, the 1876
court, if practicable, may hold the hearing by telephone or, in 1877
the alternative, at the institution, jail, or workhouse in which 1878
the party or counsel is confined. 1879

(3) The amount of an award made pursuant to division (B)(1) 1880
of this section that represents reasonable attorney's fees shall 1881
not exceed, and may be equal to or less than, whichever of the 1882
following is applicable: 1883

(a) If the party is being represented on a contingent fee 1884

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;

(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.

(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.

(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:

(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;

(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.

(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
the civil action or appeal may submit to the court or be ordered
by the court to submit to it, for consideration in determining the

amount of the costs and expenses, an itemized list or other 1916
evidence of the costs and expenses that were incurred in 1917
connection with that action or appeal and that were necessitated 1918
by the frivolous conduct, including, but not limited to, expert 1919
witness fees and expenses associated with discovery. 1920

(C) An award of reasonable attorney's fees under this section 1921
does not affect or determine the amount of or the manner of 1922
computation of attorney's fees as between an attorney and the 1923
attorney's client. 1924

(D) This section does not affect or limit the application of 1925
any provision of the Rules of Civil Procedure, the Rules of 1926
Appellate Procedure, or another court rule or section of the 1927
Revised Code to the extent that the provision prohibits an award 1928
of court costs, attorney's fees, or other expenses incurred in 1929
connection with a particular civil action or appeal or authorizes 1930
an award of court costs, attorney's fees, or other expenses 1931
incurred in connection with a particular civil action or appeal in 1932
a specified manner, generally, or subject to limitations. 1933

Sec. 2505.02. (A) As used in this section: 1934

(1) "Substantial right" means a right that the United States 1935
Constitution, the Ohio Constitution, a statute, the common law, or 1936
a rule of procedure entitles a person to enforce or protect. 1937

(2) "Special proceeding" means an action or proceeding that 1938
is specially created by statute and that prior to 1853 was not 1939
denoted as an action at law or a suit in equity. 1940

(3) "Provisional remedy" means a proceeding ancillary to an 1941
action, including, but not limited to, a proceeding for a 1942
preliminary injunction, attachment, discovery of privileged 1943
matter, suppression of evidence, ~~or~~ a prima-facie showing pursuant 1944
to section 2307.85 or 2307.86 of the Revised Code, a prima-facie 1945

showing pursuant to section 2307.92 of the Revised Code, or a 1946
finding made pursuant to division (A)(3) of section 2307.93 of the 1947
Revised Code. 1948

(B) An order is a final order that may be reviewed, affirmed, 1949
modified, or reversed, with or without retrial, when it is one of 1950
the following: 1951

(1) An order that affects a substantial right in an action 1952
that in effect determines the action and prevents a judgment; 1953

(2) An order that affects a substantial right made in a 1954
special proceeding or upon a summary application in an action 1955
after judgment; 1956

(3) An order that vacates or sets aside a judgment or grants 1957
a new trial; 1958

(4) An order that grants or denies a provisional remedy and 1959
to which both of the following apply: 1960

(a) The order in effect determines the action with respect to 1961
the provisional remedy and prevents a judgment in the action in 1962
favor of the appealing party with respect to the provisional 1963
remedy. 1964

(b) The appealing party would not be afforded a meaningful or 1965
effective remedy by an appeal following final judgment as to all 1966
proceedings, issues, claims, and parties in the action. 1967

(5) An order that determines that an action may or may not be 1968
maintained as a class action; 1969

(6) An order determining the constitutionality of any changes 1970
to the Revised Code made by Am. Sub. S.B. 281 of the 124th general 1971
assembly, including the amendment of sections 1751.67, 2117.06, 1972
2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711.21, 1973
2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 1974
3923.64, 3929.71, 4705.15, and 5111.018, and the enactment of 1975

sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised
Code or any changes made by Sub. S.B. 80 of the 125th general
assembly, including the amendment of sections 2125.02, 2305.10,
2315.19, and 2315.21 of the Revised Code.

(C) When a court issues an order that vacates or sets aside a
judgment or grants a new trial, the court, upon the request of
either party, shall state in the order the grounds upon which the
new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including
an appeal, that is pending in any court on July 22, 1998, and all
claims filed or actions commenced on or after July 22, 1998,
notwithstanding any provision of any prior statute or rule of law
of this state.

Sec. 4507.07. (A) The registrar of motor vehicles shall not
grant the application of any minor under eighteen years of age for
a probationary license, a restricted license, or a temporary
instruction permit, unless the application is signed by one of the
minor's parents, the minor's guardian, another person having
custody of the applicant, or, if there is no parent or guardian, a
responsible person who is willing to assume the obligation imposed
under this section.

At the time a minor under eighteen years of age submits an
application for a license or permit at a driver's license
examining station, the adult who signs the application shall
present identification establishing that the adult is the
individual whose signature appears on the application. The
registrar shall prescribe, by rule, the types of identification
that are suitable for the purposes of this paragraph. If the adult
who signs the application does not provide identification as
required by this paragraph, the application shall not be accepted.

When a minor under eighteen years of age applies for a probationary license, a restricted license, or a temporary instruction permit, the registrar shall give the adult who signs the application notice of the potential liability that may be imputed to the adult pursuant to division (B) of this section and notice of how the adult may prevent any liability from being imputed to the adult pursuant to that division.

(B) Any negligence, or willful or wanton misconduct, that is committed by a minor under eighteen years of age when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application of the minor for a probationary license, restricted license, or temporary instruction permit, which person shall be jointly and severally liable with the minor for any damages caused by the negligence or the willful or wanton misconduct. This joint and several liability is not subject to section 2307.22, or 2315.36, ~~or 2315.46~~ of the Revised Code with respect to a ~~negligence~~ tort claim that otherwise is subject to that section.

There shall be no imputed liability imposed under this division if a minor under eighteen years of age has proof of financial responsibility with respect to the operation of a motor vehicle owned by the minor or, if the minor is not the owner of a motor vehicle, with respect to the minor's operation of any motor vehicle, in the form and in the amounts required under Chapter 4509. of the Revised Code.

(C) Any person who has signed the application of a minor under eighteen years of age for a license or permit subsequently may surrender to the registrar the license or temporary instruction permit of the minor and request that the license or permit be canceled. The registrar then shall cancel the license or temporary instruction permit, and the person who signed the application of the minor shall be relieved from the liability

imposed by division (B) of this section. 2038

(D) Any minor under eighteen years of age whose probationary 2039
license, restricted license, or temporary instruction permit is 2040
surrendered to the registrar by the person who signed the 2041
application for the license or permit and whose license or 2042
temporary instruction permit subsequently is canceled by the 2043
registrar may obtain a new license or temporary instruction permit 2044
without having to undergo the examinations otherwise required by 2045
sections 4507.11 and 4507.12 of the Revised Code and without 2046
having to tender the fee for that license or temporary instruction 2047
permit, if the minor is able to produce another parent, guardian, 2048
other person having custody of the minor, or other adult, and that 2049
adult is willing to assume the liability imposed under division 2050
(B) of this section. That adult shall comply with the procedures 2051
contained in division (A) of this section. 2052

Sec. 4513.263. (A) As used in this section and in section 2053
4513.99 of the Revised Code: 2054

(1) "Automobile" means any commercial tractor, passenger car, 2055
commercial car, or truck that is required to be factory-equipped 2056
with an occupant restraining device for the operator or any 2057
passenger by regulations adopted by the United States secretary of 2058
transportation pursuant to the "National Traffic and Motor Vehicle 2059
Safety Act of 1966," 80 Stat. 719, 15 U.S.C.A. 1392. 2060

(2) "Occupant restraining device" means a seat safety belt, 2061
shoulder belt, harness, or other safety device for restraining a 2062
person who is an operator of or passenger in an automobile and 2063
that satisfies the minimum federal vehicle safety standards 2064
established by the United States department of transportation. 2065

(3) "Passenger" means any person in an automobile, other than 2066
its operator, who is occupying a seating position for which an 2067

occupant restraining device is provided.	2068
(4) "Commercial tractor," "passenger car," and "commercial car" have the same meanings as in section 4501.01 of the Revised Code.	2069 2070 2071
(5) "Vehicle" and "motor vehicle," as used in the definitions of the terms set forth in division (A)(4) of this section, have the same meanings as in section 4511.01 of the Revised Code.	2072 2073 2074
<u>(6) "Tort action" means a civil action for damages for injury, death, or loss to person or property. "Tort action" includes a product liability claim, as defined in section 2307.71 of the Revised Code, and an asbestos claim, as defined in section 2307.91 of the Revised Code, but does not include a civil action for damages for breach of contract or another agreement between persons.</u>	2075 2076 2077 2078 2079 2080 2081
(B) No person shall do any of the following:	2082
(1) Operate an automobile on any street or highway unless that person is wearing all of the available elements of a properly adjusted occupant restraining device, or operate a school bus that has an occupant restraining device installed for use in its operator's seat unless that person is wearing all of the available elements of the device, as properly adjusted;	2083 2084 2085 2086 2087 2088
(2) Operate an automobile on any street or highway unless each passenger in the automobile who is subject to the requirement set forth in division (B)(3) of this section is wearing all of the available elements of a properly adjusted occupant restraining device;	2089 2090 2091 2092 2093
(3) Occupy, as a passenger, a seating position on the front seat of an automobile being operated on any street or highway unless that person is wearing all of the available elements of a properly adjusted occupant restraining device;	2094 2095 2096 2097

(4) Operate a taxicab on any street or highway unless all 2098
factory-equipped occupant restraining devices in the taxicab are 2099
maintained in usable form. 2100

(C) Division (B)(3) of this section does not apply to a 2101
person who is required by section 4511.81 of the Revised Code to 2102
be secured in a child restraint device. Division (B)(1) of this 2103
section does not apply to a person who is an employee of the 2104
United States postal service or of a newspaper home delivery 2105
service, during any period in which the person is engaged in the 2106
operation of an automobile to deliver mail or newspapers to 2107
addressees. Divisions (B)(1) and (3) of this section do not apply 2108
to a person who has an affidavit signed by a physician licensed to 2109
practice in this state under Chapter 4731. of the Revised Code or 2110
a chiropractor licensed to practice in this state under Chapter 2111
4734. of the Revised Code that states that the person has a 2112
physical impairment that makes use of an occupant restraining 2113
device impossible or impractical. 2114

(D) Notwithstanding any provision of law to the contrary, no 2115
law enforcement officer shall cause an operator of an automobile 2116
being operated on any street or highway to stop the automobile for 2117
the sole purpose of determining whether a violation of division 2118
(B) of this section has been or is being committed or for the sole 2119
purpose of issuing a ticket, citation, or summons for a violation 2120
of that nature or causing the arrest of or commencing a 2121
prosecution of a person for a violation of that nature, and no law 2122
enforcement officer shall view the interior or visually inspect 2123
any automobile being operated on any street or highway for the 2124
sole purpose of determining whether a violation of that nature has 2125
been or is being committed. 2126

(E) All fines collected for violations of division (B) of 2127
this section, or for violations of any ordinance or resolution of 2128
a political subdivision that is substantively comparable to that 2129

division, shall be forwarded to the treasurer of state for deposit 2130
as follows: 2131

(1) Eight per cent shall be deposited into the seat belt 2132
education fund, which is hereby created in the state treasury, and 2133
shall be used by the department of public safety to establish a 2134
seat belt education program. 2135

(2) Eight per cent shall be deposited into the elementary 2136
school program fund, which is hereby created in the state 2137
treasury, and shall be used by the department of public safety to 2138
establish and administer elementary school programs that encourage 2139
seat safety belt use. 2140

(3) Two per cent shall be deposited into the Ohio medical 2141
transportation trust fund created by section 4766.05 of the 2142
Revised Code. 2143

(4) Twenty-eight per cent shall be deposited into the trauma 2144
and emergency medical services fund, which is hereby created in 2145
the state treasury, and shall be used by the department of public 2146
safety for the administration of the division of emergency medical 2147
services and the state board of emergency medical services. 2148

(5) Fifty-four per cent shall be deposited into the trauma 2149
and emergency medical services grants fund, which is hereby 2150
created in the state treasury, and shall be used by the state 2151
board of emergency medical services to make grants, in accordance 2152
with section 4765.07 of the Revised Code and rules the board 2153
adopts under section 4765.11 of the Revised Code. 2154

~~(F)(1) Subject to division (F)(2) of this section, the~~ 2155
failure of a person to wear all of the available elements of a 2156
properly adjusted occupant restraining device in violation of 2157
division (B)(1) or (3) of this section or the failure of a person 2158
to ensure that each minor who is a passenger of an automobile 2159
being operated by ~~the~~ that person is wearing all of the available 2160

elements of ~~such a~~ properly adjusted occupant restraining device, 2161
in violation of division (B)(2) of this section, shall not be 2162
considered or used by the trier of fact in a tort action as 2163
evidence of negligence or contributory negligence, ~~shall not. But,~~ 2164
the trier of fact may determine based on evidence admitted 2165
consistent with the Ohio rules of evidence that the failure 2166
contributed to the harm alleged in the tort action and may 2167
diminish a recovery for of compensatory damages that represents 2168
noneconomic loss, as defined in section 2307.011 of the Revised 2169
Code, in any civil a tort action involving the person arising from 2170
the ownership, maintenance, or operation of an automobile; that 2171
could have been recovered but for the plaintiff's failure to wear 2172
all of the available elements of a properly adjusted occupant 2173
restraining device. Evidence of that failure shall not be used as 2174
a basis for a criminal prosecution of the person other than a 2175
prosecution for a violation of this section; and shall not be 2176
admissible as evidence in ~~any civil or~~ a criminal action involving 2177
the person other than a prosecution for a violation of this 2178
section. 2179

~~(2) If, at the time of an accident involving a passenger car 2180
equipped with occupant restraining devices, any occupant of the 2181
passenger car who sustained injury or death was not wearing an 2182
available occupant restraining device, was not wearing all of the 2183
available elements of such a device, or was not wearing such a 2184
device as properly adjusted, then, consistent with the Rules of 2185
Evidence, the fact that the occupant was not wearing the available 2186
occupant restraining device, was not wearing all of the available 2187
elements of such a device, or was not wearing such a device as 2188
properly adjusted is admissible in evidence in relation to any 2189
claim for relief in a tort action to the extent that the claim for 2190
relief satisfies all of the following: 2191~~

~~(a) It seeks to recover damages for injury or death to the 2192~~

occupant.	2193
(b) The defendant in question is the manufacturer, designer,	2194
distributor, or seller of the passenger car.	2195
(c) The claim for relief against the defendant in question is	2196
that the injury or death sustained by the occupant was enhanced or	2197
aggravated by some design defect in the passenger car or that the	2198
passenger car was not crashworthy.	2199
(3) As used in division (F)(2) of this section, "tort action"	2200
means a civil action for damages for injury, death, or loss to	2201
person or property. "Tort action" includes a product liability	2202
claim that is subject to sections 2307.71 to 2307.80 of the	2203
Revised Code, but does not include a civil action for damages for	2204
a breach of a contract or another agreement between persons.	2205
(G)(1) Whoever violates division (B)(1) of this section shall	2206
be fined thirty dollars.	2207
(2) Whoever violates division (B)(3) of this section shall be	2208
fined twenty dollars.	2209
(3) Except as otherwise provided in this division, whoever	2210
violates division (B)(4) of this section is guilty of a minor	2211
misdemeanor. If the offender previously has been convicted of or	2212
pleaded guilty to a violation of division (B)(4) of this section,	2213
whoever violates division (B)(4) of this section is guilty of a	2214
misdemeanor of the third degree.	2215
Section 2. That existing sections 1775.14, 2117.06, 2125.02,	2216
2125.04, 2305.01, 2305.03, 2305.10, 2305.25, 2307.011, 2307.23,	2217
2307.29, 2307.60, 2307.71, 2307.75, 2307.80, 2315.01, 2315.21,	2218
2315.32, 2315.33, 2315.34, 2315.36, 2323.51, 2505.02, 4507.07, and	2219
4513.263 and sections 2315.41, 2315.42, 2315.43, 2315.44, 2315.45,	2220
and 2315.46 of the Revised Code are hereby repealed.	2221

Section 3. The General Assembly makes the following statement	2222
of findings and intent:	2223
(A) The General Assembly finds:	2224
(1) The current civil litigation system represents a	2225
challenge to the economic viability of the state of Ohio.	2226
(2) The General Assembly recognizes that a fair system of	2227
civil justice strikes an essential balance between the rights of	2228
those who have been legitimately harmed and the rights of those	2229
who have been unfairly sued.	2230
(3) This state has a rational and legitimate state interest	2231
in making certain that Ohio has a fair, predictable system of	2232
civil justice that preserves the rights of those who have been	2233
harmed by negligent behavior, while curbing the number of	2234
frivolous lawsuits. The General Assembly bases its findings on	2235
this state interest upon the following evidence:	2236
(a) A National Bureau of Economic Research study estimates	2237
that states that have adopted abuse reforms have experienced	2238
employment growth between eleven and twelve per cent, productivity	2239
growth of seven to eight per cent, and total output growth between	2240
ten and twenty per cent for liability reducing reforms.	2241
(b) According to a 2002 study from the White House Council of	2242
Economic Advisors, the cost of tort litigation is equal to a two	2243
and one tenth per cent wage and salary tax, a one and three tenth	2244
per cent tax on personal consumption, and a three and one tenth	2245
per cent tax on capital investment income.	2246
(c) The 2003 Harris Poll of nine hundred and twenty-eight	2247
senior corporate attorneys conducted by the United States Chamber	2248
of Commerce's Institute for Legal Reform reports that eight out of	2249
ten respondents claim that the litigation environment in a state	2250
could affect important business decisions about their company,	2251

such as where to locate or do business. In addition, one in four 2252
senior attorneys surveyed cited limits on damages as one specific 2253
means for state policy makers to improve the litigation 2254
environment in their state and promote economic development. 2255

(d) The cost of the United States tort system grew at a 2256
record rate in 2001, according to a February 2003 study published 2257
by Tillinghast-Towers Perrin. The system, however, failed to 2258
return even fifty cents for every dollar to people who were 2259
injured. Tillinghast-Towers Perrin also found that fifty-four per 2260
cent of the total cost accounted for attorney's fees, both for 2261
plaintiffs and defendants, and administration. Only twenty-two per 2262
cent of the tort system's cost was used directly to reimburse 2263
people for the economic damages associated with injuries and 2264
losses they sustain. 2265

(e) The Tillinghast-Towers Perrin study also found that the 2266
cost of the United States tort system grew fourteen and three 2267
tenths of a per cent in 2001, the highest increase since 1986, 2268
greatly exceeding overall economic growth of two and six tenth per 2269
cent. As a result, the cost of the United States tort system rose 2270
to two hundred and five billion dollars total or seven hundred and 2271
twenty-one dollars per citizen, equal to a five per cent tax on 2272
wages. 2273

(f) As stated in testimony by Ohio Department of Development 2274
Director Bruce Johnson, as a percentage of the gross domestic 2275
product, United States tort costs have grown from six tenths of a 2276
per cent to two per cent since 1950, about double the percentage 2277
that other industrialized nations pay annually. These tort costs 2278
put Ohio businesses at a disadvantage vis-a-vis foreign 2279
competition and are not helpful to development. 2280

(4)(a) Reform to the punitive damages law in Ohio is urgently 2281
needed to restore balance, fairness, and predictability to the 2282

civil justice system. 2283

(b) In prohibiting a court from entering judgment for 2284
punitive or exemplary damages in excess of the two times the 2285
amount of compensatory damages awarded to the plaintiff and, with 2286
respect to an individual or small employer that employs not more 2287
than one hundred persons or if the employer is classified as being 2288
in the manufacturing sector not more than five hundred persons, 2289
from entering judgment for punitive or exemplary damages in excess 2290
of the lesser of two times the amount of compensatory damages 2291
awarded to the plaintiff or ten per cent of the individual's or 2292
employer's net worth when the tort was committed up to a maximum 2293
of three hundred fifty thousand dollars, the General Assembly 2294
finds the following: 2295

(i) Punitive or exemplary damages awarded in tort actions are 2296
similar in nature to fines and additional court costs imposed in 2297
criminal actions, because punitive or exemplary damages, fines, 2298
and additional court costs are designed to punish a tortfeasor for 2299
certain wrongful actions or omissions. 2300

(ii) The absence of a statutory ceiling upon recoverable 2301
punitive or exemplary damages in tort actions has resulted in 2302
occasional multiple awards of punitive or exemplary damages that 2303
have no rational connection to the wrongful actions or omissions 2304
of the tortfeasor. 2305

(iii) The distinction between small employers and other 2306
defendants based on the number of full-time permanent employees 2307
distinguishes all other defendants including individuals and 2308
nonemployers. This distinction is rationally based on size 2309
considering both the economic capacity of an employer to maintain 2310
that number of employees and to impact the community at large, as 2311
exemplified by the United States Small Business Administration's 2312
Office of Advocacy. 2313

(c) The limits on punitive or exemplary damages as specified 2314
in section 2315.21 of the Revised Code, as amended by this act, 2315
are based on guidance recently provided by the United States 2316
Supreme Court in *State Farm Mutual Insurance v. Campbell* (2003), 2317
123 S.Ct. 1513. In determining whether a one hundred and 2318
forty-five million dollar award of punitive damages was 2319
appropriate, the United States Supreme Court referred to the three 2320
guideposts for punitive damages articulated in *BMW of North* 2321
America Inc. v. Gore (1996), 517 U.S. 599: (1) the degree of 2322
reprehensibility of the defendant's misconduct; (2) the disparity 2323
between the actual or potential harm suffered by the plaintiff and 2324
the punitive damages awarded; and (3) the difference between the 2325
punitive damages awarded by the jury and the civil penalties 2326
authorized or imposed in comparable cases. According to the United 2327
States Supreme Court, "few awards exceeding a single digit ratio 2328
between punitive damages and compensatory damages. . . will 2329
satisfy due process." *Id.* at 31. 2330

(d) The limits on punitive or exemplary damages as specified 2331
in section 2315.21 of the Revised Code, as amended by this act, 2332
are based on testimony asking members of the General Assembly to 2333
recognize the economic impact of occasional multiple punitive 2334
damages awards and stating that a number of other states have 2335
imposed limits on punitive or exemplary damage awards. 2336

(5)(a) Statutes of repose are vital instruments that provide 2337
time limits, closure, and peace of mind to potential parties of 2338
lawsuits. 2339

(b) Forty-seven other states have adopted statutes of repose 2340
to protect architects, engineers, and constructors of improvements 2341
to real property from lawsuits arising after a specific number of 2342
years after completion of an improvement to real property. The 2343
General Assembly recognizes that Kentucky, New York, and Ohio are 2344
the only three states that do not have a statute of repose. The 2345

General Assembly also acknowledges that Ohio stands by itself, due
to the fact that both Kentucky and New York have a rebuttable
presumption that exists and only if a plaintiff can overcome that
presumption can a claim continue.

(c) As stated in testimony by Jack Pottmeyer, architect and
managing principal of MKC Associates, Inc., this unlimited
liability forces professionals to maintain records in perpetuity,
because those professionals cannot reasonably predict when a
record from fifteen or twenty years earlier may become the subject
of a civil action. Those actions occur despite the fact that, over
the course of many years, owners of the property or those
responsible for its maintenance could make modifications or other
substantial changes that would significantly change the intent or
scope of the original design of the property designed by an
architectural firm. The problem is compounded by the fact that
professional liability insurance for architects and engineers is
offered by relatively few insurance carriers and is written on
what is known as a "claims made basis," meaning a policy must be
in effect when the claim is made, not at the time of the service,
in order for the claim to be paid. Without a statute of repose,
professional liability insurance must be maintained forever to
ensure coverage of any potential claim on previous services. These
minimum annual premiums can add up, averaging between three
thousand five hundred dollars and five thousand dollars annually,
which is especially burdensome for a retired design professional.

(6)(a) The collateral source rule prohibits a defendant from
introducing evidence that the plaintiff received any benefits from
sources outside the dispute.

(b) Twenty-one states have modified or abolished the
collateral source rule.

(B) In enacting section 2305.131 of the Revised Code in this

act, it is the intent of the General Assembly to do all of the 2377
following: 2378

(1) To declare that the ten-year statute of repose prescribed 2379
by section 2305.131 of the Revised Code, as enacted by this act, 2380
is a specific provision intended to promote a greater interest 2381
than the interest underlying the general four-year statute of 2382
limitations prescribed by section 2305.09 of the Revised Code, the 2383
general two-year statute of limitations prescribed by section 2384
2305.10 of the Revised Code, and other general statutes of 2385
limitation prescribed by the Revised Code; 2386

(2) To recognize that, subsequent to the completion of the 2387
construction of an improvement to real property, all of the 2388
following generally apply to the persons who provided services for 2389
the improvement or who furnished the design, planning, supervision 2390
of construction, or construction of the improvement: 2391

(a) They lack control over the improvement, the ability to 2392
make determinations with respect to the improvement, and the 2393
opportunity or responsibility to maintain or undertake the 2394
maintenance of the improvement. 2395

(b) They lack control over other forces, uses, and 2396
intervening causes that may cause stress, strain, or wear and tear 2397
to the improvement. 2398

(c) They have no right or opportunity to be made aware of, to 2399
evaluate the effect of, or to take action to overcome the effect 2400
of the forces, uses, and intervening causes described in division 2401
(E)(5)(b) of this section. 2402

(3) To recognize that, more than ten years after the 2403
completion of the construction of an improvement to real property, 2404
the availability of relevant evidence pertaining to the 2405
improvement and the availability of witnesses knowledgeable with 2406
respect to the improvement is problematic; 2407

(4) To recognize that maintaining records and other 2408
documentation pertaining to services provided for an improvement 2409
to real property or the design, planning, supervision of 2410
construction, or construction of an improvement to real property 2411
for a reasonable period of time is appropriate and to recognize 2412
that, because the useful life of an improvement to real property 2413
may be substantially longer than ten years after the completion of 2414
the construction of the improvement, it is an unacceptable burden 2415
to require the maintenance of those types of records and other 2416
documentation for a period in excess of ten years after that 2417
completion; 2418

(5) To declare that section 2305.131 of the Revised Code, as 2419
enacted by this act, strikes a rational balance between the rights 2420
of prospective claimants and the rights of design professionals, 2421
construction contractors, and construction subcontractors and to 2422
declare that the ten-year statute of repose prescribed in that 2423
section is a rational period of repose intended to preclude the 2424
pitfalls of stale litigation but not to affect civil actions 2425
against those in actual control and possession of an improvement 2426
to real property at the time that a defective and unsafe condition 2427
of that improvement causes an injury to real or personal property, 2428
bodily injury, or wrongful death. 2429

(C) In enacting division (D)(2) of section 2125.02 and 2430
division (C) of section 2305.10 of the Revised Code in this act, 2431
it is the intent of the General Assembly to do all of the 2432
following: 2433

(1) To declare that the ten-year statute of repose prescribed 2434
by division (D)(2) of section 2125.02 and division (C) of section 2435
2305.10 of the Revised Code, as enacted by this act, are specific 2436
provisions intended to promote a greater interest than the 2437
interest underlying the general four-year statute of limitations 2438
prescribed by section 2305.09 of the Revised Code, the general 2439

two-year statutes of limitations prescribed by sections 2125.02	2440
and 2305.10 of the Revised Code, and other general statutes of	2441
limitations prescribed by the Revised Code;	2442
(2) To declare that, subject to the two-year exceptions	2443
prescribed in division (D)(2)(d) of section 2125.02 and in	2444
division (C)(4) of section 2305.10 of the Revised Code, the	2445
ten-year statutes of repose shall serve as a limitation upon the	2446
commencement of a civil action in accordance with an otherwise	2447
applicable statute of limitations prescribed by the Revised Code;	2448
(3) To recognize that subsequent to the delivery of a	2449
product, the manufacturer or supplier lacks control over the	2450
product, over the uses made of the product, and over the	2451
conditions under which the product is used;	2452
(4) To recognize that under the circumstances described in	2453
division (C)(3) of this section, it is more appropriate for the	2454
party or parties who have had control over the product during the	2455
intervening time period to be responsible for any harm caused by	2456
the product;	2457
(5) To recognize that, more than ten years after a product	2458
has been delivered, it is very difficult for a manufacturer or	2459
supplier to locate reliable evidence and witnesses regarding the	2460
design, production, or marketing of the product, thus severely	2461
disadvantaging manufacturers or suppliers in their efforts to	2462
defend actions based on a product liability claim;	2463
(6) To recognize the inappropriateness of applying current	2464
legal and technological standards to products manufactured many	2465
years prior to the commencement of an action based on a product	2466
liability claim;	2467
(7) To recognize that a statute of repose for product	2468
liability claims would enhance the competitiveness of Ohio	2469
manufacturers by reducing their exposure to disruptive and	2470

protracted liability with respect to products long out of their control, by increasing finality in commercial transactions, and by allowing manufacturers to conduct their affairs with increased certainty;

(8) To declare that division (D)(2) of section 2125.02 and division (C) of section 2305.10 of the Revised Code, as enacted by this act, strike a rational balance between the rights of prospective claimants and the rights of product manufacturers and suppliers and to declare that the ten-year statutes of repose prescribed in those sections are rational periods of repose intended to preclude the problems of stale litigation but not to affect civil actions against those in actual control and possession of a product at the time that the product causes an injury to real or personal property, bodily injury, or wrongful death;

(D) The General Assembly declares its intent that the amendment made by this act to section 2307.71 of the Revised Code is intended to supersede the holding of the Ohio Supreme Court in *Carrel v. Allied Products Corp.* (1997), 78 Ohio St.3d 284, that the common law product liability cause of action of negligent design survives the enactment of the Ohio Product Liability Act, sections 2307.71 to 2307.80 of the Revised Code, and to abrogate all common law product liability causes of action.

(E) The Ohio General Assembly respectfully requests the Ohio Supreme Court to uphold this intent in the courts of Ohio, to reconsider its holding on damage caps in *State v. Sheward* (1999), Ohio St. 3d 451, to reconsider its holding on the deductibility of collateral source benefits in *Sorrel v. Thevenir* (1994), 69 Ohio St. 3d 415, and to reconsider its holding on statutes of repose in *Brennaman v. R.M.I. Co.* (1994), 70 Ohio St. 3d 460.

Section 4. (A) The General Assembly acknowledges the Court's

authority in prescribing rules governing practice and procedure in 2502
the courts of this state, as provided by Section 5 of Article IV 2503
of the Ohio Constitution. 2504

(B) The General Assembly hereby requests the Supreme Court to 2505
adopt a "Legal Consumer's Bill of Rights" that would substantially 2506
conform with the following language: 2507

Each attorney who is licensed to practice law in this state 2508
shall append to every written retainer agreement or contract for 2509
legal services a legal consumer's bill of rights that shall be 2510
substantially in the following form: 2511

"LEGAL CONSUMER'S BILL OF RIGHTS 2512

Consumers of legal services have both rights and 2513
responsibilities in the resolution of legal disputes. Lawyers, as 2514
well, have duties and rights related to the clients they 2515
represent. This listing is designed to provide consumers with an 2516
overview of their rights and responsibilities in relating to their 2517
lawyers and in the resolution of their legal matters. 2518

Client rights and lawyer duties: 2519

1. COURTESY 2520

You can expect to be treated with courtesy and consideration 2521
by your lawyer and by others under the supervision of your lawyer 2522
involved in your legal matter. 2523

2. PROFESSIONALISM 2524

You can expect competent and diligent representation by your 2525
lawyer, in accord with accepted aspirational standards of 2526
professionalism. 2527

3. ATTENTION 2528

You can expect your lawyer's independent professional 2529
judgment and loyalty uncompromised by conflicts of interest. Your 2530

lawyer will maintain accurate records and protect any funds you	2531
provide regarding your legal matter.	2532
4. FEE DISCLOSURE	2533
You can expect your lawyer to fully disclose fee arrangements	2534
and other costs at the onset of your relationship, and to provide	2535
a written fee agreement or contingency fee contract.	2536
5. RESPONSIVENESS	2537
You can expect to have your questions answered and telephone	2538
calls returned by your lawyer in a reasonable time in accordance	2539
with professional standards.	2540
6. CONTROL	2541
You can expect your lawyer to keep you informed about the	2542
progress of your legal matter, to disclose alternative approaches	2543
to resolving your legal matter, and to have you participate	2544
meaningfully in the resolution process.	2545
7. RESPECT	2546
You can expect to have your lawyer respect your legitimate	2547
objectives and to include you in making settlement decisions	2548
regarding your legal dispute.	2549
8. CONFIDENTIALITY	2550
You can expect to have your lawyer honor the attorney-client	2551
privilege, protect your right to privacy and preserve your secrets	2552
and confidences.	2553
9. ETHICS	2554
You can expect ethical conduct from your lawyer in accord	2555
with the Code of Professional Responsibility.	2556
10. NON-DISCRIMINATION	2557
You may not be refused representation based upon race, creed,	2558

color, religion, sex, age, national origin or disability.	2559
11. GRIEVANCES	2560
You may file a grievance with the certified grievance	2561
committee of your local bar association or the Ohio State Bar	2562
Association or with the Board of Commissioners on Grievances and	2563
Discipline of the Supreme Court if you are not satisfied with the	2564
legal services you have retained. The committee and the board	2565
include nonattorneys as members. The Board of Commissioners on	2566
Grievances and Discipline of the Supreme Court of Ohio has the	2567
authority to discipline and to impose sanctions on attorneys in	2568
Ohio.	2569
Client responsibilities	2570
1. TRUTHFULNESS	2571
Your lawyer can expect you to be truthful and to have you	2572
provide a full disclosure of pertinent information needed to	2573
handle your legal matter.	2574
2. RESPONSIVENESS	2575
Your lawyer can expect you to provide timely responses to	2576
reasonable requests for information, and to be on time for legal	2577
proceedings. Your lawyer can expect you to pay your legal bills in	2578
a timely manner.	2579
3. COURTESY	2580
Just as you expect to be treated with respect and courtesy,	2581
your lawyer can expect you to set appointments in advance to meet	2582
with your lawyer, to be responsible for making reasonable requests	2583
of your lawyer's time, and to be treated respectfully.	2584
4. COMMUNICATION	2585
Your lawyers can expect you to communicate in a timely manner	2586
about your legal matter, or if you are unhappy with the way your	2587

matter is being handled. There is a grievance procedure in place 2588
to handle disputes with your lawyer that you are not able to 2589
resolve on your own. 2590

5. ETHICS 2591

Your lawyer can expect not to be asked to engage in behavior 2592
that is unethical, inappropriate, unprofessional, or illegal." 2593

(C) The General Assembly hereby requests the Supreme Court to 2594
amend Ohio Rules of Civil Procedure Rule 68 to conform to Federal 2595
Rules of Civil Procedure Rule 68. 2596

Section 5. If any item of law that constitutes the whole or 2597
part of a section of law contained in this act, or if any 2598
application of any item of law that constitutes the whole or part 2599
of a section of law contained in this act, is held invalid, the 2600
invalidity does not affect other items of law or applications of 2601
items of law that can be given effect without the invalid item of 2602
law or application. To this end, the items of law of which the 2603
sections contained in this act are composed, and their 2604
applications, are independent and severable. 2605

Section 6. If any item of law that constitutes the whole or 2606
part of a section of law contained in this act, or if any 2607
application of any item of law contained in this act, is held to 2608
be preempted by federal law, the preemption of the item of law or 2609
its application does not affect other items of law or applications 2610
that can be given affect. The items of law of which the sections 2611
of this act are composed, and their applications, are independent 2612
and severable. 2613

Section 7. Section 2505.02 of the Revised Code is presented 2614
in this act as a composite of the section as amended by Am. Sub. 2615
H.B. 292, Am. Sub. H.B. 342, and Sub. S.B. 187 of the 125th 2616
General Assembly. The General Assembly, applying the principle 2617

stated in division (B) of section 1.52 of the Revised Code that	2618
amendments are to be harmonized if reasonably capable of	2619
simultaneous operation, finds that the composite is the resulting	2620
version of the section in effect prior to the effective date of	2621
the section as presented in this act.	2622