

As Reported by the Senate Judiciary--Civil Justice Committee

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Sub. S. B. No. 80

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

A B I L L

To amend sections 1533.18, 1701.76, 1701.82, 1775.14,	1
2117.06, 2125.01, 2125.02, 2125.04, 2305.01,	2
2305.03, 2305.10, 2305.25, 2307.011, 2307.23,	3
2307.29, 2307.60, 2307.71, 2307.75, 2307.80,	4
2315.01, 2315.21, 2315.32, 2315.33, 2315.34,	5
2315.36, 2323.41, 2323.43, 2323.51, 4507.07,	6
4513.263, and 4705.15; to enact sections 901.52,	7
1519.07, 2305.131, 2307.711, 2307.91 to 2307.97,	8
and 4705.16; and to repeal sections 2315.41,	9
2315.42, 2315.43, 2315.44, 2315.45, and 2315.46 of	10
the Revised Code to make changes related to the	11
award of certain damages, collateral benefits	12
evidence, and contributory fault in tort actions;	13
to establish a statute of repose for certain	14
product liability claims and claims based on	15
unsafe conditions of real property improvements	16
and to make other changes related to product	17
liability claims; to provide that the product	18
liability statutes are intended to abrogate common	19
law product liability causes of action; to enact a	20
conflicts of law provision for statutes of	21
limitation in civil actions; to modify the	22
provisions on frivolous conduct in filing civil	23

actions; to prohibit imputing any assurances or 24
assumption of liability regarding public access to 25
premises used for growing agricultural produce; to 26
enact a legal consumer's bill of rights; to limit 27
attorney contingency fees in connection with 28
certain tort actions; to establish minimum medical 29
requirements for filing certain asbestos claims; 30
to establish limitations on successor 31
asbestos-related liabilities relating to 32
corporations; and to make other changes related to 33
civil actions; and to amend the version of section 34
4513.263 of the Revised Code that is scheduled to 35
take effect January 1, 2004, to continue the 36
provisions of this act on and after that effective 37
date. 38

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

Section 1. That sections 1533.18, 1701.76, 1701.82, 1775.14, 39
2117.06, 2125.01, 2125.02, 2125.04, 2305.01, 2305.03, 2305.10, 40
2305.25, 2307.011, 2307.23, 2307.29, 2307.60, 2307.71, 2307.75, 41
2307.80, 2315.01, 2315.21, 2315.32, 2315.33, 2315.34, 2315.36, 42
2323.41, 2323.43, 2323.51, 4507.07, 4513.263, and 4705.15 be 43
amended and sections 901.52, 1519.07, 2305.131, 2307.711, 2307.91, 44
2307.92, 2307.93, 2307.94, 2307.95, 2307.96, 2307.97, and 4705.16 45
of the Revised Code be enacted to read as follows: 46

Sec. 901.52. (A) As used in this section, "tort action" has 47
the same meaning as in section 2305.35 of the Revised Code. 48

(B) In a tort action, in the absence of willful or wanton 49
misconduct or intentionally tortious conduct, no owner, lessee, 50
renter, or operator of premises that are open to the public for 51

direct access to growing agricultural produce shall be imputed to
do either of the following:

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

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

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

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

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

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

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

(2) An owner, lessee, or occupant of premise does not assume,
has no responsibility for, does not incur liability for, and is
not liable for any injury to person or property caused by any act

of a user of a recreational trail. 82

Sec. 1533.18. As used in sections 1533.18 and 1533.181 of the 83
Revised Code: 84

(A) "Premises" means all privately-owned lands, ways, and 85
waters, and any buildings and structures thereon, and all 86
privately owned and state-owned lands, ways, and waters leased to 87
a private person, firm, or organization, including any buildings 88
and structures thereon. 89

(B) "Recreational user" means a person to whom permission has 90
been granted, without the payment of a fee or consideration to the 91
owner, lessee, or occupant of premises, other than a fee or 92
consideration paid to the state or any agency of the state, or a 93
lease payment paid to the owner of privately owned lands, to enter 94
upon premises to hunt, fish, trap, camp, hike, swim, operate a 95
snowmobile or all-purpose vehicle, or engage in other recreational 96
pursuits. 97

(C) "All-purpose vehicle" has the same meaning as in section 98
4519.01 of the Revised Code. 99

Sec. 1701.76. (A)(1) Provided the provisions of Chapter 1704. 100
of the Revised Code do not prevent the transaction from being 101
effected, a lease, sale, exchange, transfer, or other disposition 102
of all, or substantially all, of the assets, with or without the 103
good will, of a corporation, if not made in the usual and regular 104
course of its business, may be made upon ~~such~~ the terms and 105
conditions and for ~~such~~ the consideration, ~~which~~ that may consist, 106
in whole or in part, of money or other property of any 107
description, including shares or other securities or promissory 108
obligations of any other corporation, domestic or foreign, ~~as~~ that 109
may be authorized as follows: 110

(a) By the directors, either before or after authorization by 111

the shareholders as required in this section; and 112

(b) At a meeting of the shareholders held for ~~such~~ that 113
purpose, by the affirmative vote of the holders of shares 114
entitling them to exercise two-thirds of the voting power of the 115
corporation on ~~such~~ the proposal, or, if the articles so provide 116
or permit, by the affirmative vote of a greater or lesser 117
proportion, but not less than a majority, of ~~such~~ the voting 118
power, and by ~~such~~ the affirmative vote of the holders of shares 119
of any particular class ~~as~~ that is required by the articles. 120

(2) At the shareholder meeting described in division 121
(A)(1)(b) of this section or at any subsequent shareholder 122
meeting, shareholders, by the same vote that is required to 123
authorize the lease, sale, exchange, transfer, or other 124
disposition of all, or substantially all, of the assets, with or 125
without the good will, of the corporation, may grant authority to 126
the directors to establish or amend any of the terms and 127
conditions of the transaction, except that the shareholders shall 128
not authorize the directors to do any of the following: 129

(a) Alter or change the amount or kind of shares, securities, 130
money, property, or rights to be received in exchange for the 131
assets; 132

(b) Alter or change to any material extent the amount or kind 133
of liabilities to be assumed in exchange for the assets; 134

(c) Alter or change any other terms and conditions of the 135
transaction if any of the alterations or changes, alone or in the 136
aggregate, would materially adversely affect the shareholders or 137
the corporation. 138

(3) Notice of the meeting of the shareholders described in 139
division (A)(1)(b) of this section shall be given to all 140
shareholders whether or not entitled to vote at the meeting and 141
shall be accompanied by a copy or summary of the terms of the 142

transaction. 143

(B) The corporation by its directors may abandon ~~such the~~ 144
transaction under this section, subject to the contract rights of 145
other persons, if the power of abandonment is conferred upon the 146
directors either by the terms of the transaction or by the same 147
vote of shareholders and at the same meeting of shareholders as 148
that referred to in division (A)(1)(b) of this section or at any 149
subsequent meeting. 150

(C) Dissenting holders of shares of any class, whether or not 151
entitled to vote, shall be entitled to relief under section 152
1701.85 of the Revised Code. 153

(D) An action to set aside a conveyance by a corporation, on 154
the ground that any section of the Revised Code applicable to the 155
lease, sale, exchange, transfer, or other disposition of all, or 156
substantially all, of the assets of ~~such that~~ corporation has not 157
been complied with, shall be brought within ninety days after ~~such~~ 158
that transaction, or ~~such the~~ action shall be forever barred. 159

(E) If a resolution of dissolution is adopted pursuant to 160
section 1701.86 of the Revised Code, the directors may dispose of 161
all, or substantially all, of the corporation's assets without the 162
necessity of a shareholders' authorization under this section. 163

(F) The terms and conditions of any transaction under this 164
section shall be subject to the limitations specified in section 165
2307.96 of the Revised Code. 166

Sec. 1701.82. (A) When a merger or consolidation becomes 167
effective, all of the following apply: 168

(1) The separate existence of each constituent entity other 169
than the surviving entity in a merger shall cease, except that 170
whenever a conveyance, assignment, transfer, deed, or other 171
instrument or act is necessary to vest property or rights in the 172

surviving or new entity, the officers, general partners, or other 173
authorized representatives of the respective constituent entities 174
shall execute, acknowledge, and deliver ~~such~~ those instruments and 175
do ~~such~~ those acts. For these purposes, the existence of the 176
constituent entities and the authority of their respective 177
officers, directors, general partners, or other authorized 178
representatives is continued notwithstanding the merger or 179
consolidation. 180

(2) In the case of a consolidation, the new entity exists 181
when the consolidation becomes effective and, if it is a domestic 182
corporation, the articles contained in or provided for in the 183
agreement of consolidation shall be its original articles. In the 184
case of a merger in which the surviving entity is a domestic 185
corporation, the articles of the domestic surviving corporation in 186
effect immediately prior to the time the merger becomes effective 187
shall continue as its articles after the merger except as 188
otherwise provided in the agreement of merger. 189

(3) The surviving or new entity possesses all assets and 190
property of every description, and every interest in the assets 191
and property, wherever located, and the rights, privileges, 192
immunities, powers, franchises, and authority, of a public as well 193
as of a private nature, of each constituent entity, and, subject 194
to the limitations specified in section 2307.96 of the Revised 195
Code, all obligations belonging to or due to each constituent 196
entity, all of which are vested in the surviving or new entity 197
without further act or deed. Title to any real estate or any 198
interest in the real estate vested in any constituent entity shall 199
not revert or in any way be impaired by reason of such merger or 200
consolidation. 201

(4) The Subject to the limitations specified in section 202
2307.96 of the Revised Code, the surviving or new entity is liable 203
for all the obligations of each constituent entity, including 204

liability to dissenting shareholders. Any claim existing or any 205
action or proceeding pending by or against any constituent entity 206
may be prosecuted to judgment, with right of appeal, as if the 207
merger or consolidation had not taken place, or the surviving or 208
new entity may be substituted in its place. 209

(5) ~~All~~ Subject to the limitations specified in section 210
2307.96 of the Revised Code, all the rights of creditors of each 211
constituent entity are preserved unimpaired, and all liens upon 212
the property of any constituent entity are preserved unimpaired, 213
on only the property affected by ~~such~~ those liens immediately 214
prior to the effective date of the merger or consolidation. If a 215
general partner of a constituent partnership is not a general 216
partner of the entity surviving or the new entity resulting from 217
the merger or consolidation, then the former general partner shall 218
have no liability for any obligation incurred after the merger or 219
consolidation except to the extent that a former creditor of the 220
constituent partnership in which the former general partner was a 221
partner extends credit to the surviving or new entity reasonably 222
believing that the former general partner continued as a general 223
partner of the surviving or new entity. 224

(B) If a general partner of a constituent partnership is not 225
a general partner of the entity surviving or the new entity 226
resulting from the merger or consolidation, the provisions of 227
division (B) of section 1782.434 of the Revised Code shall apply. 228

(C) In the case of a merger of a domestic constituent 229
corporation into a foreign surviving corporation, limited 230
liability company, or limited partnership that is not licensed or 231
registered to transact business in this state or in the case of a 232
consolidation of a domestic constituent corporation into a new 233
foreign corporation, limited liability company, or limited 234
partnership, if the surviving or new entity intends to transact 235
business in this state and the certificate of merger or 236

consolidation is accompanied by the information described in 237
division (B)(4) of section 1701.81 of the Revised Code, then, on 238
the effective date of the merger or consolidation, the surviving 239
or new entity shall be considered to have complied with the 240
requirements for procuring a license or for registering to 241
transact business in this state as a foreign corporation, limited 242
liability company, or limited partnership, as the case may be. In 243
such a case, a copy of the certificate of merger or consolidation 244
certified by the secretary of state constitutes the license 245
certificate prescribed by the laws of this state for a foreign 246
corporation transacting business in this state or the application 247
for registration prescribed for a foreign limited partnership or 248
limited liability company. 249

(D) Any action to set aside any merger or consolidation on 250
the ground that any section of the Revised Code applicable to the 251
merger or consolidation has not been complied with shall be 252
brought within ninety days after the effective date of ~~such~~ that 253
merger or consolidation or be forever barred. 254

(E) As used in this section, "corporation" or "entity" 255
applies to both domestic and foreign corporations and entities 256
where the context so permits. In the case of a foreign constituent 257
entity or a foreign new entity, this section is subject to the 258
laws of the state under the laws of which the entity exists or in 259
which it has property. 260

Sec. 1775.14. (A) Subject to section 1339.65 of the Revised 261
Code and except as provided in division (B) of this section, all 262
partners are liable as follows: 263

(1) Jointly and severally for everything chargeable to the 264
partnership under sections 1775.12 and 1775.13 of the Revised 265
Code. This joint and several liability is not subject to section 266
2307.22, or 2315.36, ~~or 2315.46~~ of the Revised Code with respect 267

to a ~~negligence or other~~ tort claim that otherwise is subject to 268
~~any~~ either of those sections. 269

(2) Jointly for all other debts and obligations of the 270
partnership, but any partner may enter into a separate obligation 271
to perform a partnership contract. 272

(B) Subject to divisions (C)(1) and (2) of this section or as 273
otherwise provided in a written agreement between the partners of 274
a registered limited liability partnership, a partner in a 275
registered limited liability partnership is not liable, directly 276
or indirectly, by way of indemnification, contribution, 277
assessment, or otherwise, for debts, obligations, or other 278
liabilities of any kind of, or chargeable to, the partnership or 279
another partner or partners arising from negligence or from 280
wrongful acts, errors, omissions, or misconduct, whether or not 281
intentional or characterized as tort, contract, or otherwise, 282
committed or occurring while the partnership is a registered 283
limited liability partnership and committed or occurring in the 284
course of the partnership business by another partner or an 285
employee, agent, or representative of the partnership. 286

(C)(1) Division (B) of this section does not affect the 287
liability of a partner in a registered limited liability 288
partnership for that partner's own negligence, wrongful acts, 289
errors, omissions, or misconduct, including that partner's own 290
negligence, wrongful acts, errors, omissions, or misconduct in 291
directly supervising any other partner or any employee, agent, or 292
representative of the partnership. 293

(2) Division (B) of this section shall not affect the 294
liability of a partner for liabilities imposed by Chapters 5735., 295
5739., 5743., and 5747. and section 3734.908 of the Revised Code. 296

(D) A partner in a registered limited liability partnership 297
is not a proper party to an action or proceeding by or against a 298

registered limited liability partnership with respect to any debt, 299
obligation, or other liability of any kind described in division 300
(B) of this section, unless the partner is liable under divisions 301
(C)(1) and (2) of this section. 302

Sec. 2117.06. (A) All creditors having claims against an 303
estate, including claims arising out of contract, out of tort, on 304
cognovit notes, or on judgments, whether due or not due, secured 305
or unsecured, liquidated or unliquidated, shall present their 306
claims in one of the following manners: 307

(1) To the executor or administrator in a writing; 308

(2) To the executor or administrator in a writing, and to the 309
probate court by filing a copy of the writing with it; 310

(3) In a writing that is sent by ordinary mail addressed to 311
the decedent and that is actually received by the executor or 312
administrator within the appropriate time specified in division 313
(B) of this section. For purposes of this division, if an executor 314
or administrator is not a natural person, the writing shall be 315
considered as being actually received by the executor or 316
administrator only if the person charged with the primary 317
responsibility of administering the estate of the decedent 318
actually receives the writing within the appropriate time 319
specified in division (B) of this section. 320

(B) All claims shall be presented within one year after the 321
death of the decedent, whether or not the estate is released from 322
administration or an executor or administrator is appointed during 323
that one-year period. Every claim presented shall set forth the 324
claimant's address. 325

(C) A claim that is not presented within one year after the 326
death of the decedent shall be forever barred as to all parties, 327
including, but not limited to, devisees, legatees, and 328

distributees. No payment shall be made on the claim and no action 329
shall be maintained on the claim, except as otherwise provided in 330
sections 2117.37 to 2117.42 of the Revised Code with reference to 331
contingent claims. 332

(D) In the absence of any prior demand for allowance, the 333
executor or administrator shall allow or reject all claims, except 334
tax assessment claims, within thirty days after their 335
presentation, provided that failure of the executor or 336
administrator to allow or reject within that time shall not 337
prevent the executor or administrator from doing so after that 338
time and shall not prejudice the rights of any claimant. Upon the 339
allowance of a claim, the executor or the administrator, on demand 340
of the creditor, shall furnish the creditor with a written 341
statement or memorandum of the fact and date of the allowance. 342

(E) If the executor or administrator has actual knowledge of 343
a pending action commenced against the decedent prior to the 344
decedent's death in a court of record in this state, the executor 345
or administrator shall file a notice of the appointment of the 346
executor or administrator in the pending action within ten days 347
after acquiring that knowledge. If the administrator or executor 348
is not a natural person, actual knowledge of a pending suit 349
against the decedent shall be limited to the actual knowledge of 350
the person charged with the primary responsibility of 351
administering the estate of the decedent. Failure to file the 352
notice within the ten-day period does not extend the claim period 353
established by this section. 354

(F) This section applies to any person who is required to 355
give written notice to the executor or administrator of a motion 356
or application to revive an action pending against the decedent at 357
the date of the death of the decedent. 358

(G) Nothing in this section or in section 2117.07 of the 359
Revised Code shall be construed to reduce the ~~time mentioned~~ 360

periods of limitation or periods prior to repose in section 361
2125.02, ~~2305.09, 2305.10, 2305.11, 2305.113,~~ or ~~2305.12~~ Chapter 362
2305. of the Revised Code, provided that no portion of any 363
recovery on a claim brought pursuant to that section or any of 364
~~those sections~~ section in that chapter shall come from the assets 365
of an estate unless the claim has been presented against the 366
estate in accordance with Chapter 2117. of the Revised Code. 367

(H) Any person whose claim has been presented and has not 368
been rejected after presentment is a creditor as that term is used 369
in Chapters 2113. to 2125. of the Revised Code. Claims that are 370
contingent need not be presented except as provided in sections 371
2117.37 to 2117.42 of the Revised Code, but, whether presented 372
pursuant to those sections or this section, contingent claims may 373
be presented in any of the manners described in division (A) of 374
this section. 375

(I) If a creditor presents a claim against an estate in 376
accordance with division (A)(2) of this section, the probate court 377
shall not close the administration of the estate until that claim 378
is allowed or rejected. 379

(J) The probate court shall not require an executor or 380
administrator to make and return into the court a schedule of 381
claims against the estate. 382

(K) If the executor or administrator makes a distribution of 383
the assets of the estate prior to the expiration of the time for 384
the filing of claims as set forth in this section, the executor or 385
administrator shall provide notice on the account delivered to 386
each distributee that the distributee may be liable to the estate 387
up to the value of the distribution and may be required to return 388
all or any part of the value of the distribution if a valid claim 389
is subsequently made against the estate within the time permitted 390
under this section. 391

Sec. 2125.01. ~~When~~ (A)(1) Except as provided in division (B) 392
of this section, if the death of a person is caused by wrongful 393
act, neglect, or default ~~which that~~ would have entitled the ~~party~~ 394
injured person to maintain ~~an~~ a civil action and recover damages 395
if death had not ensued, the person who would have been liable if 396
death had not ensued, or the administrator or executor of the 397
estate of ~~such the~~ liable person, as ~~such that~~ administrator or 398
executor, ~~shall be~~ is liable ~~to an action for~~ in damages in a 399
civil action for wrongful death under this chapter, 400
notwithstanding the death of the injured person ~~injured~~ and 401
although the death was caused under circumstances ~~which that~~ make 402
it aggravated murder, murder, or manslaughter. ~~When~~ If the civil 403
action for wrongful death is against ~~such an~~ administrator or 404
executor, the damages recovered shall be a valid claim against the 405
estate of ~~such the~~ deceased liable person. No civil action for ~~the~~ 406
wrongful death ~~of a person~~ may be maintained against the owner or 407
lessee of the real property upon which the death occurred if the 408
cause of the death was the violent unprovoked act of a party other 409
than the owner, the lessee, or a person under the control of the 410
owner or lessee, unless the acts or omissions of the owner, 411
lessee, or person under the control of the owner or lessee 412
constitute gross negligence. 413

~~When~~ (2) If the death of a person is caused by a wrongful 414
act, neglect, or default in another state or foreign country, ~~for~~ 415
~~which~~ and a right to maintain ~~an~~ a civil action for wrongful death 416
and recover damages is given by a statute of ~~such the~~ other state 417
or foreign country, ~~such the~~ right ~~of to maintain the civil~~ action 418
may be enforced in this state, except as provided in division (B) 419
of this section. Every ~~such~~ civil action of that nature shall be 420
commenced within the time prescribed for the commencement of ~~such~~ 421
civil actions of that nature by the statute of ~~such the~~ other 422
state or foreign country. 423

~~The same remedy shall apply to any such cause of action now existing and to any such action commenced before January 1, 1932, or attempted to be commenced in proper time and now appearing on the files of any court within this state, and no prior law of this state shall prevent the maintenance of such cause of action.~~

(B) A person may not maintain a civil action for wrongful death in a court of this state under division (A)(1) or (2) of this section if either of the following applies:

(1) The person liable for the personal injuries sustained by the decedent or the administrator or executor of that person's estate compensated the decedent for those injuries prior to the death of the decedent; because of the payment of that compensation, the decedent executed to that person, administrator, or executor a valid release of the decedent's claims against that person or that person's estate based on the personal injuries sustained by the decedent; and those personal injuries were sustained under the same circumstances that otherwise could be the basis of a civil action for wrongful death in a court of this state under division (A)(1) or (2) of this section.

(2) Prior to the death of the decedent, a judgment for damages was entered in a civil action against the person liable for the personal injuries sustained by the decedent or against the administrator or executor of that person's estate; that person or the administrator or executor of that person's estate fully satisfied the judgment so entered prior to the decedent's death; and the decedent's personal injuries that were the subject of that civil action were sustained under the same circumstances that otherwise could be the basis of a civil action for wrongful death in a court of this state under division (A)(1) or (2) of 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 455
the personal representative of the decedent for the exclusive 456
benefit of the surviving spouse, the children, and the parents of 457
the decedent, all of whom are rebuttably presumed to have suffered 458
damages by reason of the wrongful death, and for the exclusive 459
benefit of the other next of kin of the decedent. A parent who 460
abandoned a minor child who is the decedent shall not receive ~~any~~ 461
a benefit in a ~~wrongful death~~ civil action for wrongful death 462
brought under this division. 463

(2) The jury, or the court if the civil action for wrongful 464
death is not tried to a jury, may award damages authorized by 465
division (B) of this section, as it determines are proportioned to 466
the injury and loss resulting to the beneficiaries described in 467
division (A)(1) of this section by reason of the wrongful death 468
and may award the reasonable funeral and burial expenses incurred 469
as a result of the wrongful death. In its verdict, the jury or 470
court shall set forth separately the amount, if any, awarded for 471
the reasonable funeral and burial expenses incurred as a result of 472
the wrongful death. 473

(3)(a) The date of the decedent's death fixes, subject to 474
division (A)(3)(b)(iii) of this section, the status of all 475
beneficiaries of the civil action for wrongful death for purposes 476
of determining the damages suffered by them and the amount of 477
damages to be awarded. A person who is conceived prior to the 478
decedent's death and who is born alive after the decedent's death 479
is a beneficiary of the action. 480

(b)(i) In determining the amount of damages to be awarded, 481
the jury or court may consider all factors existing at the time of 482
the decedent's death that are relevant to a determination of the 483
damages suffered by reason of the wrongful death. 484

(ii) Consistent with the Rules of Evidence, ~~any~~ a party to ~~an~~ 485

a civil action for wrongful death may present evidence of the cost 486
of an annuity in connection with ~~any~~ an issue of recoverable 487
future damages. If ~~such~~ that evidence is presented, then, in 488
addition to the factors described in division (A)(3)(b)(i) of this 489
section and, if applicable, division (A)(3)(b)(iii) of this 490
section, the jury or court may consider that evidence in 491
determining the future damages suffered by reason of the wrongful 492
death. If ~~such~~ that evidence is presented, the present value in 493
dollars of ~~any~~ an annuity is its cost. 494

(iii) Consistent with the Rules of Evidence, ~~any~~ a party to 495
~~an~~ a civil action for wrongful death may present evidence that the 496
surviving spouse of the decedent is remarried. If ~~such~~ that 497
evidence is presented, then, in addition to the factors described 498
in divisions (A)(3)(b)(i) and (ii) of this section, the jury or 499
court may consider that evidence in determining the damages 500
suffered by the surviving spouse by reason of the wrongful death. 501

(B) Compensatory damages may be awarded in ~~an~~ a civil action 502
for wrongful death and may include damages for the following: 503

(1) Loss of support from the reasonably expected earning 504
capacity of the decedent; 505

(2) Loss of services of the decedent; 506

(3) Loss of the society of the decedent, including loss of 507
companionship, consortium, care, assistance, attention, 508
protection, advice, guidance, counsel, instruction, training, and 509
education, suffered by the surviving spouse, ~~minor~~ dependent 510
children, parents, or next of kin of the decedent; 511

(4) Loss of prospective inheritance to the decedent's heirs 512
at law at the time of the decedent's death; 513

(5) The mental anguish incurred by the surviving spouse, 514
~~minor~~ dependent children, parents, or next of kin of the decedent. 515

(C) A personal representative appointed in this state, with
the consent of the court making the appointment and at any time
before or after the commencement of ~~an~~ a civil action for wrongful
death, may settle with the defendant the amount to be paid.

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

(2)(a) Except as otherwise provided in divisions (D)(2)(b),
(c), (d), (e), and (f) of this section, no cause of action for
wrongful death involving 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.

(b) Division (D)(2)(a) 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.

(c) Division (D)(2)(a) of this section does not bar a civil
action for wrongful death involving 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
decedent's death, has not expired in accordance with the terms of
that warranty.

(d) If the decedent's death occurs during the ten-year period
described in division (D)(2)(a) of this section but less than two
years prior to the expiration of that period, a civil action for

wrongful death involving a product liability claim may be
commenced within two years after the decedent's death.

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(e) If the decedent's death occurs during the ten-year period
described in division (D)(2)(a) 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, a civil action
for wrongful death involving a product liability claim may be
commenced within two years after the disability is removed.

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

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(ii) If division (D)(2)(f)(i) of this section applies
regarding a civil action for wrongful death, the cause of action
that is the basis of the action accrues upon the date on which the
claimant is informed by competent medical authority that the
decedent's death 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 decedent's death was related
to the exposure to the product, whichever date occurs first. A
civil action for wrongful death based on a cause of action
described in division (D)(2)(f)(i) of this section shall be
commenced within two years after the cause of action accrues and
shall not be commenced more than two years after the cause of
action accrues.

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(g) Division (D)(2)(a) of this section does not bar a civil
action for wrongful death based on a product liability claim
against a manufacturer or supplier of a product if the product

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involved is a substance or device described in division (B)(5) of
section 2315.10 of the Revised Code. If division (D)(2)(g) of this
section applies regarding a civil action for wrongful death, the
cause of action that is the basis of the action accrues upon the
date on which the claimant is informed by competent medical
authority that the decedent's death 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
decedent's death was related to the exposure to the product,
whichever date occurs first. A civil action for wrongful death
based on a cause of action described in division (D)(2)(g) of this
section shall be commenced within two years after the cause of
action accrues and shall not be commenced more than two years
after the cause of action accrues.

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

(2) The movant who files a motion described in division
(E)(1) of this section shall name the parent who abandoned the
~~child~~ deceased minor and, whether or not that parent is a resident
of this state, the parent shall be served with a summons and a

copy of the motion in accordance with the Rules of Civil 610
Procedure. Upon the filing of the motion, the court shall conduct 611
a hearing. In the hearing on the motion, the movant has the burden 612
of proving, by a preponderance of the evidence, that the parent 613
abandoned the ~~deceased~~ minor ~~child~~. If, at the hearing, the court 614
finds that the movant has sustained that burden of proof, the 615
court shall issue an order that includes its ~~finding~~ findings that 616
the parent abandoned the ~~deceased~~ minor ~~child~~ and that, because of 617
the prohibition set forth in division (A)(1) of this section, the 618
parent is not entitled to recover damages in the ~~wrongful-death~~ 619
action based on the death of the ~~deceased~~ minor ~~child~~. 620

(3) A motion requesting a court to issue an order finding 621
that ~~the~~ a specified parent abandoned ~~the~~ a minor child and is not 622
entitled to recover damages in ~~the~~ a civil action for wrongful 623
death ~~action~~ based on the death of the ~~deceased~~ minor ~~child~~ may be 624
filed at any time during the pendency of the ~~wrongful-death~~ 625
action. 626

(F) This section does not create a new cause of action or 627
substantive legal right against any person involving a product 628
liability claim. 629

(G) As used in this section: 630

(1) "Annuity" means an annuity that would be purchased from 631
either of the following types of insurance companies: 632

(a) An insurance company that the A. M. Best Company, in its 633
most recently published rating guide of life insurance companies, 634
has rated A or better and has rated XII or higher as to financial 635
size or strength; 636

(b)(i) An insurance company that the superintendent of 637
insurance, under rules adopted pursuant to Chapter 119. of the 638
Revised Code for purposes of implementing this division, 639
determines is licensed to do business in this state and, 640

considering the factors described in division ~~(F)~~(G)(1)(b)(ii) of 641
this section, is a stable insurance company that issues annuities 642
that are safe and desirable. 643

(ii) In making determinations as described in division 644
~~(F)~~(G)(1)(b)(i) of this section, the superintendent shall be 645
guided by the principle that the jury or court in ~~an~~ a civil 646
action for wrongful death should be presented only with evidence 647
as to the cost of annuities that are safe and desirable for the 648
beneficiaries of ~~such an~~ the action who are awarded compensatory 649
damages under this section. In making ~~such~~ the determinations, the 650
superintendent shall consider the financial condition, general 651
standing, operating results, profitability, leverage, liquidity, 652
amount and soundness of reinsurance, adequacy of reserves, and the 653
management of ~~any a particular~~ insurance company ~~in question~~ 654
involved and also may consider ratings, grades, and 655
classifications of any nationally recognized rating services of 656
insurance companies and any other factors relevant to the making 657
of ~~such~~ the determinations. 658

(2) "Future damages" means damages that result from the 659
wrongful death and that will accrue after the verdict or 660
determination of liability by the jury or court is rendered in the 661
civil action for wrongful death. 662

(3) "Abandoned" means that a parent of a minor failed without 663
justifiable cause to communicate with the minor, care for the 664
minor, and provide for the maintenance or support of the minor as 665
required by law or judicial decree for a period of at least one 666
year immediately prior to the date of the death of the minor. 667

(4) "Minor" means a person who is less than eighteen years of 668
age. 669

(5) "Harm" means death. 670

(6) "Manufacturer," "product," "product liability claim," and 671

"supplier" have the same meanings as in section 2307.71 of the
Revised Code.

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(H) Divisions (D) and (G)(5) to (G)(7) of 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 amendment, in which those
divisions are 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 amendment.

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Sec. 2125.04. In every civil action for wrongful death
commenced or attempted to be commenced within the time specified
by division (D)(1) or (D)(2)(c), (d), (e), or (f) of section
2125.02 of the Revised Code, if a judgment for the plaintiff is
reversed or ~~if~~ the plaintiff fails otherwise than upon the merits,
and if the time limited by ~~such section~~ any of those divisions for
the commencement of ~~such the~~ the action has expired at the date of
~~such the~~ reversal or failure, the plaintiff or, if the plaintiff
dies and the cause of action survives, the personal representative
of the plaintiff may commence a new civil action for wrongful
death within one year after ~~such that~~ that date, subject to division
(B) of section 2125.01 of the Revised Code or division (D)(2) of
section 2125.02 of the Revised Code.

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Sec. 2305.01. ~~The~~ Except as otherwise provided by this
section or section 2305.03 of the Revised Code, the court of
common pleas has original jurisdiction in all civil cases in which
the sum or matter in dispute exceeds the exclusive original
jurisdiction of county courts and appellate jurisdiction from the
decisions of boards of county commissioners. The court of common

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pleas shall not have jurisdiction to award compensatory damages 702
for noneconomic loss that exceed the amount set forth in section 703
2323.43 of the Revised Code. The court of common pleas shall not 704
have jurisdiction, in any tort action to which the amounts apply, 705
to award punitive or exemplary damages that exceed the amounts set 706
forth in section 2315.21 of the Revised Code. 707

The court of common pleas may on its own motion transfer for 708
trial any action in the court to any municipal court in the county 709
having concurrent jurisdiction of the subject matter of, and the 710
parties to, the action, if the amount sought by the plaintiff does 711
not exceed one thousand dollars and if the judge or presiding 712
judge of the municipal court concurs in the proposed transfer. 713
Upon the issuance of an order of transfer, the clerk of courts 714
shall remove to the designated municipal court the entire case 715
file. Any untaxed portion of the common pleas deposit for court 716
costs shall be remitted to the municipal court by the clerk of 717
courts to be applied in accordance with section 1901.26 of the 718
Revised Code, and the costs taxed by the municipal court shall be 719
added to any costs taxed in the common pleas court. 720

The court of common pleas has jurisdiction in any action 721
brought pursuant to division (I) of section 3733.11 of the Revised 722
Code if the residential premises that are the subject of the 723
action are located within the territorial jurisdiction of the 724
court. 725

The courts of common pleas of Adams, Athens, Belmont, Brown, 726
Clermont, Columbiana, Gallia, Hamilton, Jefferson, Lawrence, 727
Meigs, Monroe, Scioto, and Washington counties have jurisdiction 728
beyond the north or northwest shore of the Ohio river extending to 729
the opposite shore line, between the extended boundary lines of 730
any adjacent counties or adjacent state. Each of those courts of 731
common pleas has concurrent jurisdiction on the Ohio river with 732

any adjacent court of common pleas that borders on that river and 733
with any court of Kentucky or of West Virginia that borders on the 734
Ohio river and that has jurisdiction on the Ohio river under the 735
law of Kentucky or the law of West Virginia, whichever is 736
applicable, or under federal law. 737

Sec. 2305.03. ~~A civil action,~~ (A) Except as provided in 738
division (B) of this section and unless a different limitation is 739
prescribed by statute, ~~can a civil action may~~ be commenced only 740
within the period prescribed in sections ~~2305.03~~ 2305.04 to 741
2305.22, inclusive, of the Revised Code. ~~When~~ If interposed by 742
proper plea by a party to an action mentioned in ~~such~~ any of those 743
sections, lapse of time shall be a bar ~~thereto~~ to the action. 744

(B) No civil action that is based upon a cause of action that 745
accrued in any other state, territory, district, or foreign 746
jurisdiction may be commenced and maintained in this state if the 747
period of limitation that applies to that action under the laws of 748
that other state, territory, district, or foreign jurisdiction has 749
expired or the period of limitation that applies to that action 750
under the laws of this state has expired. 751

Sec. 2305.10. ~~An~~ (A) Except as provided in division (C) of 752
this section, an action based on a product liability claim and an 753
action for bodily injury or injuring personal property shall be 754
brought within two years after the cause ~~thereof arose~~ of action 755
accrues. Except as provided in divisions (B)(1), (2), (3), (4), 756
and (5) of this section, a cause of action accrues under this 757
division when the injury or loss to person or property occurs. 758

(B)(1) For purposes of division (A) of this section, a cause 759
of action for bodily injury that is not described in division 760
(B)(2), (3), (4), or (5) of this section and that is caused by 761
exposure to hazardous or toxic chemicals, ethical drugs, or 762

ethical medical devices accrues upon the date on which the 763
plaintiff is informed by competent medical authority that the 764
plaintiff has an injury that is related to the exposure, or upon 765
the date on which by the exercise of reasonable diligence the 766
plaintiff should have known that the plaintiff has an injury that 767
is related to the exposure, whichever date occurs first. 768

(2) For purposes of division (A) of this section, a cause of 769
action for bodily injury caused by exposure to ~~asbestos or to~~ 770
chromium in any of its chemical forms ~~arises~~ accrues upon the date 771
on which the plaintiff is informed by competent medical authority 772
that the plaintiff has ~~been injured by such~~ an injury that is 773
related to the exposure, or upon the date on which, by the 774
exercise of reasonable diligence, the plaintiff should have ~~become~~ 775
~~aware~~ known that the plaintiff ~~had been injured by~~ has an injury 776
that is related to the exposure, whichever date occurs first. 777

(3) For purposes of division (A) of this section, a cause of 778
action for bodily injury incurred by a veteran through exposure to 779
chemical defoliants or herbicides or other causative agents, 780
including agent orange, ~~arises~~ accrues upon the date on which the 781
plaintiff is informed by competent medical authority that the 782
plaintiff has ~~been injured by such~~ an injury that is related to 783
the exposure, or upon the date on which by the exercise of 784
reasonable diligence the plaintiff should have known that the 785
plaintiff has an injury that is related to the exposure, whichever 786
date occurs first. 787

~~As used in this section, "agent orange," "causative agent,"~~ 788
~~and "veteran" have the same meanings as in section 5903.21 of the~~ 789
~~Revised Code.~~ 790

(4) For purposes of division (A) of this section, a cause of 791
action for bodily injury ~~which may be~~ caused by exposure to 792
diethylstilbestrol or other nonsteroidal synthetic estrogens, 793

including exposure before birth, accrues upon the date on which 794
the plaintiff ~~learns from a licensed physician~~ is informed by 795
competent medical authority that the plaintiff has an injury ~~which~~ 796
~~may be that is~~ related to ~~such the~~ exposure, or upon the date on 797
which by the exercise of reasonable diligence the plaintiff should 798
have ~~become aware~~ known that the plaintiff has an injury ~~which may~~ 799
~~be that is~~ related to ~~such the~~ exposure, whichever date occurs 800
first. 801

(5) For purposes of division (A) of this section, a cause of 802
action for bodily injury caused by exposure to asbestos accrues 803
upon the date on which the plaintiff is informed by competent 804
medical authority that the plaintiff has an injury that is related 805
to the exposure, or upon the date on which by the exercise of 806
reasonable diligence the plaintiff should have known that the 807
plaintiff has an injury that is related to the exposure, whichever 808
date occurs first. 809

(C)(1) Except as otherwise provided in divisions (C)(2), (3), 810
(4), (5), (6), and (7) of this section, no cause of action based 811
on a product liability claim shall accrue against the manufacturer 812
or supplier of a product later than ten years from the date that 813
the product was delivered to its first purchaser or first lessee 814
who was not engaged in a business in which the product was used as 815
a component in the production, construction, creation, assembly, 816
or rebuilding of another product. 817

(2) Division (C)(1) of this section does not apply if the 818
manufacturer or supplier of a product engaged in fraud in regard 819
to information about the product and the fraud contributed to the 820
harm that is alleged in a product liability claim involving that 821
product. 822

(3) Division (C)(1) of this section does not bar an action 823
based on a product liability claim against a manufacturer or 824
supplier of a product who made an express, written warranty as to 825

the safety of the product that was for a period longer than ten 826
years and that, at the time of the accrual of the cause of action, 827
has not expired in accordance with the terms of that warranty. 828

(4) If the cause of action relative to a product liability 829
claim accrues during the ten-year period described in division 830
(C)(1) of this section but less than two years prior to the 831
expiration of that period, an action based on the product 832
liability claim may be commenced within two years after the cause 833
of action accrues. 834

(5) If a cause of action relative to a product liability 835
claim accrues during the ten-year period described in division 836
(C)(1) of this section and the claimant cannot commence an action 837
during that period due to a disability described in section 838
2305.16 of the Revised Code, an action based on the product 839
liability claim may be commenced within two years after the 840
disability is removed. 841

(6) Division (C)(1) of this section does not bar an action 842
for bodily injury caused by exposure to asbestos if the cause of 843
action that is the basis of the action accrues upon the date on 844
which the plaintiff is informed by competent medical authority 845
that the plaintiff has an injury that is related to the exposure, 846
or upon the date on which by the exercise of reasonable diligence 847
the plaintiff should have known that the plaintiff has an injury 848
that is related to the exposure, whichever date occurs first. 849

(7)(a) Division (C)(1) of this section does not bar an action 850
based on a product liability claim against a manufacturer or 851
supplier of a product if all of the following apply: 852

(i) The action is for bodily injury. 853

(ii) The product involved is a substance or device described 854
in division (B)(1), (2), (3), or (4) of this section. 855

(iii) The bodily injury results from exposure to the product 856
during the ten-year period described in division (C)(1) of this 857
section. 858

(b) If division (C)(7)(a) of this section applies regarding 859
an action, the cause of action accrues upon the date on which the 860
claimant is informed by competent medical authority that the 861
bodily injury was related to the exposure to the product, or upon 862
the date on which by the exercise of reasonable diligence the 863
claimant should have known that the bodily injury was related to 864
the exposure to the product, whichever date occurs first. The 865
action based on the product liability claim shall be commenced 866
within two years after the cause of action accrues and shall not 867
be commenced more than two years after the cause of action 868
accrues. 869

(D) This section does not create a new cause of action or 870
substantive legal right against any person involving a product 871
liability claim. 872

(E) As used in this section: 873

(1) "Agent orange," "causative agent," and "veteran" have the 874
same meanings as in section 5903.21 of the Revised Code. 875

(2) "Ethical drug," "ethical medical device," "manufacturer," 876
"product," "product liability claim," and "supplier" have the same 877
meanings as in section 2307.71 of the Revised Code. 878

(3) "Harm" means injury, death, or loss to person or 879
property. 880

(F) This section shall be considered to be purely remedial in 881
operation and shall be applied in a remedial manner in any civil 882
action commenced on or after the effective date of this amendment, 883
in which this section is relevant, regardless of when the cause of 884
action accrued and notwithstanding any other section of the 885

Revised Code or prior rule of law of this state, but shall not be 886
construed to apply to any civil action pending prior to the 887
effective date of this amendment. 888

Sec. 2305.131. (A)(1) Notwithstanding an otherwise applicable 889
period of limitations specified in this chapter or in section 890
2125.02 of the Revised Code and except as otherwise provided in 891
divisions (A)(2), (A)(3), (C), and (D) of this section, no cause 892
of action to recover damages for bodily injury, an injury to real 893
or personal property, or wrongful death that arises out of a 894
defective and unsafe condition of an improvement to real property 895
and no cause of action for contribution or indemnity for damages 896
sustained as a result of bodily injury, an injury to real or 897
personal property, or wrongful death that arises out of a 898
defective and unsafe condition of an improvement to real property 899
shall accrue against a person who performed services for the 900
improvement to real property or a person who furnished the design, 901
planning, supervision of construction, or construction of the 902
improvement to real property later than ten years from the date of 903
the performance of the services or the furnishing of the design, 904
planning, supervision of construction, or construction. 905

(2) Notwithstanding an otherwise applicable period of 906
limitations specified in this chapter or in section 2125.02 of the 907
Revised Code, a claimant who discovers a defective and unsafe 908
condition of an improvement to real property during the ten-year 909
period specified in division (A)(1) of this section but less than 910
two years prior to the expiration of that period may commence a 911
civil action to recover damages as described in that division 912
within two years from the date of the discovery of that defective 913
and unsafe condition. 914

(3) Notwithstanding an otherwise applicable period of 915
limitations specified in this chapter or in section 2125.02 of the 916

Revised Code, if a cause of action that arises out of a defective 917
and unsafe condition of an improvement to real property accrues 918
during the ten-year period specified in division (A)(1) of this 919
section and the plaintiff cannot commence an action during that 920
period due to a disability described in section 2305.16 of the 921
Revised Code, the plaintiff may commence a civil action to recover 922
damages as described in that division within two years from the 923
removal of that disability. 924

(B) Division (A) of this section does not apply to a civil 925
action commenced against a person who is an owner of, tenant of, 926
landlord of, or other person in possession and control of an 927
improvement to real property and who is in actual possession and 928
control of the improvement to real property at the time that the 929
defective and unsafe condition of the improvement to real property 930
constitutes the proximate cause of the bodily injury, injury to 931
real or personal property, or wrongful death that is the subject 932
matter of the civil action. 933

(C) Division (A)(1) of this section is not available as an 934
affirmative defense to a defendant in a civil action described in 935
that division if the defendant engages in fraud in regard to 936
furnishing the design, planning, supervision of construction, or 937
construction of an improvement to real property or in regard to 938
any relevant fact or other information that pertains to the act or 939
omission constituting the alleged basis of the bodily injury, 940
injury to real or personal property, or wrongful death or to the 941
defective and unsafe condition of the improvement to real 942
property. 943

(D) Division (A)(1) of this section does not prohibit the 944
commencement of a civil action for damages against a person who 945
has expressly warranted or guaranteed an improvement to real 946
property for a period longer than the period described in division 947
(A)(1) of this section and whose warranty or guarantee has not 948
expired as of the time of the alleged bodily injury, injury to 949
real or personal property, or wrongful death in accordance with 950
the terms of that warranty or guarantee. 951

(E) This section does not create a new cause of action or 952
substantive legal right against any person resulting from the 953
design, planning, supervision of construction, or construction of 954
an improvement to real property. 955

(F) This section shall be considered to be purely remedial in 956
operation and shall be applied in a remedial manner in any civil 957
action commenced on or after the effective date of this section, 958
in which this section is relevant, regardless of when the cause of 959
action accrued and notwithstanding any other section of the 960
Revised Code or prior rule of law of this state, but shall not be 961
construed to apply to any civil action pending prior to the 962
effective date of this section. 963

Sec. 2305.25. As used in this section and sections 2305.251 964
to 2305.253 of the Revised Code: 965

(A)(1) "Health care entity" means an entity, whether acting 966
on its own behalf or on behalf of or in affiliation with other 967
health care entities, that conducts as part of its regular 968
business activities professional credentialing or quality review 969
activities involving the competence of, professional conduct of, 970
or quality of care provided by health care providers, including 971
both individuals who provide health care and entities that provide 972
health care. 973

(2) "Health care entity" includes any entity described in 974
division (A)(1) of this section, regardless of whether it is a 975
government entity; for-profit or nonprofit corporation; limited 976
liability company; partnership; professional corporation; state or 977
local society composed of physicians, dentists, optometrists, 978
psychologists, or pharmacists; or other health care organization. 979

(B) "Health insuring corporation" means an entity that holds 980
a certificate of authority under Chapter 1751. of the Revised 981
Code. "Health insuring corporation" includes wholly owned 982
subsidiaries of a health insuring corporation. 983

(C) "Hospital" means either of the following: 984

(1) An institution that has been registered or licensed by 985
the department of health as a hospital; 986

(2) An entity, other than an insurance company authorized to 987
do business in this state, that owns, controls, or is affiliated 988
with an institution that has been registered or licensed by the 989
department of health as a hospital. 990

(D) "Incident report or risk management report" means a 991
report of an incident involving injury or potential injury to a 992
patient as a result of patient care provided by health care 993
providers, including both individuals who provide health care and 994
entities that provide health care, that is prepared by or for the 995
use of a peer review committee of a health care entity and is 996
within the scope of the functions of that committee. 997

(E)(1) "Peer review committee" means a utilization review 998
committee, quality assessment committee, performance improvement 999
committee, tissue committee, credentialing committee, or other 1000
committee that does either of the following: 1001

(a) Conducts professional credentialing or quality review 1002
activities involving the competence of, professional conduct of, 1003

or quality of care provided by health care providers, including 1004
both individuals who provide health care and entities that provide 1005
health care; 1006

(b) Conducts any other attendant hearing process initiated as 1007
a result of a peer review committee's recommendations or actions. 1008

(2) "Peer review committee" includes all of the following: 1009

(a) A peer review committee of a hospital or long-term care 1010
facility or a peer review committee of a nonprofit health care 1011
corporation that is a member of the hospital or long-term care 1012
facility or of which the hospital or facility is a member; 1013

(b) A peer review committee of a community mental health 1014
center; 1015

(c) A board or committee of a hospital, a long-term care 1016
facility, or other health care entity when reviewing professional 1017
qualifications or activities of health care providers, including 1018
both individuals who provide health care and entities that provide 1019
health care; 1020

(d) A peer review committee, professional standards review 1021
committee, or arbitration committee of a state or local society 1022
composed of members who are in active practice as physicians, 1023
dentists, optometrists, psychologists, or pharmacists; 1024

(e) A peer review committee of a health insuring corporation 1025
that has at least a two-thirds majority of member physicians in 1026
active practice and that conducts professional credentialing and 1027
quality review activities involving the competence or professional 1028
conduct of health care providers that adversely affects or could 1029
adversely affect the health or welfare of any patient; 1030

(f) A peer review committee of a health insuring corporation 1031
that has at least a two-thirds majority of member physicians in 1032
active practice and that conducts professional credentialing and 1033

quality review activities involving the competence or professional 1034
conduct of a health care facility that has contracted with the 1035
health insuring corporation to provide health care services to 1036
enrollees, which conduct adversely affects, or could adversely 1037
affect, the health or welfare of any patient; 1038

(g) A peer review committee of a sickness and accident 1039
insurer that has at least a two-thirds majority of physicians in 1040
active practice and that conducts professional credentialing and 1041
quality review activities involving the competence or professional 1042
conduct of health care providers that adversely affects or could 1043
adversely affect the health or welfare of any patient; 1044

(h) A peer review committee of a sickness and accident 1045
insurer that has at least a two-thirds majority of physicians in 1046
active practice and that conducts professional credentialing and 1047
quality review activities involving the competence or professional 1048
conduct of a health care facility that has contracted with the 1049
insurer to provide health care services to insureds, which conduct 1050
adversely affects, or could adversely affect, the health or 1051
welfare of any patient; 1052

(i) A peer review committee of any insurer authorized under 1053
Title XXXIX of the Revised Code to do the business of medical 1054
professional liability insurance in this state that conducts 1055
professional quality review activities involving the competence or 1056
professional conduct of health care providers that adversely 1057
affects or could affect the health or welfare of any patient; 1058

(j) Any other peer review committee of a health care entity. 1059

(F) "Physician" means an individual authorized to practice 1060
medicine and surgery, osteopathic medicine and surgery, or 1061
podiatric medicine and surgery. 1062

(G) "Sickness and accident insurer" means an entity 1063
authorized under Title XXXIX of the Revised Code to do the 1064

business of sickness and accident insurance in this state. 1065

(H) "Tort action" means a civil action for damages for 1066
injury, death, or loss to a patient of a health care entity. "Tort 1067
action" includes a product liability claim, as defined in section 1068
2307.71 of the Revised Code, but does not include a civil action 1069
for a breach of contract or another agreement between persons. 1070

Sec. 2307.011. As used in Chapters 2307. and 2315. of the 1071
Revised Code: 1072

(A) "Conduct" means actions or omissions. 1073

(B) "Contributory fault" means contributory negligence, other 1074
contributory tortious conduct, ~~comparative negligence~~, or, except 1075
as provided with respect to product liability claims in section 1076
2307.711 of the Revised Code, express or implied assumption of the 1077
risk. 1078

(C) "Economic loss" means any of the following types of 1079
pecuniary harm: 1080

(1) All wages, salaries, or other compensation lost as a 1081
result of an injury, death, or loss to person or property that is 1082
a subject of a tort action, including wages, salaries, or other 1083
compensation lost as of the date of a judgment and future expected 1084
lost earnings; 1085

(2) All expenditures for medical care or treatment, 1086
rehabilitation services, or other care, treatment, services, 1087
products, or accommodations incurred as a result of an injury, 1088
death, or loss to person that is a subject of a tort action, 1089
including expenditures for those purposes that were incurred as of 1090
the date of a judgment and expenditures for those purposes that, 1091
in the determination of the trier of fact, will be incurred in the 1092
future because of the injury, whether paid by the injured person 1093
or by another person on behalf of the injured person; 1094

(3) All expenditures of a person whose property was injured 1095
or destroyed or of another person on behalf of the person whose 1096
property was injured or destroyed in order to repair or replace 1097
the property; 1098

(4) Any other expenditures incurred as a result of an injury, 1099
death, or loss to person or property that is a subject of a tort 1100
action, except expenditures of the injured person, the person 1101
whose property was injured or destroyed, or another person on 1102
behalf of the injured person or the person whose property was 1103
injured or destroyed in relation to the actual preparation or 1104
presentation of the claim involved. 1105

(D) "Intentional tort claim" means a claim alleging that a 1106
tortfeasor intentionally caused or intentionally contributed to 1107
the injury or loss to person or property or the wrongful death or 1108
that a tortfeasor knew or believed that the injury or loss to 1109
person or property or the wrongful death was substantially certain 1110
to result from the tortfeasor's conduct. As used in sections 1111
2307.22, 2307.711, and 2315.32, ~~and 2315.42~~ of the Revised Code, 1112
"intentional tort claim" does not include an intentional tort 1113
claim alleged by an employee or the employee's legal 1114
representative against the employee's employer and that arises 1115
from the tortfeasor's conduct that occurs on premises owned, 1116
leased, or supervised by the employer. 1117

(E) ~~"Negligence claim" means a civil action for damages for~~ 1118
~~injury, death, or loss to person or property to the extent that~~ 1119
~~the damages are sought or recovered based on allegation or proof~~ 1120
~~of negligence.~~ 1121

~~(F)~~ "Noneconomic loss" means nonpecuniary harm that results 1122
from an injury, death, or loss to person that is a subject of a 1123
tort action, including, but not limited to, pain and suffering; 1124
loss of society, consortium, companionship, care, assistance, 1125

attention, protection, advice, guidance, counsel, instruction, 1126
training, or education; mental anguish; and any other intangible 1127
loss. 1128

~~(G)~~(F) "Person" has the same meaning as in division (C) of 1129
section 1.59 of the Revised Code and additionally includes a 1130
political subdivision and the state. 1131

~~(H)~~(G) "Persons from whom the plaintiff does not seek 1132
recovery in this action" includes, but is not limited to, the 1133
following: 1134

(1) Persons who have entered into a settlement agreement with 1135
the plaintiff; 1136

(2) Persons whom the plaintiff has dismissed from the tort 1137
action without prejudice; 1138

(3) Persons whom the plaintiff has dismissed from the tort 1139
action with prejudice; 1140

(4) Persons who are not a party to the tort action whether or 1141
not that person was or could have been a party to the tort action 1142
if the name of the person has been disclosed prior to trial. 1143

~~(I)~~(H) "Plaintiff" includes the person for whom the plaintiff 1144
is legal representative. 1145

~~(J)~~(I) "Political subdivision" and "state" have the same 1146
meanings as in section 2744.01 of the Revised Code. 1147

~~(K)~~(J) "Tort action" means a civil action for damages for 1148
injury, death, or loss to person or property. "Tort action" 1149
includes a product liability claim, as defined in section 2307.71 1150
of the Revised Code, but does not include a civil action for 1151
damages for a breach of contract or another agreement between 1152
persons. 1153

~~(L)~~(K) "Trier of fact" means the jury or, in a nonjury 1154
action, the court. 1155

Sec. 2307.23. (A) In determining the percentage of tortious 1156
conduct attributable to a party in a tort action under section 1157
2307.22, or sections 2315.32 to 2315.36, ~~or sections 2315.41 to~~ 1158
~~2315.46~~ of the Revised Code, the court in a nonjury action shall 1159
make findings of fact, and the jury in a jury action shall return 1160
a general verdict accompanied by answers to interrogatories, that 1161
shall specify all of the following: 1162

(1) The percentage of tortious conduct that proximately 1163
caused the injury or loss to person or property or the wrongful 1164
death that is attributable to the plaintiff and to each party to 1165
the tort action from whom the plaintiff seeks recovery in this 1166
action; 1167

(2) The percentage of tortious conduct that proximately 1168
caused the injury or loss to person or property or the wrongful 1169
death that is attributable to each person from whom the plaintiff 1170
does not seek recovery in this action. 1171

(B) The sum of the percentages of tortious conduct as 1172
determined pursuant to division (A) of this section shall equal 1173
one hundred per cent. 1174

(C) For purposes of division (A)(2) of this section, it is an 1175
affirmative defense for each party to the tort action from whom 1176
the plaintiff seeks recovery in this action that a specific 1177
percentage of the tortious conduct that proximately caused the 1178
injury or loss to person or property or the wrongful death is 1179
attributable to one or more persons from whom the plaintiff does 1180
not seek recovery in this action. Any party to the tort action 1181
from whom the plaintiff seeks recovery in this action may raise an 1182
affirmative defense under this division at any time before the 1183
trial of the action. 1184

Sec. 2307.29. No provision of sections 2307.25 to 2307.28 of 1185

the Revised Code applies to a ~~negligence or other~~ tort claim to 1186
the extent that sections 2307.22 to 2307.24, or sections 2315.32 1187
to 2315.36, ~~or sections 2315.41 to 2315.46~~ of the Revised Code 1188
make a party against whom a judgment is entered liable to the 1189
plaintiff only for the proportionate share of that party as 1190
described in those sections. 1191

Sec. 2307.60. (A) Anyone injured in person or property by a 1192
criminal act has, and may recover full damages in, a civil action 1193
unless specifically excepted by law, may recover the costs of 1194
maintaining the civil action and attorney's fees if authorized by 1195
any provision of the Rules of Civil Procedure or another section 1196
of the Revised Code or under the common law of this state, and may 1197
recover punitive or exemplary damages if authorized by section 1198
2315.21 or another section of the Revised Code. No record of a 1199
conviction, unless obtained by confession in open court, shall be 1200
used as evidence in a civil action brought pursuant to division 1201
(A) of this section. 1202

(B)(1) As used in division (B) of this section, "tort action" 1203
means a civil action for damages for injury, death, or loss to 1204
person or property other than a civil action for damages for a 1205
breach of contract or another agreement between persons. "Tort 1206
action" includes, but is not limited to, a product liability 1207
claim, as defined in section 2307.71 of the Revised Code, an 1208
action for wrongful death under Chapter 2125. of the Revised Code, 1209
and an action based on derivative claims for relief. 1210

(2) Recovery on a claim for relief in a tort action is barred 1211
to any person or the person's legal representative if the person 1212
has been convicted of or has pleaded guilty to a felony, or to a 1213
misdemeanor that is an offense of violence, arising out of 1214
criminal conduct that was a proximate cause of the injury or loss 1215
for which relief is claimed in the action. 1216

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

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

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

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

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

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

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

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

~~(C)~~(3) "Environment" means navigable waters, surface water, ground water, drinking water supplies, land surface, subsurface strata, and air.

~~(D)~~(4) "Ethical drug" means a prescription drug that is 1247
prescribed or dispensed by a physician or any other person who is 1248
legally authorized to prescribe or dispense a prescription drug. 1249

~~(E)~~(5) "Ethical medical device" means a medical device that 1250
is prescribed, dispensed, or implanted by a physician or any other 1251
person who is legally authorized to prescribe, dispense, or 1252
implant a medical device and that is regulated under the "Federal 1253
Food, Drug, and Cosmetic Act," 52 Stat. 1040, 21 U.S.C. 301-392, 1254
as amended. 1255

~~(F)~~(6) "Foreseeable risk" means a risk of harm that satisfies 1256
both of the following: 1257

~~(1)~~(a) It is associated with an intended or reasonably 1258
foreseeable use, modification, or alteration of a product in 1259
question. 1260

~~(2)~~(b) It is a risk that the manufacturer in question should 1261
recognize while exercising both of the following: 1262

~~(a)~~(i) The attention, perception, memory, knowledge, and 1263
intelligence that a reasonable manufacturer should possess; 1264

~~(b)~~(ii) Any superior attention, perception, memory, 1265
knowledge, or intelligence that the manufacturer in question 1266
possesses. 1267

~~(G)~~(7) "Harm" means death, physical injury to person, serious 1268
emotional distress, or physical damage to property other than the 1269
product in question. Economic loss is not "harm." 1270

~~(H)~~(8) "Hazardous or toxic substances" include, but are not 1271
limited to, hazardous waste as defined in section 3734.01 of the 1272
Revised Code, hazardous waste as specified in the rules of the 1273
director of environmental protection pursuant to division (A) of 1274
section 3734.12 of the Revised Code, hazardous substances as 1275
defined in section 3716.01 of the Revised Code, and hazardous 1276

substances, pollutants, and contaminants as defined in or by 1277
regulations adopted pursuant to the "Comprehensive Environmental 1278
Response, Compensation, and Liability Act of 1980," 94 Stat. 2767, 1279
42 U.S.C. 9601, as amended. 1280

~~(I)~~(9) "Manufacturer" means a person engaged in a business to 1281
design, formulate, produce, create, make, construct, assemble, or 1282
rebuild a product or a component of a product. 1283

~~(J)~~(10) "Person" has the same meaning as in division (C) of 1284
section 1.59 of the Revised Code and also includes governmental 1285
entities. 1286

~~(K)~~(11) "Physician" means a person who is licensed to 1287
practice medicine and surgery or osteopathic medicine and surgery 1288
by the state medical board. 1289

~~(L)~~(1)(12)(a) "Product" means, subject to division 1290
~~(L)~~(2)(A)(12)(b) of this section, any object, substance, mixture, 1291
or raw material that constitutes tangible personal property and 1292
that satisfies all of the following: 1293

~~(a)~~(i) It is capable of delivery itself, or as an assembled 1294
whole in a mixed or combined state, or as a component or 1295
ingredient~~+~~. 1296

~~(b)~~(ii) It is produced, manufactured, or supplied for 1297
introduction into trade or commerce~~+~~. 1298

~~(c)~~(iii) It is intended for sale or lease to persons for 1299
commercial or personal use. 1300

~~(2)~~(b) "Product" does not include human tissue, blood, or 1301
organs. 1302

~~(M)~~(13) "Product liability claim" means a claim that is 1303
asserted in a civil action pursuant to sections 2307.71 to 2307.80 1304
of the Revised Code and that seeks to recover compensatory damages 1305
from a manufacturer or supplier for death, physical injury to 1306

person, emotional distress, or physical damage to property other 1307
than the product in question, that allegedly arose from any of the 1308
following: 1309

~~(1)~~(a) The design, formulation, production, construction, 1310
creation, assembly, rebuilding, testing, or marketing of that 1311
product; 1312

~~(2)~~(b) Any warning or instruction, or lack of warning or 1313
instruction, associated with that product; 1314

~~(3)~~(c) Any failure of that product to conform to any relevant 1315
representation or warranty. 1316

~~(N)~~(14) "Representation" means an express representation of a 1317
material fact concerning the character, quality, or safety of a 1318
product. 1319

~~(O)~~~~(1)~~(15)(a) "Supplier" means, subject to division 1320
~~(O)~~~~(2)~~(A)(15)(b) of this section, either of the following: 1321

~~(a)~~(i) A person that, in the course of a business conducted 1322
for the purpose, sells, distributes, leases, prepares, blends, 1323
packages, labels, or otherwise participates in the placing of a 1324
product in the stream of commerce; 1325

~~(b)~~(ii) A person that, in the course of a business conducted 1326
for the purpose, installs, repairs, or maintains any aspect of a 1327
product that allegedly causes harm. 1328

~~(2)~~(b) "Supplier" does not include any of the following: 1329

~~(a)~~(i) A manufacturer; 1330

~~(b)~~(ii) A seller of real property; 1331

~~(c)~~(iii) A provider of professional services who, incidental 1332
to a professional transaction the essence of which is the 1333
furnishing of judgment, skill, or services, sells or uses a 1334
product; 1335

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

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

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

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

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

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

(3) If implied assumption of the risk is asserted as an 1366
affirmative defense to a product liability claim against a 1367
supplier under division (A)(1) of section 2307.78 of the Revised 1368
Code, sections 2315.32 to 2315.36 of the Revised Code are 1369
applicable to that affirmative defense and shall be used to 1370
determine whether the claimant is entitled to recover compensatory 1371
damages based on that claim and the amount of any recoverable 1372
compensatory damages. 1373

Sec. 2307.75. (A) Subject to divisions (D), (E), and (F) of 1374
this section, a product is defective in design or formulation if 1375
~~either of the following applies:~~ 1376

~~(1) When, at the time it left the control of its~~ 1377
manufacturer, the foreseeable risks associated with its design or 1378
formulation as determined pursuant to division (B) of this section 1379
exceeded the benefits associated with that design or formulation 1380
as determined pursuant to division (C) of this section: 1381

~~(2) It is more dangerous than an ordinary consumer would~~ 1382
~~expect when used in an intended or reasonably foreseeable manner.~~ 1383

(B) The foreseeable risks associated with the design or 1384
formulation of a product shall be determined by considering 1385
factors including, but not limited to, the following: 1386

(1) The nature and magnitude of the risks of harm associated 1387
with that design or formulation in light of the intended and 1388
reasonably foreseeable uses, modifications, or alterations of the 1389
product; 1390

(2) The likely awareness of product users, whether based on 1391
warnings, general knowledge, or otherwise, of those risks of harm; 1392

(3) The likelihood that that design or formulation would 1393
cause harm in light of the intended and reasonably foreseeable 1394
uses, modifications, or alterations of the product; 1395

(4) The extent to which that design or formulation conformed 1396
to any applicable public or private product standard that was in 1397
effect when the product left the control of its manufacturer. 1398

(C) The benefits associated with the design or formulation of 1399
a product shall be determined by considering factors including, 1400
but not limited to, the following: 1401

(1) The intended or actual utility of the product, including 1402
any performance or safety advantages associated with that design 1403
or formulation; 1404

(2) The technical and economic feasibility, when the product 1405
left the control of its manufacturer, of using an alternative 1406
design or formulation; 1407

(3) The nature and magnitude of any foreseeable risks 1408
associated with ~~such~~ an alternative design or formulation. 1409

(D) An ethical drug or ethical medical device is not 1410
defective in design or formulation because some aspect of it is 1411
unavoidably unsafe, if the manufacturer of the ethical drug or 1412
ethical medical device provides adequate warning and instruction 1413
under section 2307.76 of the Revised Code concerning that 1414
unavoidably unsafe aspect. 1415

(E) A product is not defective in design or formulation if 1416
the harm for which the claimant seeks to recover compensatory 1417
damages was caused by an inherent characteristic of the product 1418
which is a generic aspect of the product that cannot be eliminated 1419
without substantially compromising the product's usefulness or 1420
desirability and which is recognized by the ordinary person with 1421
the ordinary knowledge common to the community. 1422

(F) A product is not defective in design or formulation if, 1423
at the time the product left the control of its manufacturer, a 1424
practical and technically feasible alternative design or 1425

formulation was not available that would have prevented the harm 1426
for which the claimant seeks to recover compensatory damages 1427
without substantially impairing the usefulness or intended purpose 1428
of the product, unless the manufacturer acted unreasonably in 1429
introducing the product into trade or commerce. 1430

Sec. 2307.80. (A) Subject to ~~division~~ divisions (C) and (D) 1431
of this section, punitive or exemplary damages shall not be 1432
awarded against a manufacturer or supplier in question in 1433
connection with a product liability claim unless the claimant 1434
establishes, by clear and convincing evidence, that harm for which 1435
the claimant is entitled to recover compensatory damages in 1436
accordance with section 2307.73 or 2307.78 of the Revised Code was 1437
the result of misconduct of the manufacturer or supplier in 1438
question that manifested a flagrant disregard of the safety of 1439
persons who might be harmed by the product in question. The fact 1440
by itself that a product is defective does not establish a 1441
flagrant disregard of the safety of persons who might be harmed by 1442
that product. 1443

(B) Whether the trier of fact is a jury or the court, if the 1444
trier of fact determines that a manufacturer or supplier in 1445
question is liable for punitive or exemplary damages in connection 1446
with a product liability claim, the amount of those damages shall 1447
be determined by the court. In determining the amount of punitive 1448
or exemplary damages, the court shall consider factors including, 1449
but not limited to, the following: 1450

(1) The likelihood that serious harm would arise from the 1451
misconduct of the manufacturer or supplier in question; 1452

(2) The degree of the awareness of the manufacturer or 1453
supplier in question of that likelihood; 1454

(3) The profitability of the misconduct to the manufacturer 1455
or supplier in question; 1456

(4) The duration of the misconduct and any concealment of it 1457
by the manufacturer or supplier in question; 1458

(5) The attitude and conduct of the manufacturer or supplier 1459
in question upon the discovery of the misconduct and whether the 1460
misconduct has terminated; 1461

(6) The financial condition of the manufacturer or supplier 1462
in question; 1463

(7) The total effect of other punishment imposed or likely to 1464
be imposed upon the manufacturer or supplier in question as a 1465
result of the misconduct, including awards of punitive or 1466
exemplary damages to persons similarly situated to the claimant 1467
and the severity of criminal penalties to which the manufacturer 1468
or supplier in question has been or is likely to be subjected. 1469

(C) ~~If~~ (1) Except as provided in division (C)(2) of this 1470
section, if a claimant alleges in a product liability claim that a 1471
drug or device caused harm to the claimant, the manufacturer of 1472
the drug or device shall not be liable for punitive or exemplary 1473
damages in connection with that product liability claim if the 1474
drug or device that allegedly caused the harm satisfies either of 1475
the following: 1476

(a) It was manufactured and labeled in relevant and material 1477
respects in accordance with the terms of an approval or license 1478
issued by the federal food and drug administration under the 1479
"Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 1480
U.S.C. 301-392, as amended, or the "Public Health Service Act," 58 1481
Stat. 682 (1944), 42 U.S.C. 201-300cc-15, as amended,~~unless it is~~ 1482
established. 1483

(b) It was an over-the-counter drug marketed pursuant to 1484
federal regulations, was generally recognized as safe and 1485
effective and as not being misbranded pursuant to the applicable 1486
federal regulations, and satisfied in relevant and material 1487

respects each of the conditions contained in the applicable 1488
regulations and each of the conditions contained in an applicable 1489
monograph. 1490

(2) Division (C)(1) of this section does not apply if the 1491
claimant establishes, by a preponderance of the evidence, that the 1492
manufacturer fraudulently and in violation of applicable 1493
regulations of the food and drug administration withheld from the 1494
food and drug administration information known to be material and 1495
relevant to the harm that the claimant allegedly suffered or 1496
misrepresented to the food and drug administration information of 1497
that type. ~~For~~ 1498

(3) For purposes of this division, "drug divisions (C) and 1499
(D) of this section: 1500

(a) "Drug" has the same meaning given to that term as in the 1501
"Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040, 1041 1502
(1938), 21 U.S.C. 321(g)(1), as amended. 1503

(b) "Federal regulations" means regulations of the United 1504
States food and drug administration that are adopted pursuant to 1505
the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 1506
21 U.S.C. 301-392, as amended, and that are set forth in Parts 1507
300, 400, 600, 800, and 1000 of Chapter I of Title 21 of the Code 1508
of Federal Regulations, 21 C.F.R. 300, 400, 600, 800, and 1000, as 1509
amended. 1510

(c) "Device" has the same meaning as in the "Federal Food, 1511
Drug, and Cosmetic Act," 52 Stat. 1040, 1041 (1938), 21 U.S.C. 1512
321(h), as amended. 1513

(D) If a claimant alleges in a product liability claim that a 1514
product other than a drug or device caused harm to the claimant, 1515
the manufacturer or supplier of the product shall not be liable 1516
for punitive or exemplary damages in connection with the claim if 1517
the manufacturer or supplier fully complied with all applicable 1518

government standards relative to the product's manufacture or 1519
construction, the product's design or formulation, adequate 1520
warnings or instructions, and representations when the product 1521
left the control of the manufacturer or supplier. 1522

(E) The bifurcated trial provisions of division (B) of 1523
section 2315.21 of the Revised Code, the ceiling on recoverable 1524
punitive or exemplary damages specified in division (D)(1) of that 1525
section, and the provisions of division (D)(3) of that section 1526
apply to awards of punitive or exemplary damages under this 1527
section. 1528

Sec. 2307.91. As used in sections 2307.91 to 2307.95 of the 1529
Revised Code: 1530

(A) "AMA guides to the evaluation of permanent impairment" 1531
means the American medical association's guides to the evaluation 1532
of permanent impairment (fifth edition 2000) as may be modified by 1533
the American medical association. 1534

(B) "Asbestos" means chrysotile, amosite, crocidolite, 1535
tremolite asbestos, anthophyllite asbestos, actinolite asbestos, 1536
and any of these minerals that have been chemically treated or 1537
altered. 1538

(C) "Asbestos claim" means any claim for damages, losses, 1539
indemnification, contribution, or other relief arising out of, 1540
based on, or in any way related to asbestos. "Asbestos claim" 1541
includes a claim made by or on behalf of any person who has been 1542
exposed to asbestos, or any representative, spouse, parent, child, 1543
or other relative of that person, for injury, including mental or 1544
emotional injury, death, or loss to person, risk of disease or 1545
other injury, costs of medical monitoring or surveillance, or any 1546
other effects on the person's health that are caused by the 1547
person's exposure to asbestos. 1548

(D) "Asbestosis" means bilateral diffuse interstitial 1549
fibrosis of the lungs caused by inhalation of asbestos fibers. 1550

(E) "Board-certified internist" means a medical doctor who is 1551
currently certified by the American board of internal medicine. 1552

(F) "Board-certified oncologist" means a medical doctor who 1553
is currently certified by the American board of internal medicine 1554
in the subspecialty of medical oncology. 1555

(G) "Board-certified pathologist" means a medical doctor who 1556
is currently certified by the American board of pathology. 1557

(H) "Board-certified pulmonary specialist" means a medical 1558
doctor who is currently certified by the American board of 1559
internal medicine in the subspecialty of pulmonary medicine. 1560

(I) "Certified B-reader" means an individual qualified as a 1561
"final" or "B-reader" as defined in 42 C.F.R. section 37.51(b), as 1562
amended. 1563

(J) "Civil action" means all suits or claims of a civil 1564
nature in state or federal court, whether cognizable as cases at 1565
law or in equity or admiralty. The term "civil action" does not 1566
include an action relating to any workers' compensation law. 1567

(K) "Exposed person" means any person whose exposure to 1568
asbestos or to asbestos-containing products is the basis for an 1569
asbestos claim. 1570

(L) "Exposure years" means the following: 1571

(1) Each single year of exposure prior to 1972 will be 1572
counted as one year. 1573

(2) Each single year of exposure from 1972 through 1979 will 1574
be counted as one-half year. 1575

(3) Exposure after 1979 will not be counted, except that each 1576
year from 1972 forward for which the plaintiff can establish 1577

exposure exceeding the occupational safety and health 1578
administration (OSHA) limit for eight-hour time-weighted average 1579
airborne concentration for a substantial portion of the year will 1580
count as one year. 1581

(M) "FEV1" means forced expiratory volume in the first 1582
second, which is the maximal volume of air expelled in one second 1583
during performance of simple spirometric tests. 1584

(N) "FVC" means forced vital capacity that is maximal volume 1585
of air expired with maximum effort from a position of full 1586
inspiration. 1587

(O) "ILO scale" means the system for the classification of 1588
chest x-rays set forth in the international labour office's 1589
guidelines for the use of ILO international classification of 1590
radiographs of pneumoconioses (1980), as amended. 1591

(P) "Lung cancer" means a malignant tumor in which the 1592
primary site of origin of the cancer is inside the lungs, but that 1593
term does not include an asbestos claim based upon mesothelioma. 1594

(Q) "Mesothelioma" means a malignant tumor with a primary 1595
site of origin in the pleura or the peritoneum, which has been 1596
diagnosed by a board-certified pathologist, using standardized and 1597
accepted criteria of microscopic morphology and appropriate 1598
staining techniques. 1599

(R) "Nonmalignant condition" means a condition that is caused 1600
or may be caused by asbestos other than a diagnosed cancer. 1601

(S) "Nonsmoker" means the exposed person has not smoked 1602
cigarettes or used any other tobacco products within the last 1603
fifteen years. 1604

(T) "Pathological evidence of asbestosis" means a statement 1605
by a board-certified pathologist that more than one representative 1606
section of lung tissue uninvolved with any other disease process 1607

demonstrates a pattern of peribronchiolar or parenchymal scarring 1608
in the presence of characteristic asbestos bodies and that there 1609
is no other more likely explanation for the presence of the 1610
fibrosis. 1611

(U) "Physical impairment" means a nonmalignant condition that 1612
meets the minimum requirements of division (B) of section 2307.92 1613
of the Revised Code, lung cancer that meets the minimum 1614
requirements of division (C) of section 2307.92 of the Revised 1615
Code, or cancer of the colon, rectum, larynx, pharynx, esophagus, 1616
or stomach that meets the minimum requirements of division (D) of 1617
section 2307.92 of the Revised Code. 1618

(V) "Predicted lower limit of normal" means the fifth 1619
percentile of healthy populations based on age, height, and 1620
gender, as referenced in the AMA guides to the evaluation of 1621
permanent impairment. 1622

(W) "Qualified physician" means a medical doctor who is 1623
providing a diagnosis for purposes of constituting prima-facie 1624
evidence of an exposed person's physical impairment that meets the 1625
requirements of section 2307.92 of the Revised Code and who meets 1626
the following requirements: 1627

(1) The medical doctor is a board-certified internist, 1628
pulmonary specialist, oncologist, or pathologist. 1629

(2) The medical doctor is actually treating or has treated 1630
the exposed person and has or had a doctor-patient relationship 1631
with the person. 1632

(3) The medical doctor spends not more than ten per cent of 1633
the medical doctor's professional practice time in providing 1634
consulting or expert services in connection with actual or 1635
potential civil actions, and the medical doctor's medical group, 1636
professional corporation, clinic, or other affiliated group earns 1637
not more than twenty per cent of its revenues from providing those 1638

services. 1639

(4) The medical doctor is currently licensed to practice and 1640
actively practices in the state where the plaintiff's civil action 1641
was filed. 1642

(5) The medical doctor receives or received payment for the 1643
treatment of the exposed person from that person's HMO or other 1644
medical provider. 1645

(X) "Radiological evidence of asbestosis" means a chest x-ray 1646
showing small, irregular opacities (s, t) graded by a certified 1647
B-reader as at least 1/1 on the ILO scale. 1648

(Y) "Radiological evidence of diffuse pleural thickening" 1649
means a chest x-ray showing bilateral pleural thickening graded by 1650
a certified B-reader as at least B2 on the ILO scale and blunting 1651
of at least one costophrenic angle. 1652

(Z) "Smoker" means a person who has smoked cigarettes or 1653
other tobacco products within the last fifteen years. 1654

(AA) "Spirometry" means the measurement of volume of air 1655
inhaled or exhaled by the lung. 1656

(BB) "Substantial contributing factor" means all of the 1657
following: 1658

(1) Exposure to asbestos is the predominate cause of the 1659
physical impairment alleged in the asbestos claim. 1660

(2) The exposure to asbestos took place on a regular basis 1661
over an extended period of time and in close proximity to the 1662
exposed person. 1663

(3) A qualified physician has determined with a reasonable 1664
degree of medical certainty that the physical impairment of the 1665
exposed person would not have occurred but for the asbestos 1666
exposures. 1667

(CC) "Veterans' benefit program" means any program for 1668
benefits in connection with military service administered by the 1669
veterans' administration under title 38 of the United States Code. 1670

(DD) "Workers' compensation law" means Chapters 4121., 4123., 1671
4127., and 4131. of the Revised Code. 1672

Sec. 2307.92. (A) Physical impairment of the exposed person, 1673
to which the person's exposure to asbestos is a substantial 1674
contributing factor, shall be an essential element of an asbestos 1675
claim. 1676

(B) No person shall bring or maintain a civil action alleging 1677
an asbestos claim based on a nonmalignant condition in the absence 1678
of a prima-facie showing that the exposed person has a physical 1679
impairment, that the physical impairment is a result of a medical 1680
condition, and that the person's exposure to asbestos is a 1681
substantial contributing factor to the medical condition. That 1682
prima-facie showing shall include all of the following minimum 1683
requirements: 1684

(1) Evidence verifying that a qualified physician has taken a 1685
detailed occupational and exposure history of the exposed person 1686
from the exposed person or, if that person is deceased, from the 1687
person who is most knowledgeable about the exposures that form the 1688
basis of the asbestos claim for a nonmalignant condition, 1689
including all of the following: 1690

(a) All of the exposed person's principal places of 1691
employment and exposures to airborne contaminants; 1692

(b) Whether each place of employment involved exposures to 1693
airborne contaminants, including, but not limited to, asbestos 1694
fibers or other disease causing dusts, that can cause pulmonary 1695
impairment and, if that type of exposure is involved, the nature, 1696
duration, and level of the exposure. 1697

(2) Evidence verifying that a qualified physician has taken a 1698
detailed medical and smoking history of the exposed person, 1699
including a thorough review of the exposed person's past and 1700
present medical problems and the most probable causes of those 1701
medical problems; 1702

(3) A diagnosis by a qualified physician, based on a medical 1703
examination and pulmonary function testing of the exposed person, 1704
that all of the following apply to the exposed person: 1705

(a) The exposed person has a permanent respiratory impairment 1706
rating of at least class 2 as defined by and evaluated pursuant to 1707
the AMA guides to the evaluation of permanent impairment. 1708

(b) The exposed person has asbestosis or diffuse pleural 1709
thickening, based at a minimum on radiological or pathological 1710
evidence of asbestosis or radiological evidence of diffuse pleural 1711
thickening. 1712

(c) The asbestosis or diffuse pleural thickening described in 1713
division (B)(3)(b) of this section, rather than solely chronic 1714
obstructive pulmonary disease, is a substantial contributing 1715
factor to the exposed person's physical impairment, based at a 1716
minimum on a determination that the exposed person has either of 1717
the following: 1718

(i) A forced vital capacity below the predicted lower limit 1719
of normal and a ratio of FEV1 to FVC that is equal to or greater 1720
than the predicted lower limit of normal; 1721

(ii) A chest x-ray showing small, irregular opacities (s, t) 1722
graded by a certified B-reader at least 2/1 on the ILO scale. 1723

(C) No person shall bring or maintain a civil action alleging 1724
an asbestos claim based upon lung cancer in the absence of a 1725
prima-facie showing of all of the following minimum requirements: 1726

(1) A diagnosis by a board-certified pathologist, 1727

board-certified pulmonary specialist, or board-certified 1728
oncologist that the exposed person has primary lung cancer and 1729
that exposure to asbestos is a substantial contributing factor to 1730
that cancer; 1731

(2) Evidence that is sufficient to demonstrate that at least 1732
ten years have elapsed between the date of the exposed person's 1733
first exposure to asbestos and the date of diagnosis of the 1734
exposed person's primary lung cancer; 1735

(3) Either of the following: 1736

(a) In the case of an exposed person who is a nonsmoker, 1737
either of the following requirements: 1738

(i) Radiological or pathological evidence of asbestosis or 1739
radiological evidence of diffuse pleural thickening; 1740

(ii) Evidence of the exposed person's occupational exposure 1741
to asbestos for any of the applicable minimum exposure periods in 1742
the occupations as specified in divisions (D)(3)(b)(i), (ii), and 1743
(iii) of this section. 1744

(b) In the case of an exposed person who is a smoker, both of 1745
the requirements specified in divisions (C)(3)(a)(i) and (ii) of 1746
this section. 1747

(D) No person shall bring or maintain a civil action alleging 1748
an asbestos claim based upon cancer of the colon, rectum, larynx, 1749
pharynx, esophagus, or stomach, in the absence of a prima-facie 1750
showing of all of the following minimum requirements: 1751

(1) A diagnosis by a board-certified pathologist, 1752
board-certified pulmonary specialist, or board-certified 1753
oncologist, whichever is appropriate for the type of cancer 1754
claimed, that the exposed person has primary cancer of the colon, 1755
rectum, larynx, pharynx, esophagus, or stomach and that exposure 1756
to asbestos was a substantial contributing factor to that 1757

particular cancer; 1758

(2) Evidence that is sufficient to demonstrate that at least 1759
ten years have elapsed between the date of the exposed person's 1760
first exposure to asbestos and the date of diagnosis of the 1761
exposed person's particular cancer; 1762

(3) Either of the following requirements: 1763

(a) Radiological or pathological evidence of asbestos or 1764
radiological evidence of diffuse pleural thickening; 1765

(b) Evidence of the exposed person's occupational exposure to 1766
asbestos for any of the following applicable minimum exposure 1767
periods in the specified occupations: 1768

(i) Five exposure years for insulators, shipyard workers, 1769
workers in manufacturing plants handling raw asbestos, 1770
boilermakers, shipfitters, steamfitters, or other trades 1771
performing similar functions; 1772

(ii) Ten exposure years for utility and power house workers, 1773
secondary manufacturing workers, or other trades performing 1774
similar functions; 1775

(iii) Fifteen exposure years for general construction, 1776
maintenance workers, chemical and refinery workers, marine engine 1777
room personnel and other personnel on vessels, stationary 1778
engineers and firemen, railroad engine repair workers, or other 1779
trades performing similar functions. 1780

(E) No prima-facie showing is required in a civil action 1781
alleging an asbestos claim based upon mesothelioma. 1782

(F) Evidence relating to physical impairment under this 1783
section, including pulmonary function testing and diffusing 1784
studies, shall comply with the technical recommendations for 1785
examinations, testing procedures, quality assurance, quality 1786
control, and equipment incorporated in the AMA guides to the 1787

evaluation of permanent impairment and reported as set forth in 20 1788
C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and 1789
the interpretive standards set forth in the official statement of 1790
the American thoracic society entitled "lung function testing: 1791
selection of reference values and interpretive strategies" as 1792
published in American review of respiratory disease, 1793
1991:144:1202-1218. 1794

(G) All of the following apply to the presentation of 1795
prima-facie evidence that meets the requirements of division (B), 1796
(C), or (D) of this section: 1797

(1) It does not result in any presumption at trial that the 1798
exposed person has a physical impairment that is caused by an 1799
asbestos-related condition. 1800

(2) It is not conclusive as to the liability of any defendant 1801
in the case. 1802

(3) It is not admissible at trial. 1803

Sec. 2307.93. The plaintiff in any civil action who alleges 1804
an asbestos claim shall file together with the complaint or other 1805
initial pleading a written report and supporting test results 1806
constituting prima-facie evidence of the exposed person's physical 1807
impairment that meets the minimum requirements of division (B), 1808
(C), or (D) of section 2307.92 of the Revised Code, whichever is 1809
applicable. With respect to any asbestos claim that is pending on 1810
the effective date of this section, the plaintiff shall file the 1811
written report and supporting test results described in this 1812
section sixty days following the effective date of this section or 1813
thirty days prior to trial, whichever is earlier. The defendant in 1814
the case shall be afforded a reasonable opportunity to challenge 1815
the adequacy of the proffered prima-facie evidence of the physical 1816
impairment. The court shall dismiss the plaintiff's claim without 1817

prejudice upon a finding of failure to make the prima-facie 1818
showing required by division (B), (C), or (D) of section 2307.92 1819
of the Revised Code. 1820

Sec. 2307.94. (A) Notwithstanding any other provision of the 1821
Revised Code, with respect to any asbestos claim based upon a 1822
nonmalignant condition that is not barred as of the effective date 1823
of this section, the period of limitations shall not begin to run 1824
until the exposed person discovers, or through the exercise of 1825
reasonable diligence should have discovered, that the person has a 1826
physical impairment due to a nonmalignant condition. 1827

(B) An asbestos claim that arises out of a nonmalignant 1828
condition shall be a distinct cause of action from an asbestos 1829
claim relating to the same exposed person that arises out of 1830
asbestos-related cancer. No damages shall be awarded for fear or 1831
risk of cancer in any civil action asserting only an asbestos 1832
claim for a nonmalignant condition. 1833

(C) No settlement of an asbestos claim for a nonmalignant 1834
condition that is concluded after the effective date of this 1835
section shall require, as a condition of settlement, the release 1836
of any future claim for asbestos-related cancer. 1837

Sec. 2307.95. Sections 2307.91 to 2307.95 of the Revised Code 1838
shall not affect the scope or operation of any workers' 1839
compensation law or veterans' benefit program or the exclusive 1840
remedy of subrogation under the provisions of that law or program 1841
and shall not authorize any lawsuit that is barred by any 1842
provision of any workers' compensation law. 1843

Sec. 2307.96. (A) As used in this section and section 2307.97 1844
of the Revised Code: 1845

(1) "Asbestos" has the same meaning as in section 2307.91 of 1846
the Revised Code. 1847

(2) "Asbestos claim" means any claim for damages, losses, 1848
indemnification, contribution, or other relief arising out of, 1849
based on, or in any way related to asbestos. "Asbestos claim" 1850
includes any of the following: 1851

(a) A claim made by or on behalf of any person who has been 1852
exposed to asbestos, or any representative, spouse, parent, child, 1853
or other relative of that person, for injury, including mental or 1854
emotional injury, death, or loss to person, risk of disease or 1855
other injury, costs of medical monitoring or surveillance, or any 1856
other effects on the person's health that are caused by the 1857
person's exposure to asbestos; 1858

(b) A claim for damage or loss to property that is caused by 1859
the installation, presence, or removal of asbestos. 1860

(3)(a) "Successor" means a domestic corporation or a 1861
subsidiary of a domestic corporation that acquired any assets of 1862
or the stock of a foreign business corporation, if all of the 1863
following apply: 1864

(a) The transaction occurred on or before July 29, 1977. 1865

(b) The purchasing domestic corporation paid less than five 1866
million dollars for the acquisition. 1867

(c) The principal place of business of the foreign 1868
corporation was located outside the state of Ohio. 1869

(4)(a) "Successor asbestos-related liabilities," in relation 1870
to an asset purchase or a stock purchase by a successor means any 1871
liabilities, whether known or unknown, asserted or unasserted, 1872
absolute or contingent, accrued or unaccrued, liquidated or 1873
unliquidated, or due or to become due, if the liabilities are 1874
related in any way to asbestos claims and are assumed or incurred 1875

by a successor as a result of or in connection with the asset 1876
purchase or stock purchase, merger, or consolidation, or the 1877
agreement of the asset purchase or stock purchase. 1878

(b) "Successor asbestos-related liabilities" includes any 1879
liabilities described in division (A)(4)(a) of this section that, 1880
after the effective date of the asset purchase or stock purchase, 1881
are paid, otherwise discharged, committed to be paid, or committed 1882
to be otherwise discharged by or on behalf of the successor, or by 1883
or on behalf of a transferor, in connection with any judgment, 1884
settlement, or other discharge of those liabilities in this state 1885
or another jurisdiction. 1886

(5) "Transferor" means a foreign corporation or its 1887
shareholders from which successor asbestos-related liabilities are 1888
assumed or incurred by the successor. 1889

(B)(1) Except as otherwise provided in division (B)(2) of 1890
this section, the cumulative successor asbestos-related 1891
liabilities of a successor shall be limited to the fair market 1892
value of the acquired assets or stock as determined on the 1893
effective date of the asset purchase or stock purchase, merger, or 1894
consolidation. 1895

(2) If a transferor had assumed or incurred successor 1896
asbestos-related liabilities in connection with a prior asset 1897
purchase, stock purchase, merger, or consolidation involving a 1898
prior transferor, the successor asbestos-related liabilities of 1899
the successor described in division (B)(1) of this section shall 1900
be limited to the fair market value of the previously acquired 1901
assets or stock as determined on the effective date of the prior 1902
asset purchase, stock purchase, merger, or consolidation. 1903

(3) The successor described in division (B)(1) or (2) of this 1904
section shall have no responsibility for any successor 1905
asbestos-related liabilities in excess of the limitation of those 1906

liabilities as described in the applicable division. 1907

(C)(1) Except as otherwise provided in division (C)(2) of 1908
this section, the assets of a successor shall be exempt from 1909
restraint, attachment, or execution on any judgment entered in 1910
this state or another jurisdiction related to any claim for 1911
successor asbestos-related liabilities if the cumulative amounts 1912
of those liabilities that, after the effective date of the asset 1913
purchase or stock purchase that is covered by division (B) of this 1914
section, are paid or committed to be paid by or on behalf of the 1915
successor, or by or on behalf of the transferor, in connection 1916
with any judgment, settlement, or other discharge of claims of 1917
asbestos-related liabilities exceed the fair market value of the 1918
assets or stock as determined on the effective date of the asset 1919
purchase or stock purchase, merger, or consolidation. 1920

(2) If a transferor had assumed or incurred successor 1921
asbestos-related liabilities in connection with a prior asset 1922
purchase, stock purchase, merger, or consolidation involving a 1923
prior transferor, the assets of the successor described in 1924
division (C)(1) of this section shall be exempt from restraint, 1925
attachment, or execution on any judgment entered in this state or 1926
another jurisdiction related to any claim for successor 1927
asbestos-related liabilities if the cumulative amounts of those 1928
liabilities that, after the effective date of the prior asset 1929
purchase, stock purchase, merger, or consolidation, are paid or 1930
committed to be paid by or on behalf of the successor, or by or on 1931
behalf of the prior transferor, in connection with any judgment, 1932
settlement, or other discharge of claims of asbestos-related 1933
liabilities, exceed the fair market value of the previously 1934
acquired assets or stock as determined on the effective date of 1935
the prior asset purchase, stock purchase, merger, or 1936
consolidation. 1937

(D)(1) A successor may establish the fair market value of 1938

total assets under division (B) or (C) of this section by means of 1939
any method that is reasonable under the circumstances, including 1940
by reference to the going-concern value of those assets, to the 1941
purchase price attributable to or paid for the assets in an arm's 1942
length transaction, or, in the absence of other readily available 1943
information from which fair market value can be determined, to the 1944
value of those assets recorded on a balance sheet. Total assets 1945
shall include intangible assets. A showing by the successor of a 1946
reasonable determination of the fair market value of total assets 1947
is prima-facie evidence of the fair market value of those assets. 1948

(2) After a successor has established a reasonable 1949
determination of the fair market value of total assets under 1950
division (D)(1) of this section, a claimant that disputes that 1951
determination of the fair market value has the burden of 1952
establishing a different fair market value of those assets. 1953

(3) For the purpose of adjusting the limitations set forth in 1954
division (B) or (C) of this section to account for the passage of 1955
time, the fair market value of total assets on the effective date 1956
of the applicable asset purchase or stock purchase under the 1957
applicable division shall be increased annually, at the rate equal 1958
to the prime rate as listed in the first edition of the Wall 1959
Street Journal published for each calendar year since the asset 1960
purchase or stock purchase plus one per cent, not compounded, 1961
until the earlier of either of the following: 1962

(a) The date of the judgment, settlement, or other discharge 1963
of claims of successor asbestos-related liabilities to which the 1964
limitations in division (B) or (C) of this section are being 1965
applied; 1966

(b) The date on which the adjusted fair market value of total 1967
assets under division (D)(3) of this section is first exceeded by 1968
the cumulative amounts of successor asbestos-related liabilities 1969

that are paid or committed to be paid by or on behalf of the 1970
successor, or by or on behalf of a transferor, after the effective 1971
date of the asset purchase or stock purchase in connection with 1972
any judgment, settlement, or other discharge of the successor 1973
asbestos-related liabilities. 1974

(E)(1) The limitations set forth in divisions (B) and (C) of 1975
this section shall apply to the following: 1976

(a) All asbestos claims, including asbestos claims that are 1977
pending on the effective date of this section, and all litigation 1978
involving asbestos claims, including litigation that is pending on 1979
the effective date of this section; 1980

(b) Successors of a successor to which this section applies. 1981

(2) The limitations set forth in divisions (B) and (C) of 1982
this section do not apply to any of the following: 1983

(a) Workers' compensation benefits that are paid by or on 1984
behalf of an employer to an employee pursuant to any provision of 1985
Chapter 4121., 4123., 4127., or 4131. of the Revised Code or 1986
comparable workers' compensation law of another jurisdiction; 1987

(b) Any claim against a successor that does not constitute a 1988
claim for a successor asbestos-related liability; 1989

(c) An insurance corporation; 1990

(d) Any obligations arising under the "National Labor 1991
Relations Act," 49 Stat. 449, 29 U.S.C. 151 et seq., as amended, 1992
or under any collective bargaining agreement. 1993

Sec. 2307.97. (A) A holder of shares, an owner of any 1994
beneficial interest in shares, or a subscriber for shares whose 1995
subscription has been accepted, or any affiliate or holding 1996
company of that holder, owner, or subscriber or of the 1997
corporation, shall be under no obligation to, and shall have no 1998

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liability to, the corporation or to any person with respect to any obligation or liability of the corporation relating in any way to asbestos claims on the basis that the holder, owner, subscriber, affiliate, or holding company described in division (A) of this section controlled the corporation or is or was the alter ego of the corporation, or on the basis of actual fraud or constructive fraud, a sham to perpetrate a fraud, a fraudulent conveyance, piercing the corporate veil, or any other similar theory, unless the person demonstrates that the holder, owner, subscriber, affiliate, or holding company caused the corporation to be used for the purpose of perpetrating and did perpetrate an actual fraud on the person primarily for the direct pecuniary benefit of the holder, owner, subscriber, affiliate, or holding company, and then only to the extent of that direct pecuniary benefit.

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(B) Any liability of the holder, owner, or subscriber of shares of a corporation described in division (A) of this section or any affiliate or holding company of that holder, owner, or subscriber or of the corporation for an obligation or liability that is limited by that division is exclusive and preempts any other obligation or liability imposed upon a holder, owner, or subscriber of shares of a corporation described in that division or any affiliate or holding company of that holder, owner, or subscriber or of the corporation for that obligation or liability under common law or otherwise.

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

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~~(A)(1)~~ The plaintiff concisely ~~must~~ shall state the plaintiff's claim, and briefly may state the plaintiff's evidence

to sustain it. 2029

~~(B)~~(2) The defendant ~~must then~~ briefly shall state the 2030
defendant's defense, and briefly may state the defendant's 2031
evidence in support of it. 2032

~~(C)~~(3) The party who would be defeated if no evidence were 2033
offered on either side, first, ~~must~~ shall produce that party's 2034
evidence, and the adverse party ~~must~~ shall then produce the 2035
adverse party's evidence. 2036

~~(D)~~(4) The parties then shall be confined to rebutting 2037
evidence, unless the court for good reasons, and in the 2038
furtherance of justice, permits them to offer evidence in their 2039
original cases. 2040

~~(E)~~(5) When the evidence is concluded, either party may 2041
present written instructions to the court on matters of law and 2042
request them to be given to the jury, ~~which instructions shall be~~ 2043
~~given or refused by the.~~ The court shall give or refuse to give 2044
the written instructions to the jury before the argument to the 2045
jury is commenced. 2046

~~(F)~~(6) The parties then may submit or argue the case to the 2047
jury. The party required first to produce that party's evidence 2048
shall have the opening and closing arguments. If several 2049
defendants, ~~having~~ have separate defenses, ~~and~~ appear by different 2050
counsel, the court shall arrange their relative order. 2051

~~(G)~~(7) The court, after the argument is concluded, and before 2052
proceeding with other business, shall charge the jury. ~~Any charge~~ 2053
~~shall be reduced to writing by the~~ The court shall reduce a charge 2054
to writing if either party, before the argument to the jury is 2055
commenced, requests it. ~~Such charge may be examined by the~~ The 2056
parties may examine that charge before any closing argument is 2057
made by any of the parties. ~~A If a charge or instruction, when so~~ 2058
is written and given, as prescribed in this division, the court 2059

shall not ~~be orally qualified, modified~~ qualify, modify, or in any
manner ~~explained~~ explain the charge or instruction to the jury ~~by~~
~~the court~~. All written charges and instructions shall be taken by
the jurors in their retirement, shall be returned with their
verdict into court, and shall remain on file with the papers of
the case.

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

As used in this division, "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, but does not include a civil
action for damages for breach of contract or another agreement
between persons.

Division (B) of 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
amendment, in which division (B) of 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 amendment.

Sec. 2315.21. (A) As used in this section:

(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.

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

(3) "Home" has the same meaning as in section 3721.10 of the
Revised Code.

(4) "Employer" includes, but is not limited to, a parent,
subsidiary, affiliate, division, or department of the employer. If
the employer is an individual, the individual shall be considered
an employer under this section only if the subject of the tort
action is related to the individual's capacity as an employer.

(5) "Small employer" means an employer who employs not more
than five hundred persons on a full-time permanent basis.

(B)(1) In a tort action in which a plaintiff makes a claim
for compensatory damages and a claim for punitive or exemplary
damages, upon the motion of any party, the trial of the tort
action shall be bifurcated as follows:

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

(b) If the trier of fact determines in the initial stage of
the trial that the plaintiff is entitled to recover compensatory
damages for the injury or loss to person or property from the
defendant, evidence may be presented in the second stage of the
trial, and a determination by the trier of fact shall be made,
with respect to whether the plaintiff additionally is entitled to
recover punitive or exemplary damages for the injury or loss to

person or property from the defendant.

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

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(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.

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(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:

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(1) The actions or omissions of that defendant demonstrate malice, 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.

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(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.

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~~(C)~~(D)(1) In a tort action, the trier of fact shall determine 2153
the liability of any defendant for punitive or exemplary damages 2154
and the amount of those damages. 2155

(2) Except as provided in division (D)(6) of this section, 2156
both of the following apply regarding any award of punitive or 2157
exemplary damages in a tort action: 2158

(a) The court shall not enter judgment for punitive or 2159
exemplary damages in excess of the greater of the amount of the 2160
compensatory damages awarded to the plaintiff from that defendant 2161
or one hundred thousand dollars, as determined pursuant to 2162
division (B)(2) or (3) of this section. 2163

(b) If the defendant is a small employer, the court shall not 2164
enter judgment for punitive or exemplary damages in excess of the 2165
lesser of the amount of the compensatory damages awarded to the 2166
plaintiff from the defendant or one hundred thousand dollars, as 2167
determined pursuant to division (B)(2) or (3) of this section. 2168

(3) No award of prejudgment interest under division (C)(1) of 2169
section 1343.03 of the Revised Code shall include any prejudgment 2170
interest on punitive or exemplary damages found by the trier of 2171
fact. 2172

(4) In a tort action, the burden of proof shall be upon a 2173
plaintiff in question, by clear and convincing evidence, to 2174
establish that the plaintiff is entitled to recover punitive or 2175
exemplary damages. 2176

(5)(a) In any tort action, except as provided in division 2177
(D)(5)(b) or (6) of this section, punitive or exemplary damages 2178
shall not be awarded against a defendant if that defendant files 2179
with the court a certified judgment, judgment entries, or other 2180
evidence showing that punitive or exemplary damages have already 2181
been awarded and have been collected, in any state or federal 2182
court, against that defendant based on the same act or course of 2183

conduct that is alleged to have caused the injury or loss to 2184
person or property for which the plaintiff seeks compensatory 2185
damages and that the aggregate of those previous punitive or 2186
exemplary damage awards exceeds the maximum amount of punitive or 2187
exemplary damages that may be awarded under division (D)(2) of 2188
this section against that defendant in the tort action. 2189

(b) Notwithstanding division (D)(5)(a) of this section and 2190
except as provided in division (D)(6) of this section, punitive or 2191
exemplary damages may be awarded against a defendant in either of 2192
the following types of tort actions: 2193

(i) In subsequent tort actions involving the same act or 2194
course of conduct for which punitive or exemplary damages have 2195
already been awarded, if the court determines by clear and 2196
convincing evidence that the plaintiff will offer new and 2197
substantial evidence of previously undiscovered, additional 2198
behavior of a type described in division (C) of this section on 2199
the part of that defendant, other than the injury or loss for 2200
which the plaintiff seeks compensatory damages. In that case, the 2201
court shall make specific findings of fact in the record to 2202
support its conclusion. The court shall reduce the amount of any 2203
punitive or exemplary damages otherwise awardable pursuant to this 2204
section by the sum of the punitive or exemplary damages awards 2205
previously rendered against that defendant in any state or federal 2206
court. The court shall not inform the jury about the court's 2207
determination and action under division (D)(5)(b)(i) of this 2208
section. 2209

(ii) In subsequent tort actions involving the same act or 2210
course of conduct for which punitive or exemplary damages have 2211
already been awarded, if the court determines by clear and 2212
convincing evidence that the total amount of prior punitive or 2213
exemplary damages awards was totally insufficient to punish that 2214
defendant's behavior of a type described in division (C) of this 2215

2216 section and to deter that defendant and others from similar
2217 behavior in the future. In that case, the court shall make
2218 specific findings of fact in the record to support its conclusion.
2219 The court shall reduce the amount of any punitive or exemplary
2220 damages otherwise awardable pursuant to this section by the sum of
2221 the punitive or exemplary damages awards previously rendered
2222 against that defendant in any state or federal court. The court
2223 shall not inform the jury about the court's determination and
2224 action under division (D)(5)(b)(ii) of this section.

2225 (6) Division (D)(2) of this section does not apply to a tort
2226 action for bodily injury against a defendant who has been
2227 convicted of or pleaded guilty to a criminal offense that is a
2228 violation of section 2907.02, 2907.03, 2907.04, or 4511.19 of the
2229 Revised Code if the bodily injury that is the basis of the tort
2230 action was caused by that defendant.

2231 ~~(D)~~(E) This section does not apply to tort actions against
2232 the state in the court of claims, including, but not limited to,
2233 tort actions against a state university or college that are
2234 subject to division (B)(1) of section 3345.40 of the Revised Code,
2235 to tort actions against political subdivisions of this state that
2236 are commenced under or are subject to Chapter 2744. of the Revised
2237 Code, or to the extent that another section of the Revised Code
2238 expressly provides any of the following:

2239 (1) Punitive or exemplary damages are recoverable from a
2240 defendant in question in a tort action on a basis other than that
2241 the actions or omissions of that defendant demonstrate malice,
2242 aggravated or egregious fraud, ~~oppression,~~ or insult, or on a
2243 basis other than that the defendant in question as principal or
2244 master knowingly authorized, participated in, or ratified actions
2245 or omissions of an agent or servant that so demonstrate.

2246 (2) Punitive or exemplary damages are recoverable from a

defendant in question in a tort action irrespective of whether the 2247
plaintiff in question has adduced proof of actual damages. 2248

(3) The burden of proof upon a plaintiff in question to 2249
recover punitive or exemplary damages from a defendant in question 2250
in a tort action is one other than clear and convincing evidence. 2251

(4) Punitive or exemplary damages are not recoverable from a 2252
defendant in question in a tort action. 2253

~~(E)~~(F) When determining the amount of an award of punitive or 2254
exemplary damages against either a home or a residential facility 2255
licensed under section 5123.19 of the Revised Code, the trier of 2256
fact shall consider all of the following: 2257

(1) The ability of the home or residential facility to pay 2258
the award of punitive or exemplary damages based on the home's or 2259
residential facility's assets, income, and net worth; 2260

(2) Whether the amount of punitive or exemplary damages is 2261
sufficient to deter future tortious conduct; 2262

(3) The financial ability of the home or residential 2263
facility, both currently and in the future, to provide 2264
accommodations, personal care services, and skilled nursing care. 2265

Sec. 2315.32. (A) Sections 2315.32 to 2315.36 of the Revised 2266
Code do not apply to ~~tort~~ actions ~~based on a product liability~~ 2267
~~claim~~ described in section 4113.03 of the Revised Code. 2268

(B) The contributory fault of the plaintiff may be asserted 2269
as an affirmative defense to a ~~negligence claim or to a tort claim~~ 2270
~~other than a negligence claim~~, except that the contributory fault 2271
of the plaintiff may not be asserted as an affirmative defense to 2272
an intentional tort claim. 2273

Sec. 2315.33. The contributory fault of a person does not bar 2274
the person as plaintiff from recovering damages that have directly 2275

and proximately resulted from the tortious conduct of one or more 2276
other persons, if the contributory fault of the plaintiff was not 2277
greater than the combined tortious conduct of all other persons 2278
from whom the plaintiff seeks recovery in this action and of all 2279
other persons from whom the plaintiff does not seek recovery in 2280
this action. The court shall diminish any compensatory damages 2281
recoverable by the plaintiff by an amount that is proportionately 2282
equal to the percentage of tortious conduct of the plaintiff as 2283
determined pursuant to section 2315.34 of the Revised Code. ~~This~~ 2284
~~section does not apply to actions described in section 4113.03 of~~ 2285
~~the Revised Code.~~ 2286

Sec. 2315.34. If contributory fault is asserted and 2287
established as an affirmative defense to a ~~negligence~~ tort claim, 2288
the court in a nonjury action shall make findings of fact, and the 2289
jury in a jury action shall return a general verdict accompanied 2290
by answers to interrogatories, that shall specify the following: 2291

(A) The total amount of the compensatory damages that would 2292
have been recoverable on that ~~negligence~~ tort claim but for the 2293
tortious conduct of the plaintiff; 2294

(B) The portion of the compensatory damages specified under 2295
division (A) of this section that represents economic loss; 2296

(C) The portion of the compensatory damages specified under 2297
division (A) of this section that represents noneconomic loss; 2298

(D) The percentage of tortious conduct attributable to all 2299
persons as determined pursuant to section 2307.23 of the Revised 2300
Code. 2301

Sec. 2315.36. If contributory fault is asserted as an 2302
affirmative defense to a ~~negligence~~ tort claim, if it is 2303
determined that the plaintiff was contributorily at fault and that 2304

contributory fault was a direct and proximate cause of the injury, 2305
death, or loss to person or property that is the subject of the 2306
tort action, and if the plaintiff is entitled to recover 2307
compensatory damages pursuant to section 2315.33 of the Revised 2308
Code from more than one party, after it makes findings of fact or 2309
after the jury returns its general verdict accompanied by answers 2310
to interrogatories as described in section 2315.34 of the Revised 2311
Code, the court shall enter a judgment that is in favor of the 2312
plaintiff and that imposes liability pursuant to section 2307.22 2313
of the Revised Code. 2314

Sec. 2323.41. (A) In any ~~civil tort~~ action ~~upon a medical,~~ 2315
~~dental, optometric, or chiropractic claim,~~ the defendant may 2316
introduce evidence of any amount payable as a benefit to the 2317
plaintiff as a result of the damages that result from an injury, 2318
death, or loss to person or property that is the subject of the 2319
claim upon which the action is based, except if the source of 2320
collateral benefits has a mandatory self-effectuating federal 2321
right of subrogation, a contractual right of subrogation, or a 2322
statutory right of subrogation. 2323

(B) If the defendant elects to introduce evidence described 2324
in division (A) of this section, the plaintiff may introduce 2325
evidence of any amount that the plaintiff has paid or contributed 2326
to secure the plaintiff's right to receive the benefits of which 2327
the defendant has introduced evidence. 2328

(C) A source of collateral benefits of which evidence is 2329
introduced pursuant to division (A) of this section shall not 2330
recover any amount against the plaintiff nor shall it be 2331
subrogated to the rights of the plaintiff against a defendant. 2332

(D) As used in this section, ~~"medical:~~ 2333

(1) "Tort action" means a civil action for damages for 2334

injury, death, or loss to person or property. "Tort action" 2335
includes a civil action upon a product liability claim or a civil 2336
action upon a medical claim, dental claim, optometric claim, or 2337
chiropractic claim. "Tort action" does not include a civil action 2338
for damages for a breach of contract or another agreement between 2339
persons. 2340

(2) "Medical claim," "dental claim," "optometric claim," and 2341
"chiropractic claim" have the same meanings as in section 2305.113 2342
of the Revised Code. 2343

(3) "Product liability claim" has the same meaning as in 2344
section 2307.71 of the Revised Code. 2345

Sec. 2323.43. (A) In a ~~civil tort~~ action ~~upon a medical,~~ 2346
~~dental, optometric, or chiropractic claim~~ to recover damages for 2347
injury, ~~death,~~ or loss to person or property, all of the following 2348
apply: 2349

(1) There shall not be any limitation on the amount of 2350
compensatory damages that ~~represent~~ represents the economic loss 2351
of the person who is awarded the damages in the ~~civil tort~~ action. 2352

(2) Except as otherwise provided in division (A)(3) of this 2353
section, the amount of compensatory damages that represents 2354
damages for noneconomic loss that is recoverable in a ~~civil tort~~ 2355
action under this section to recover damages for injury, ~~death,~~ or 2356
loss to person or property shall not exceed the greater of two 2357
hundred fifty thousand dollars or an amount that is equal to three 2358
times the ~~plaintiff's~~ economic loss, as determined by the trier of 2359
fact, of the plaintiff in that tort action to a maximum of three 2360
hundred fifty thousand dollars for each plaintiff in that tort 2361
action or a maximum of five hundred thousand dollars for each 2362
occurrence that is the basis of that tort action. 2363

(3) The amount recoverable for noneconomic loss in a ~~civil~~ 2364

tort action under this section may exceed the amount described in 2365
division (A)(2) of this section but shall not exceed five hundred 2366
thousand dollars for each plaintiff in that tort action or one 2367
million dollars for each occurrence that is the basis of that tort 2368
action if the noneconomic losses of the plaintiff in that tort 2369
action are for either of the following: 2370

(a) Permanent and substantial physical deformity, loss of use 2371
of a limb, or loss of a bodily organ system; 2372

(b) Permanent physical functional injury that permanently 2373
prevents the injured person from being able to independently care 2374
for self and perform life sustaining activities. 2375

(B) If a trial is conducted in a ~~civil tort~~ action ~~upon a~~ 2376
~~medical, dental, optometric, or chiropractic claim~~ to recover 2377
damages for injury, ~~death~~, or loss to person or property and a 2378
plaintiff prevails ~~with respect to~~ in that claim action, the court 2379
in a nonjury trial shall make findings of fact, and the jury in a 2380
jury trial shall return a general verdict accompanied by answers 2381
to interrogatories, that shall specify all of the following: 2382

(1) The total compensatory damages recoverable by the 2383
plaintiff; 2384

(2) The portion of the total compensatory damages that 2385
represents damages for economic loss; 2386

(3) The portion of the total compensatory damages that 2387
represents damages for noneconomic loss. 2388

(C)(1) After the trier of fact in a ~~civil tort~~ action ~~upon a~~ 2389
~~medical, dental, optometric, or chiropractic claim~~ to recover 2390
damages for injury, ~~death~~, or loss to person or property complies 2391
with division (B) of this section, the court shall enter a 2392
judgment in favor of the plaintiff for compensatory damages for 2393
economic loss in the amount determined pursuant to division (B)(2) 2394
of this section, and, subject to division (D)(1) of this section, 2395

the court shall enter a judgment in favor of the plaintiff for 2396
compensatory damages for noneconomic loss. In no event shall a 2397
judgment for compensatory damages for noneconomic loss exceed the 2398
maximum recoverable amount that represents damages for noneconomic 2399
loss as provided in divisions (A)(2) and (3) of this section. 2400
Division (A) of this section shall be applied in a jury trial only 2401
after the jury has made its factual findings and determination as 2402
to the damages. 2403

(2) Prior to the trial in the ~~civil~~ tort action, any party 2404
may seek summary judgment with respect to the nature of the 2405
alleged injury or loss to person or property, seeking a 2406
determination of the damages as described in division (A)(2) or 2407
(3) of this section. 2408

(D)(1) A court of common pleas has no jurisdiction to enter 2409
judgment on an award of compensatory damages for noneconomic loss 2410
in excess of the limits set forth in this section. 2411

(2) If the trier of fact is a jury, the court shall not 2412
instruct the jury with respect to the limit on compensatory 2413
damages for noneconomic loss described in divisions (A)(2) and (3) 2414
of this section, and neither counsel for any party nor a witness 2415
shall inform the jury or potential jurors of that limit. 2416

(E) Any excess amount of compensatory damages for noneconomic 2417
loss that is greater than the applicable amount specified in 2418
division (A)(2) or (3) of this section shall not be reallocated to 2419
any other tortfeasor beyond the amount of compensatory damages 2420
that that tortfeasor would otherwise be responsible for under the 2421
laws of this state. 2422

(F)(1) If pursuant to a contingency fee agreement between an 2423
attorney and a plaintiff in a civil action upon a medical claim, 2424
dental claim, optometric claim, or chiropractic claim, the amount 2425
of the attorney's fees exceed the applicable amount of the limits 2426

on compensatory damages for noneconomic loss as provided in 2427
division (A)(2) or (3) of this section, the attorney shall make an 2428
application in the probate court of the county in which the civil 2429
action was commenced or in which the settlement was entered. The 2430
application shall contain a statement of facts, including the 2431
amount to be allocated to the settlement of the claim, the amount 2432
of the settlement or judgment that represents the compensatory 2433
damages for economic loss and noneconomic loss, the relevant 2434
provision in the contingency fee agreement, and the dollar amount 2435
of the attorney's fees under the contingency fee agreement. The 2436
application shall include the proposed distribution of the amount 2437
of the judgment or settlement. 2438

(2) The attorney shall give written notice of the hearing and 2439
a copy of the application under division (F)(1) of this section to 2440
all interested persons who have not waived notice of the hearing. 2441
Notwithstanding the waivers and consents of the interested 2442
persons, the probate court shall retain jurisdiction over the 2443
settlement, allocation, and distribution of the claim. 2444

(3) The application under division (F)(1) of this section 2445
shall state the arrangements, if any, that have been made with 2446
respect to the attorney's fees. The attorney's fees shall be 2447
subject to the approval of the probate court. 2448

(G) This section does not apply to any of the following: 2449

(1) ~~Civil Tort~~ actions ~~upon a medical, dental, optometric, or~~ 2450
~~chiropractic claim~~ that are brought against the state in the court 2451
of claims, including, but not limited to, those actions in which a 2452
state university or college is a defendant and to which division 2453
(B)(3) of section 3345.40 of the Revised Code applies; 2454

(2) ~~Civil Tort~~ actions ~~upon a medical, dental, optometric, or~~ 2455
~~chiropractic claim~~ that are brought against political subdivisions 2456
of this state and that are commenced under or are subject to 2457

Chapter 2744. of the Revised Code. Division (C) of section 2744.05 2458
of the Revised Code applies to recoverable damages in those 2459
actions; 2460

(3) Wrongful death actions brought pursuant to Chapter 2125. 2461
of the Revised Code. 2462

(H) As used in this section: 2463

(1) "Economic loss" means any of the following types of 2464
pecuniary harm: 2465

(a) All wages, salaries, or other compensation lost as a 2466
result of an injury, ~~death~~, or loss to person or property that is 2467
a subject of a civil tort action ~~upon a medical, dental,~~ 2468
~~optometric, or chiropractic claim;~~ 2469

(b) All expenditures for medical care or treatment, 2470
rehabilitation services, or other care, treatment, services, 2471
products, or accommodations as a result of an injury, ~~death~~, or 2472
loss to person or property that is a subject of a civil tort 2473
action ~~upon a medical, dental, optometric, or chiropractic claim;~~ 2474

(c) Any other expenditures incurred as a result of an injury, ~~death~~, 2475
or loss to person or property that is a subject of a civil 2476
tort action ~~upon a medical, dental, optometric, or chiropractic~~ 2477
~~claim~~, other than attorney's fees incurred in connection with that 2478
action. 2479

(2) "Medical claim," "dental claim," "optometric claim," and 2480
"chiropractic claim" have the same meanings as in section 2305.113 2481
of the Revised Code. 2482

(3) "Noneconomic loss" means nonpecuniary harm that results 2483
from an injury, ~~death~~, or loss to person or property that is a 2484
subject of a civil tort action ~~upon a medical, dental, optometric,~~ 2485
~~or chiropractic claim~~, including, but not limited to, pain and 2486
suffering, loss of society, consortium, companionship, care, 2487

assistance, attention, protection, advice, guidance, counsel, 2488
instruction, training, or education, disfigurement, mental 2489
anguish, and any other intangible loss. 2490

(4) "Occurrence" means all claims resulting from or arising 2491
out of any one person's bodily injury. 2492

(5) "Tort action" means a civil action for damages for injury 2493
or loss to person or property. "Tort action" includes a civil 2494
action upon a product liability claim, as defined in section 2495
2307.71 of the Revised Code, or a civil action upon a medical 2496
claim, dental claim, optometric claim, or chiropractic claim. 2497
"Tort action" does not include a civil action for damages for a 2498
breach of contract or another agreement between persons. 2499

(6) "Trier of fact" means the jury or, in a nonjury action, 2500
the court. 2501

Sec. 2323.51. (A) As used in this section: 2502

(1) "Conduct" means any of the following: 2503

(a) The filing of a civil action, the assertion of a claim, 2504
defense, or other position in connection with a civil action, the 2505
filing of a pleading, motion, or other paper in a civil action, 2506
including, but not limited to, a motion or paper filed for 2507
discovery purposes, or the taking of any other action in 2508
connection with a civil action; 2509

(b) The filing by an inmate of a civil action or appeal 2510
against a government entity or employee, the assertion of a claim, 2511
defense or other position in connection with a civil action of 2512
that nature or the assertion of issues of law in an appeal of that 2513
nature, or the taking of any other action in connection with a 2514
civil action or appeal of that nature. 2515

(2) "Frivolous conduct" means either of the following: 2516

(a) Conduct of an inmate or other party to a civil action, of 2517

an inmate who has filed an appeal of the type described in 2518
division (A)(1)(b) of this section, or of the inmate's or other 2519
party's counsel of record that satisfies ~~either~~ any of the 2520
following: 2521

(i) It obviously serves merely to harass or maliciously 2522
injure another party to the civil action or appeal or is for 2523
another improper purpose, including, but not limited to, causing 2524
unnecessary delay or a needless increase in the cost of 2525
litigation. 2526

(ii) It is not warranted under existing law ~~and~~, cannot be 2527
supported by a good faith argument for an extension, modification, 2528
or reversal of existing law, or cannot be supported by a good 2529
faith argument for the establishment of new law. 2530

(iii) The conduct consists of allegations or other factual 2531
contentions that have no evidentiary support or, if specifically 2532
so identified, are not likely to have evidentiary support after a 2533
reasonable opportunity for further investigation or discovery. 2534

(iv) The conduct consists of denials or factual contentions 2535
that are not warranted by the evidence or, if specifically so 2536
identified, are not reasonably based on a lack of information or 2537
belief. 2538

(b) An inmate's commencement of a civil action or appeal 2539
against a government entity or employee when any of the following 2540
applies: 2541

(i) The claim that is the basis of the civil action fails to 2542
state a claim or the issues of law that are the basis of the 2543
appeal fail to state any issues of law. 2544

(ii) It is clear that the inmate cannot prove material facts 2545
in support of the claim that is the basis of the civil action or 2546
in support of the issues of law that are the basis of the appeal. 2547

(iii) The claim that is the basis of the civil action is 2548
substantially similar to a claim in a previous civil action 2549
commenced by the inmate or the issues of law that are the basis of 2550
the appeal are substantially similar to issues of law raised in a 2551
previous appeal commenced by the inmate, in that the claim that is 2552
the basis of the current civil action or the issues of law that 2553
are the basis of the current appeal involve the same parties or 2554
arise from the same operative facts as the claim or issues of law 2555
in the previous civil action or appeal. 2556

(3) "Civil action or appeal against a government entity or 2557
employee," "inmate," "political subdivision," and "employee" have 2558
the same meanings as in section 2969.21 of the Revised Code. 2559

(4) "Reasonable attorney's fees" or "attorney's fees," when 2560
used in relation to a civil action or appeal against a government 2561
entity or employee, includes both of the following, as applicable: 2562

(a) The approximate amount of the compensation, and the 2563
fringe benefits, if any, of the attorney general, an assistant 2564
attorney general, or special counsel appointed by the attorney 2565
general that has been or will be paid by the state in connection 2566
with the legal services that were rendered by the attorney 2567
general, assistant attorney general, or special counsel in the 2568
civil action or appeal against the government entity or employee, 2569
including, but not limited to, a civil action or appeal commenced 2570
pro se by an inmate, and that were necessitated by frivolous 2571
conduct of an inmate represented by counsel of record, the counsel 2572
of record of an inmate, or a pro se inmate. 2573

(b) The approximate amount of the compensation, and the 2574
fringe benefits, if any, of a prosecuting attorney or other chief 2575
legal officer of a political subdivision, or an assistant to a 2576
chief legal officer of those natures, who has been or will be paid 2577
by a political subdivision in connection with the legal services 2578

that were rendered by the chief legal officer or assistant in the
civil action or appeal against the government entity or employee,
including, but not limited to, a civil action or appeal commenced
pro se by an inmate, and that were necessitated by frivolous
conduct of an inmate represented by counsel of record, the counsel
of record of an inmate, or a pro se inmate.

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

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

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

(2) An award may be made pursuant to division (B)(1) of this
section upon the motion of a party to a civil action or an appeal
of the type described in that division or on the court's own

initiative, but only after the court does all of the following: 2611

(a) Sets a date for a hearing to be conducted in accordance 2612
with division (B)(2)(c) of this section, to determine whether 2613
particular conduct was frivolous, to determine, if the conduct was 2614
frivolous, whether any party was adversely affected by it, and to 2615
determine, if an award is to be made, the amount of that award; 2616

(b) Gives notice of the date of the hearing described in 2617
division (B)(2)(a) of this section to each party or counsel of 2618
record who allegedly engaged in frivolous conduct and to each 2619
party who allegedly was adversely affected by frivolous conduct; 2620

(c) Conducts the hearing described in division (B)(2)(a) of 2621
this section in accordance with this division, allows the parties 2622
and counsel of record involved to present any relevant evidence at 2623
the hearing, including evidence of the type described in division 2624
(B)(5) of this section, determines that the conduct involved was 2625
frivolous and that a party was adversely affected by it, and then 2626
determines the amount of the award to be made. If any party or 2627
counsel of record who allegedly engaged in or allegedly was 2628
adversely affected by frivolous conduct is confined in a state 2629
correctional institution or in a county, multicounty, municipal, 2630
municipal-county, or multicounty-municipal jail or workhouse, the 2631
court, if practicable, may hold the hearing by telephone or, in 2632
the alternative, at the institution, jail, or workhouse in which 2633
the party or counsel is confined. 2634

(3) The amount of an award made pursuant to division (B)(1) 2635
of this section that represents reasonable attorney's fees shall 2636
not exceed, and may be equal to or less than, whichever of the 2637
following is applicable: 2638

(a) If the party is being represented on a contingent fee 2639
basis, an amount that corresponds to reasonable fees that would 2640
have been charged for legal services had the party been 2641

represented on an hourly fee basis or another basis other than a 2642
contingent fee basis; 2643

(b) In all situations other than that described in division 2644
(B)(3)(a) of this section, the attorney's fees that were 2645
reasonably incurred by a party. 2646

(4) An award made pursuant to division (B)(1) of this section 2647
may be made against a party, the party's counsel of record, or 2648
both. 2649

(5)(a) In connection with the hearing described in division 2650
(B)(2)(a) of this section, each party who may be awarded 2651
reasonable attorney's fees and the party's counsel of record may 2652
submit to the court or be ordered by the court to submit to it, 2653
for consideration in determining the amount of the reasonable 2654
attorney's fees, an itemized list or other evidence of the legal 2655
services rendered, the time expended in rendering the services, 2656
and whichever of the following is applicable: 2657

(i) If the party is being represented by that counsel on a 2658
contingent fee basis, the reasonable attorney's fees that would 2659
have been associated with those services had the party been 2660
represented by that counsel on an hourly fee basis or another 2661
basis other than a contingent fee basis; 2662

(ii) In all situations other than those described in division 2663
(B)(5)(a)(i) of this section, the attorney's fees associated with 2664
those services. 2665

(b) In connection with the hearing described in division 2666
(B)(2)(a) of this section, each party who may be awarded court 2667
costs and other reasonable expenses incurred in connection with 2668
the civil action or appeal may submit to the court or be ordered 2669
by the court to submit to it, for consideration in determining the 2670
amount of the costs and expenses, an itemized list or other 2671
evidence of the costs and expenses that were incurred in 2672

connection with that action or appeal and that were necessitated 2673
by the frivolous conduct, including, but not limited to, expert 2674
witness fees and expenses associated with discovery. 2675

(C) An award of reasonable attorney's fees under this section 2676
does not affect or determine the amount of or the manner of 2677
computation of attorney's fees as between an attorney and the 2678
attorney's client. 2679

(D) This section does not affect or limit the application of 2680
any provision of the Rules of Civil Procedure, the Rules of 2681
Appellate Procedure, or another court rule or section of the 2682
Revised Code to the extent that the provision prohibits an award 2683
of court costs, attorney's fees, or other expenses incurred in 2684
connection with a particular civil action or appeal or authorizes 2685
an award of court costs, attorney's fees, or other expenses 2686
incurred in connection with a particular civil action or appeal in 2687
a specified manner, generally, or subject to limitations. 2688

Sec. 4507.07. (A) The registrar of motor vehicles shall not 2689
grant the application of any minor under eighteen years of age for 2690
a probationary license, a restricted license, or a temporary 2691
instruction permit, unless the application is signed by one of the 2692
minor's parents, the minor's guardian, another person having 2693
custody of the applicant, or, if there is no parent or guardian, a 2694
responsible person who is willing to assume the obligation imposed 2695
under this section. 2696

At the time a minor under eighteen years of age submits an 2697
application for a license or permit at a driver's license 2698
examining station, the adult who signs the application shall 2699
present identification establishing that the adult is the 2700
individual whose signature appears on the application. The 2701
registrar shall prescribe, by rule, the types of identification 2702
that are suitable for the purposes of this paragraph. If the adult 2703

who signs the application does not provide identification as 2704
required by this paragraph, the application shall not be accepted. 2705

When a minor under eighteen years of age applies for a 2706
probationary license, a restricted license, or a temporary 2707
instruction permit, the registrar shall give the adult who signs 2708
the application notice of the potential liability that may be 2709
imputed to the adult pursuant to division (B) of this section and 2710
notice of how the adult may prevent any liability from being 2711
imputed to the adult pursuant to that division. 2712

(B) Any negligence, or willful or wanton misconduct, that is 2713
committed by a minor under eighteen years of age when driving a 2714
motor vehicle upon a highway shall be imputed to the person who 2715
has signed the application of the minor for a probationary 2716
license, restricted license, or temporary instruction permit, 2717
which person shall be jointly and severally liable with the minor 2718
for any damages caused by the negligence or the willful or wanton 2719
misconduct. This joint and several liability is not subject to 2720
section 2307.22, or 2315.36, ~~or 2315.46~~ of the Revised Code with 2721
respect to a ~~negligence~~ tort claim that otherwise is subject to 2722
that section. 2723

There shall be no imputed liability imposed under this 2724
division if a minor under eighteen years of age has proof of 2725
financial responsibility with respect to the operation of a motor 2726
vehicle owned by the minor or, if the minor is not the owner of a 2727
motor vehicle, with respect to the minor's operation of any motor 2728
vehicle, in the form and in the amounts required under Chapter 2729
4509. of the Revised Code. 2730

(C) Any person who has signed the application of a minor 2731
under eighteen years of age for a license or permit subsequently 2732
may surrender to the registrar the license or temporary 2733
instruction permit of the minor and request that the license or 2734
permit be canceled. The registrar then shall cancel the license or 2735

temporary instruction permit, and the person who signed the 2736
application of the minor shall be relieved from the liability 2737
imposed by division (B) of this section. 2738

(D) Any minor under eighteen years of age whose probationary 2739
license, restricted license, or temporary instruction permit is 2740
surrendered to the registrar by the person who signed the 2741
application for the license or permit and whose license or 2742
temporary instruction permit subsequently is canceled by the 2743
registrar may obtain a new license or temporary instruction permit 2744
without having to undergo the examinations otherwise required by 2745
sections 4507.11 and 4507.12 of the Revised Code and without 2746
having to tender the fee for that license or temporary instruction 2747
permit, if the minor is able to produce another parent, guardian, 2748
other person having custody of the minor, or other adult, and that 2749
adult is willing to assume the liability imposed under division 2750
(B) of this section. That adult shall comply with the procedures 2751
contained in division (A) of this section. 2752

Sec. 4513.263. (A) As used in this section and in section 2753
4513.99 of the Revised Code: 2754

(1) "Automobile" means any commercial tractor, passenger car, 2755
commercial car, or truck that is required to be factory-equipped 2756
with an occupant restraining device for the operator or any 2757
passenger by regulations adopted by the United States secretary of 2758
transportation pursuant to the "National Traffic and Motor Vehicle 2759
Safety Act of 1966," 80 Stat. 719, 15 U.S.C.A. 1392. 2760

(2) "Occupant restraining device" means a seat safety belt, 2761
shoulder belt, harness, or other safety device for restraining a 2762
person who is an operator of or passenger in an automobile and 2763
that satisfies the minimum federal vehicle safety standards 2764
established by the United States department of transportation. 2765

(3) "Passenger" means any person in an automobile, other than 2766

its operator, who is occupying a seating position for which an 2767
occupant restraining device is provided. 2768

(4) "Commercial tractor," "passenger car," and "commercial 2769
car" have the same meanings as in section 4501.01 of the Revised 2770
Code. 2771

(5) "Vehicle" and "motor vehicle," as used in the definitions 2772
of the terms set forth in division (A)(4) of this section, have 2773
the same meanings as in section 4511.01 of the Revised Code. 2774

(6) "Tort action" means a civil action for damages for 2775
injury, death, or loss to person or property. "Tort action" 2776
includes a product liability claim, as defined in section 2307.71 2777
of the Revised Code, but does not include a civil action for 2778
damages for a breach of contract or another agreement between 2779
persons. 2780

(B) No person shall do any of the following: 2781

(1) Operate an automobile on any street or highway unless 2782
that person is wearing all of the available elements of a properly 2783
adjusted occupant restraining device, or operate a school bus that 2784
has an occupant restraining device installed for use in its 2785
operator's seat unless that person is wearing all of the available 2786
elements of the device, as properly adjusted; 2787

(2) Operate an automobile on any street or highway unless 2788
each passenger in the automobile who is subject to the requirement 2789
set forth in division (B)(3) of this section is wearing all of the 2790
available elements of a properly adjusted occupant restraining 2791
device; 2792

(3) Occupy, as a passenger, a seating position on the front 2793
seat of an automobile being operated on any street or highway 2794
unless that person is wearing all of the available elements of a 2795
properly adjusted occupant restraining device; 2796

(4) Operate a taxicab on any street or highway unless all 2797
factory-equipped occupant restraining devices in the taxicab are 2798
maintained in usable form. 2799

(C) Division (B)(3) of this section does not apply to a 2800
person who is required by section 4511.81 of the Revised Code to 2801
be secured in a child restraint device. Division (B)(1) of this 2802
section does not apply to a person who is an employee of the 2803
United States postal service or of a newspaper home delivery 2804
service, during any period in which the person is engaged in the 2805
operation of an automobile to deliver mail or newspapers to 2806
addressees. Divisions (B)(1) and (3) of this section do not apply 2807
to a person who has an affidavit signed by a physician licensed to 2808
practice in this state under Chapter 4731. of the Revised Code or 2809
a chiropractor licensed to practice in this state under Chapter 2810
4734. of the Revised Code that states that the person has a 2811
physical impairment that makes use of an occupant restraining 2812
device impossible or impractical. 2813

(D) Notwithstanding any provision of law to the contrary, no 2814
law enforcement officer shall cause an operator of an automobile 2815
being operated on any street or highway to stop the automobile for 2816
the sole purpose of determining whether a violation of division 2817
(B) of this section has been or is being committed or for the sole 2818
purpose of issuing a ticket, citation, or summons for a violation 2819
of that nature or causing the arrest of or commencing a 2820
prosecution of a person for a violation of that nature, and no law 2821
enforcement officer shall view the interior or visually inspect 2822
any automobile being operated on any street or highway for the 2823
sole purpose of determining whether a violation of that nature has 2824
been or is being committed. 2825

(E) All fines collected for violations of division (B) of 2826
this section, or for violations of any ordinance or resolution of 2827
a political subdivision that is substantively comparable to that 2828

division, shall be forwarded to the treasurer of state for deposit 2829
as follows: 2830

(1) Eight per cent shall be deposited into the seat belt 2831
education fund, which is hereby created in the state treasury, and 2832
shall be used by the department of public safety to establish a 2833
seat belt education program. 2834

(2) Eight per cent shall be deposited into the elementary 2835
school program fund, which is hereby created in the state 2836
treasury, and shall be used by the department of public safety to 2837
establish and administer elementary school programs that encourage 2838
seat safety belt use. 2839

(3) Two per cent shall be deposited into the Ohio ambulance 2840
licensing trust fund created by section 4766.05 of the Revised 2841
Code. 2842

(4) Twenty-eight per cent shall be deposited into the trauma 2843
and emergency medical services fund, which is hereby created in 2844
the state treasury, and shall be used by the department of public 2845
safety for the administration of the division of emergency medical 2846
services and the state board of emergency medical services. 2847

(5) Fifty-four per cent shall be deposited into the trauma 2848
and emergency medical services grants fund, which is hereby 2849
created in the state treasury, and shall be used by the state 2850
board of emergency medical services to make grants, in accordance 2851
with section 4765.07 of the Revised Code and the rules that the 2852
board adopts under section 4765.11 of the Revised Code. 2853

~~(F)(1) Subject to division (F)(2) of this section, the~~ 2854
failure of a person to wear all of the available elements of a 2855
properly adjusted occupant restraining device in violation of 2856
division (B)(1) or (3) of this section or the failure of a person 2857
to ensure that each minor who is a passenger of an automobile 2858
being operated by ~~the~~ that person is wearing all of the available 2859

elements of ~~such~~ a properly adjusted occupant restraining device, 2860
in violation of division (B)(2) of this section, shall ~~not~~ be 2861
considered ~~or used by the trier of fact in a tort action as~~ 2862
~~evidence of negligence or contributory negligence, shall not fault~~ 2863
~~or other tortious conduct or considered for any other relevant~~ 2864
~~purpose if the failure contributed to the harm alleged in the tort~~ 2865
~~action and may diminish pursuant to sections 2315.32 to 2315.36 of~~ 2866
~~the Revised Code a recovery for of compensatory damages in any~~ 2867
~~civil a tort action involving the person arising from the~~ 2868
~~ownership, maintenance, or operation of an automobile; shall not~~ 2869
be used as a basis for a criminal prosecution of the person other 2870
than a prosecution for a violation of this section; and shall not 2871
be admissible as evidence in ~~any civil or a~~ criminal action 2872
involving the person other than a prosecution for a violation of 2873
this section. 2874

~~(2) If, at the time of an accident involving a passenger car~~ 2875
~~equipped with occupant restraining devices, any occupant of the~~ 2876
~~passenger car who sustained injury or death was not wearing an~~ 2877
~~available occupant restraining device, was not wearing all of the~~ 2878
~~available elements of such a device, or was not wearing such a~~ 2879
~~device as properly adjusted, then, consistent with the Rules of~~ 2880
~~Evidence, the fact that the occupant was not wearing the available~~ 2881
~~occupant restraining device, was not wearing all of the available~~ 2882
~~elements of such a device, or was not wearing such a device as~~ 2883
~~properly adjusted is admissible in evidence in relation to any~~ 2884
~~claim for relief in a tort action to the extent that the claim for~~ 2885
~~relief satisfies all of the following:~~ 2886

~~(a) It seeks to recover damages for injury or death to the~~ 2887
~~occupant.~~ 2888

~~(b) The defendant in question is the manufacturer, designer,~~ 2889
~~distributor, or seller of the passenger car.~~ 2890

~~(c) The claim for relief against the defendant in question is~~ 2891

that the injury or death sustained by the occupant was enhanced or
aggravated by some design defect in the passenger car or that the
passenger car was not crashworthy.

~~(3) As used in division (F)(2) of this section, "tort action"~~
~~means a civil action for damages for injury, death, or loss to~~
~~person or property. "Tort action" includes a product liability~~
~~claim 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 a contract or another agreement between persons.~~

Sec. 4705.15. (A) As used in this section:

(1) "Contingent fee agreement" means an agreement for the
provision of legal services by an attorney under which the
compensation of the attorney is contingent, in whole or in part,
upon a judgment being rendered in favor of or a settlement being
obtained for the client and is either a fixed amount or an amount
to be determined by a specified formula, including, but not
limited to, a percentage of any judgment rendered in favor of or
settlement obtained for the client.

(2) "Tort action" means a civil action for damages for
injury, death, or loss to person or property. "Tort action"
includes a product liability claim ~~that is subject to sections, as~~
defined in section 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 or a civil action
based upon a medical claim, dental claim, optometric claim, or
chiropractic claim.

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

(4) "Recovered" means the net sum recovered on a claim after

deducting any disbursements, costs, and expenses incurred in 2922
connection with the prosecution or settlement of the claim. Costs 2923
of medical care incurred by the plaintiff and the attorney's 2924
office overhead costs or charges are not deductible disbursements 2925
or costs for the purposes of this division. 2926

(B) If an attorney and a client contract for the provision of 2927
legal services in connection with a claim that is or may become 2928
the basis of a tort action or in connection with a medical claim, 2929
dental claim, optometric claim, or chiropractic claim and if the 2930
contract includes a contingent fee agreement, that agreement shall 2931
be reduced to writing and signed by the attorney and the client. 2932
The attorney shall provide a copy of the signed writing to the 2933
client. 2934

(C)(1) If an attorney and a client contract for the provision 2935
of legal services in connection with a claim that may become the 2936
basis of a tort action and if the contract includes a contingent 2937
fee agreement, that agreement shall not provide for the payment of 2938
a fee that exceeds, and the attorney shall not collect a 2939
contingency fee for representing the client in excess of, the 2940
following limits: 2941

(a) Thirty-five per cent of the first one hundred thousand 2942
dollars recovered on the claim; 2943

(b) Twenty-five per cent of the next five hundred thousand 2944
dollars recovered on the claim; 2945

(c) Fifteen per cent of any amount on which the recovery on 2946
the claim exceeds six hundred thousand dollars. 2947

(2) The limits in division (C)(1) of this section shall apply 2948
regardless of whether the recovery is by settlement, arbitration, 2949
or judgment or whether the person for whom the recovery is made is 2950
a responsible adult, an infant, or a person of unsound mind. 2951

(D) If an attorney represents a client in connection with a
any claim as described in division (B) of this section, if their
contract for the provision of legal services includes a contingent
fee agreement, and if the attorney becomes entitled to
compensation under that agreement, the attorney shall prepare a
signed closing statement and shall provide the client with that
statement ~~at the~~ within a reasonable time of or prior to the
~~receipt of compensation under that agreement, but not later than~~
thirty days, after the claim is finally adjudicated or settled.
The closing statement shall specify ~~the~~ all of the following:

(1) The manner in which the compensation of the attorney was
determined under that agreement, ~~any;~~

(2) The actual number of hours of the attorney's legal
services that were spent in connection with the claim;

(3) The total amount of the hourly fees or contingent fee for
the attorney's legal services in connection with the claim;

(4) The actual fee per hour of the attorney's legal services
in connection with the claim, determined by dividing the total
amount of the hourly fees specified in division (D)(3) of this
section, less itemized costs and expenses, or the total contingent
fee specified in that division by the actual number of hours of
the attorney's legal services specified in division (D)(2) of this
section;

(5) Any costs and expenses deducted by the attorney from the
judgment or settlement involved, ~~any;~~

(6) Any proposed division of the attorney's fees, costs, and
expenses with referring or associated counsel, ~~and any;~~

(7) Any other information that the attorney considers
appropriate.

Sec. 4705.16. (A) Each attorney who is licensed to practice

<u>law in this state shall append to every written retainer agreement</u>	2982
<u>or contract for legal services a legal consumer's bill of rights</u>	2983
<u>that shall be substantially in the following form:</u>	2984
<u>"LEGAL CONSUMER'S BILL OF RIGHTS</u>	2985
<u>(A) You have the right to control your own legal affairs.</u>	2986
<u>(1) Your attorney, at your request, must do all of the</u>	2987
<u>following:</u>	2988
<u>(a) Keep you informed about the status of your legal matter;</u>	2989
<u>(b) Promptly answer your questions;</u>	2990
<u>(c) Promptly return your phone calls;</u>	2991
<u>(d) Disclose any alternatives available to you for resolving</u>	2992
<u>your legal matter;</u>	2993
<u>(e) Inform you of all relevant and legal considerations to</u>	2994
<u>assist you in making a decision and advise you of the possible</u>	2995
<u>effect of each legal alternative, including any harsh consequences</u>	2996
<u>that might result.</u>	2997
<u>(2) You have the right and duty to make decisions in your</u>	2998
<u>matter, including whether, and on what terms, to settle a dispute</u>	2999
<u>or lawsuit.</u>	3000
<u>(B) You have the right to be fully informed about the costs</u>	3001
<u>and fees associated with your legal matter and you have the rights</u>	3002
<u>specified in paragraph (D), below, if you have a contingent fee</u>	3003
<u>agreement with your attorney.</u>	3004
<u>(1) Your attorney must disclose all of the following to you:</u>	3005
<u>(a) All alternative fee arrangements and the reasons for the</u>	3006
<u>particular fee arrangement proposed by the attorney;</u>	3007
<u>(b) Total anticipated fees and expenses through trial;</u>	3008
<u>(c) Total anticipated costs;</u>	3009

<u>(d) The basis of the fee charges to be made.</u>	3010
<u>(2) Your attorney must do all of the following:</u>	3011
<u>(a) Sign a written agreement that spells out the terms of</u>	3012
<u>every representation of you, including the fee arrangements;</u>	3013
<u>(b) Agree not to exceed estimated costs and fees without your</u>	3014
<u>consent;</u>	3015
<u>(c) Agree to return any unexpended portion of your retainer</u>	3016
<u>or other advanced payments;</u>	3017
<u>(d) Make full use of economical and efficient legal support</u>	3018
<u>services under your attorney's supervision, including, but not</u>	3019
<u>limited to, paralegals, law clerks, and legal secretaries, as well</u>	3020
<u>as your own personal services to reduce the costs to you;</u>	3021
<u>(e) Agree to charge a reasonable fee based on the factors</u>	3022
<u>specified in Disciplinary Rule 2-106(B) of the Code of</u>	3023
<u>Professional Responsibility.</u>	3024
<u>(C) You have the right to retain qualified and competent</u>	3025
<u>legal representation.</u>	3026
<u>(1) Your attorney must do all of the following:</u>	3027
<u>(a) Provide timely, thorough, competent and professional</u>	3028
<u>legal services;</u>	3029
<u>(b) Advise you to solicit or arrange for the services of</u>	3030
<u>co-counsel if your attorney is not qualified to represent you in</u>	3031
<u>the areas of the law relevant to your matter;</u>	3032
<u>(c) Respect your right to privacy and your confidential</u>	3033
<u>information that is protected by the attorney-client privilege and</u>	3034
<u>not reveal your confidences and secrets except under any of the</u>	3035
<u>circumstances specified in Disciplinary Rule 4-101(C) of the Code</u>	3036
<u>of Professional Conduct;</u>	3037
<u>(d) Not neglect your legal matter;</u>	3038

(e) Ensure that your attorney does not have a conflict of 3039
interest in representing you; 3040

(f) Maintain accurate records; 3041

(g) Upon your request, provide you with copies of all court 3042
documents and letters that your attorney produces or receives 3043
while representing you. 3044

(2) You have the right to an accessible legal system. 3045

If you are not satisfied with the legal services that you 3046
have retained, or with how your matter is being handled, you have 3047
the right to file a grievance with the Certified Grievance 3048
Committee of your local bar association or the Ohio State Bar 3049
Association or with the Board of Commissioners on Grievances and 3050
Discipline of the Supreme Court of Ohio. The Committee and the 3051
Board include non-attorneys as members. The Board of Commissioners 3052
on Grievances and Discipline of the Supreme Court of Ohio has the 3053
authority to discipline, and to impose sanctions on, attorneys in 3054
Ohio. 3055

(D) You have the following rights if you have a contingent 3056
fee agreement, as defined in section 4705.15 of the Revised Code, 3057
with your attorney for the provision of legal services in 3058
connection with a claim that is or may become the basis of a tort 3059
action, as defined in that section: 3060

(1) The agreement must be in writing and signed by you and 3061
your attorney. 3062

(2) Your attorney must provide a copy of the signed agreement 3063
to you. 3064

(3) If your attorney becomes entitled to compensation under 3065
the contingent fee agreement, your attorney must prepare a signed 3066
closing statement and provide you with that statement within a 3067
reasonable time, but not later than thirty (30) days, after the 3068

claim is finally adjudicated and settled. 3069

(4) Your attorney's closing statement must specify all of the 3070
following: 3071

(a) The manner in which your attorney's compensation was 3072
determined under the agreement; 3073

(b) The actual number of hours of your attorney's legal 3074
services that were spent in connection with the claim; 3075

(c) The total amount of the hourly fees or contingent fee for 3076
your attorney's legal services in connection with the claim; 3077

(d) The actual fee per hour of your attorney's legal services 3078
in connection with the claim, determined by dividing the total 3079
amount of the hourly fees specified in paragraph (4)(c), above, 3080
less itemized costs and expenses, or the total contingent fee 3081
specified in that paragraph by the actual number of hours of your 3082
attorney's legal services specified in paragraph (4)(b), above; 3083

(e) Any costs and expenses deducted by your attorney from the 3084
judgment or settlement involved; 3085

(f) Any proposed division of your attorney's fees, costs, and 3086
expenses with referring or associated counsel; 3087

(g) Any other information that your attorney considers 3088
appropriate." 3089

(B) Your attorney must deposit in an interest-bearing trust 3090
account identified as IOLTA or an interest on lawyer's trust 3091
account any client funds held by the attorney that are nominal in 3092
amount or are to be held for a short period of time in accordance 3093
with sections 4705.09 and 4705.10 of the Revised Code and any 3094
applicable provisions of the Code of Professional Conduct. 3095

(C) This section shall be called and may be cited as the 3096
"Legal Consumer's Bill of Rights." 3097

Section 2. That existing sections 1533.18, 1701.76, 1701.82, 3098
1775.14, 2117.06, 2125.01, 2125.02, 2125.04, 2305.01, 2305.03, 3099
2305.10, 2305.25, 2307.011, 2307.23, 2307.29, 2307.60, 2307.71, 3100
2307.75, 2307.80, 2315.01, 2315.21, 2315.32, 2315.33, 2315.34, 3101
2315.36, 2323.41, 2323.43, 2323.51, 4507.07, 4513.263, and 4705.15 3102
and sections 2315.41, 2315.42, 2315.43, 2315.44, 2315.45, and 3103
2315.46 of the Revised Code are hereby repealed. 3104

Section 3. That the version of section 4513.263 of the 3105
Revised Code that is scheduled to take effect January 1, 2004, be 3106
amended to read as follows: 3107

Sec. 4513.263. (A) As used in this section and in section 3108
4513.99 of the Revised Code: 3109

(1) "Automobile" means any commercial tractor, passenger car, 3110
commercial car, or truck that is required to be factory-equipped 3111
with an occupant restraining device for the operator or any 3112
passenger by regulations adopted by the United States secretary of 3113
transportation pursuant to the "National Traffic and Motor Vehicle 3114
Safety Act of 1966," 80 Stat. 719, 15 U.S.C.A. 1392. 3115

(2) "Occupant restraining device" means a seat safety belt, 3116
shoulder belt, harness, or other safety device for restraining a 3117
person who is an operator of or passenger in an automobile and 3118
that satisfies the minimum federal vehicle safety standards 3119
established by the United States department of transportation. 3120

(3) "Passenger" means any person in an automobile, other than 3121
its operator, who is occupying a seating position for which an 3122
occupant restraining device is provided. 3123

(4) "Commercial tractor," "passenger car," and "commercial 3124
car" have the same meanings as in section 4501.01 of the Revised 3125
Code. 3126

(5) "Vehicle" and "motor vehicle," as used in the definitions 3127
of the terms set forth in division (A)(4) of this section, have 3128
the same meanings as in section 4511.01 of the Revised Code. 3129

(6) "Tort action" means a civil action for damages for 3130
injury, death, or loss to person or property. "Tort action" 3131
includes a product liability claim, as defined in section 2307.71 3132
of the Revised Code, but does not include a civil action for 3133
damages for a breach of contract or another agreement between 3134
persons. 3135

(B) No person shall do any of the following: 3136

(1) Operate an automobile on any street or highway unless 3137
that person is wearing all of the available elements of a properly 3138
adjusted occupant restraining device, or operate a school bus that 3139
has an occupant restraining device installed for use in its 3140
operator's seat unless that person is wearing all of the available 3141
elements of the device, as properly adjusted; 3142

(2) Operate an automobile on any street or highway unless 3143
each passenger in the automobile who is subject to the requirement 3144
set forth in division (B)(3) of this section is wearing all of the 3145
available elements of a properly adjusted occupant restraining 3146
device; 3147

(3) Occupy, as a passenger, a seating position on the front 3148
seat of an automobile being operated on any street or highway 3149
unless that person is wearing all of the available elements of a 3150
properly adjusted occupant restraining device; 3151

(4) Operate a taxicab on any street or highway unless all 3152
factory-equipped occupant restraining devices in the taxicab are 3153
maintained in usable form. 3154

(C) Division (B)(3) of this section does not apply to a 3155
person who is required by section 4511.81 of the Revised Code to 3156

be secured in a child restraint device. Division (B)(1) of this 3157
section does not apply to a person who is an employee of the 3158
United States postal service or of a newspaper home delivery 3159
service, during any period in which the person is engaged in the 3160
operation of an automobile to deliver mail or newspapers to 3161
addressees. Divisions (B)(1) and (3) of this section do not apply 3162
to a person who has an affidavit signed by a physician licensed to 3163
practice in this state under Chapter 4731. of the Revised Code or 3164
a chiropractor licensed to practice in this state under Chapter 3165
4734. of the Revised Code that states that the person has a 3166
physical impairment that makes use of an occupant restraining 3167
device impossible or impractical. 3168

(D) Notwithstanding any provision of law to the contrary, no 3169
law enforcement officer shall cause an operator of an automobile 3170
being operated on any street or highway to stop the automobile for 3171
the sole purpose of determining whether a violation of division 3172
(B) of this section has been or is being committed or for the sole 3173
purpose of issuing a ticket, citation, or summons for a violation 3174
of that nature or causing the arrest of or commencing a 3175
prosecution of a person for a violation of that nature, and no law 3176
enforcement officer shall view the interior or visually inspect 3177
any automobile being operated on any street or highway for the 3178
sole purpose of determining whether a violation of that nature has 3179
been or is being committed. 3180

(E) All fines collected for violations of division (B) of 3181
this section, or for violations of any ordinance or resolution of 3182
a political subdivision that is substantively comparable to that 3183
division, shall be forwarded to the treasurer of state for deposit 3184
as follows: 3185

(1) Eight per cent shall be deposited into the seat belt 3186
education fund, which is hereby created in the state treasury, and 3187
shall be used by the department of public safety to establish a 3188

seat belt education program. 3189

(2) Eight per cent shall be deposited into the elementary 3190
school program fund, which is hereby created in the state 3191
treasury, and shall be used by the department of public safety to 3192
establish and administer elementary school programs that encourage 3193
seat safety belt use. 3194

(3) Two per cent shall be deposited into the Ohio ambulance 3195
licensing trust fund created by section 4766.05 of the Revised 3196
Code. 3197

(4) Twenty-eight per cent shall be deposited into the trauma 3198
and emergency medical services fund, which is hereby created in 3199
the state treasury, and shall be used by the department of public 3200
safety for the administration of the division of emergency medical 3201
services and the state board of emergency medical services. 3202

(5) Fifty-four per cent shall be deposited into the trauma 3203
and emergency medical services grants fund, which is hereby 3204
created in the state treasury, and shall be used by the state 3205
board of emergency medical services to make grants, in accordance 3206
with section 4765.07 of the Revised Code and the rules that the 3207
board adopts under section 4765.11 of the Revised Code. 3208

~~(F)(1) Subject to division (F)(2) of this section, the~~ 3209
~~failure of a person to wear all of the available elements of a~~ 3210
~~properly adjusted occupant restraining device in violation of~~ 3211
~~division (B)(1) or (3) of this section or the failure of a person~~ 3212
~~to ensure that each minor who is a passenger of an automobile~~ 3213
~~being operated by ~~the~~ that person is wearing all of the available~~ 3214
~~elements of ~~such a~~ properly adjusted occupant restraining device,~~ 3215
~~in violation of division (B)(2) of this section,~~ shall ~~not~~ be 3216
~~considered or used by the trier of fact in a tort action as~~ 3217
~~evidence of negligence or contributory negligence, shall not fault~~ 3218
~~or other tortious conduct or considered for any other relevant~~ 3219

purpose if the failure contributed to the harm alleged in the tort 3220
action and may diminish pursuant to sections 2315.32 to 2315.36 of 3221
the Revised Code a recovery for of compensatory damages in any 3222
civil a tort action involving the person arising from the 3223
ownership, maintenance, or operation of an automobile; shall not 3224
be used as a basis for a criminal prosecution of the person other 3225
than a prosecution for a violation of this section; and shall not 3226
be admissible as evidence in any civil or a criminal action 3227
involving the person other than a prosecution for a violation of 3228
this section. 3229

~~(2) If, at the time of an accident involving a passenger car~~ 3230
~~equipped with occupant restraining devices, any occupant of the~~ 3231
~~passenger car who sustained injury or death was not wearing an~~ 3232
~~available occupant restraining device, was not wearing all of the~~ 3233
~~available elements of such a device, or was not wearing such a~~ 3234
~~device as properly adjusted, then, consistent with the Rules of~~ 3235
~~Evidence, the fact that the occupant was not wearing the available~~ 3236
~~occupant restraining device, was not wearing all of the available~~ 3237
~~elements of such a device, or was not wearing such a device as~~ 3238
~~properly adjusted is admissible in evidence in relation to any~~ 3239
~~claim for relief in a tort action to the extent that the claim for~~ 3240
~~relief satisfies all of the following:~~ 3241

~~(a) It seeks to recover damages for injury or death to the~~ 3242
~~occupant.~~ 3243

~~(b) The defendant in question is the manufacturer, designer,~~ 3244
~~distributor, or seller of the passenger car.~~ 3245

~~(c) The claim for relief against the defendant in question is~~ 3246
~~that the injury or death sustained by the occupant was enhanced or~~ 3247
~~aggravated by some design defect in the passenger car or that the~~ 3248
~~passenger car was not crashworthy.~~ 3249

~~(3) As used in division (F)(2) of this section, "tort action"~~ 3250

~~means a civil action for damages for injury, death, or loss to~~ 3251
~~person or property. "Tort action" includes a product liability~~ 3252
~~claim that is subject to sections 2307.71 to 2307.80 of the~~ 3253
~~Revised Code, but does not include a civil action for damages for~~ 3254
~~a breach of a contract or another agreement between persons.~~ 3255

(G)(1) Whoever violates division (B)(1) of this section shall 3256
be fined thirty dollars. 3257

(2) Whoever violates division (B)(3) of this section shall be 3258
fined twenty dollars. 3259

(3) Except as otherwise provided in this division, whoever 3260
violates division (B)(4) of this section is guilty of a minor 3261
misdemeanor. If the offender previously has been convicted of or 3262
pleaded guilty to a violation of division (B)(4) of this section, 3263
whoever violates division (B)(4) of this section is guilty of a 3264
misdemeanor of the third degree. 3265

Section 4. That the existing version of section 4513.263 of 3266
the Revised Code that is scheduled to take effect January 1, 2004, 3267
is hereby repealed. 3268

Section 5. Sections 3 and 4 of this act shall take effect 3269
January 1, 2004. 3270

Section 6. The General Assembly makes the following statement 3271
of findings and intent: 3272

(A) The General Assembly finds: 3273

(1) The current civil litigation system represents an 3274
increasing danger to the economic viability of the state of Ohio. 3275

(2) The current tort system forces companies into bankruptcy, 3276
deprives Ohioans of essential jobs, and stifles further 3277
innovation. 3278

(3) The General Assembly recognizes that civil justice reform strikes an essential balance between the rights of those who have been legitimately harmed and the rights of those who have been unfairly sued.

(4) This state has a rational and legitimate state interest in making certain that Ohio has a fair, predictable system of civil justice that preserves the rights of those who have been harmed by negligent behavior, while curbing the number of frivolous lawsuits that clog the court system, threaten Ohio jobs, drive up costs to consumers, and stifle innovation. The General Assembly bases its findings on this state interest upon the following evidence:

(a) A National Bureau of Economic Research study estimates that states that have adopted abuse reforms have experienced employment growth between eleven and twelve per cent, productivity growth of seven to eight per cent, and total output growth between ten and twenty per cent for liability reducing reforms.

(b) According to a 2002 study from the White House Council of Economic Advisors, the cost of tort litigation is equal to a two and one tenth per cent wage and salary tax, a one and three tenth per cent tax on personal consumption, and a three and one tenth per cent tax on capital investment income.

(c) The 2003 Harris Poll of nine hundred and twenty-eight senior corporate attorneys conducted by the United States Chamber of Commerce's Institute for Legal Reform reports that eight out of ten respondents claim that the litigation environment in a state could affect important business decisions about their company, such as where to locate or do business. In addition, one in four senior attorneys surveyed cited limits on damages as one specific means for state policy makers to improve the litigation environment in their state and promote economic development.

(d) The cost of the United States tort system grew at a 3310
record rate in 2001, according to a February 2003 study published 3311
by Tillinghast-Towers Perrin. The system, however, failed to 3312
return even fifty cents for every dollar to people who were 3313
injured. Tillinghast-Towers Perrin also found that fifty-four per 3314
cent of the total cost accounted for attorney's fees, both for 3315
plaintiffs and defendants, and administration. Only twenty-two per 3316
cent of the tort system's cost was used directly to reimburse 3317
people for the economic damages associated with injuries and 3318
losses they sustain. 3319

(e) The Tillinghast-Towers Perrin study also found that the 3320
cost of the United States tort system grew fourteen and three 3321
tenths of a per cent in 2001, the highest increase since 1986, 3322
greatly exceeding overall economic growth of two and six tenth per 3323
cent. As a result, the cost of the United States tort system rose 3324
to two hundred and five billion dollars total or seven hundred and 3325
twenty-one dollars per citizen, equal to a five per cent tax on 3326
wages. 3327

(f) As stated in testimony by Ohio Department of Development 3328
Director Bruce Johnson, as a percentage of the gross domestic 3329
product, United States tort costs have grown from six tenths of a 3330
per cent to two per cent since 1950, about double the percentage 3331
that other industrialized nations pay annually. These tort costs 3332
put Ohio businesses at a disadvantage vis-a-vis foreign 3333
competition and are not helpful to development. 3334

(5)(a) Reform to the punitive damages law in Ohio is urgently 3335
needed to restore balance, fairness, and predictability to the 3336
civil justice system. 3337

(b) In prohibiting a court from entering judgment for 3338
punitive or exemplary damages in excess of the greater of the 3339
amount of compensatory damages awarded to the plaintiff or one 3340

hundred thousand dollars and, with respect to an employer with 3341
five hundred or fewer employees, from entering judgment for 3342
punitive or exemplary damages in excess of the lesser of the 3343
amount of compensatory damages awarded to the plaintiff or one 3344
hundred thousand dollars, the General Assembly finds the 3345
following: 3346

(i) Punitive or exemplary damages awarded in tort actions are 3347
similar in nature to fines and additional court costs imposed in 3348
criminal actions, because punitive or exemplary damages, fines, 3349
and additional court costs are designed to punish a tortfeasor for 3350
certain wrongful actions or omissions. 3351

(ii) The absence of a statutory ceiling upon recoverable 3352
punitive or exemplary damages in tort actions has resulted in 3353
excessive and occasionally multiple awards of punitive or 3354
exemplary damages that have no rational connection to the wrongful 3355
actions or omissions of the tortfeasor. 3356

(iii) The distinction between small employers and other 3357
defendants based on the number of full-time permanent employees 3358
distinguishes all other defendants including individuals and 3359
nonemployers. This distinction is rationally based on size 3360
considering both the economic capacity of an employer to maintain 3361
that number of employees and to impact the community at large, as 3362
exemplified by the United States Small Business Administration's 3363
Office of Advocacy. 3364

(c) The limits on punitive or exemplary damages as specified 3365
in section 2315.21 of the Revised Code, as amended by this act, 3366
are based on guidance recently provided by the United States 3367
Supreme Court in *State Farm Mutual Insurance v. Campbell* (2003), 3368
123 S.Ct. 1513. In determining whether a one hundred and 3369
forty-five million dollar award of punitive damages was 3370
appropriate, the United States Supreme Court referred to the three 3371

guideposts for punitive damages articulated in *BMW of North America Inc. v. Gore* (1996), 517 U.S. 599: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages awarded; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. According to the United States Supreme Court, "few awards exceeding a single digit ratio between punitive damages and compensatory damages. . . will satisfy due process." *Id.* at 31.

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

(6)(a) Noneconomic damages include such things as pain and suffering, emotional distress, and loss of consortium or companionship, which do not involve an economic loss and have, therefore, no precise economic value. The General Assembly recognizes that it is very difficult for juries to assign a dollar value to these losses, particularly with the minimal guidance the juries are normally given. As a result, these awards tend to be erratic and, because of the highly charged environment of personal injury trials, excessive.

(b) The limits on compensatory damages representing noneconomic loss, as specified in section 2323.43 of the Revised Code, as amended by this act, are based on testimony asking members of the General Assembly to recognize these distinctions and stating that the cap amounts are similar to caps on awards adopted by other states.

(c) In *Schiller v. Wal-Mart Stores, Inc.* (1997), 949 P.2d 89, 3404
one of the issues addressed by the Court of Appeals of Colorado is 3405
whether the caps on noneconomic damages constitute a violation of 3406
the rights to equal protection and due process as provided under 3407
the United States and Colorado Constitutions, as well as the 3408
right, pursuant to Article 2, Section 6 of the Colorado 3409
Constitution, to access to the courts. Article 2, Section 6 3410
provides that "courts of justice shall be open to every person, 3411
and a speedy remedy afforded for every injury to person, property, 3412
or character; and right and justice should be administered without 3413
sale, denial, or delay." 3414

(d) On a question of law certified from the United States 3415
District Court for the District of Idaho, the Supreme Court of 3416
Idaho held that the cap on noneconomic damages was constitutional. 3417
In *Kirkland v. Blaine County Medical Center* (2000), 134 Idaho 464, 3418
the Supreme Court of Idaho addressed the issue of whether the 3419
limit on noneconomic damages was unconstitutional under the Idaho 3420
Constitution. The Court held that the limit on noneconomic damages 3421
was constitutional and did not violate the right to a jury trial 3422
in that the limit on noneconomic damages was a modification of a 3423
common law remedy that was within the powers of the legislature 3424
and did not infringe upon the jury's right to decide cases. 3425

(e) In *Edmonds v. Murphy* (1990), 83 Md. App. 133, the Court 3426
of Special Appeals held that the limit on noneconomic damages did 3427
not violate Article 19 of the Maryland Declaration of Rights, 3428
which provides "[t]hat every man, for any injury done to him in 3429
his person or property, ought to have remedy by the course of the 3430
Law of the land, and ought to have justice and right, freely 3431
without sale, fully without any denial, and speedily without 3432
delay, according to the Law of the land." The Court held that 3433
"[t]he majority of courts that have addressed [noneconomic 3434
damages] caps under either a Fourteenth Amendment due process 3435

analysis or an analysis under state constitutional provisions 3436
similar to Article 19 have upheld caps." The Court agreed with the 3437
"sound reasoning of the majority of courts that have analyzed caps 3438
under due process analysis or under constitutional provisions 3439
similar to Article 19 and found no constitutional violation." 3440
Accordingly, the Court of Special Appeals of Maryland held that 3441
the limits on noneconomic damages did not violate the state's 3442
"open courts" provision. 3443

(7)(a) Statutes of repose are vital instruments that provide 3444
time limits, closure, and peace of mind to potential parties of 3445
lawsuits. 3446

(b) Forty-seven other states have adopted statutes of repose 3447
to protect architects, engineers, and constructors of improvements 3448
to real property from lawsuits arising after a specific number of 3449
years after completion of an improvement to real property. The 3450
General Assembly recognizes that Kentucky, New York, and Ohio are 3451
the only three states that do not have a statute of repose. The 3452
General Assembly also acknowledges that Ohio stands by itself, due 3453
to the fact that both Kentucky and New York have a rebuttable 3454
presumption that exists and only if a plaintiff can overcome that 3455
presumption can a claim continue. 3456

(c) As stated in testimony by Jack Pottmeyer, architect and 3457
managing principal of MKC Associates, Inc., this unlimited 3458
liability forces professionals to maintain records in perpetuity, 3459
because those professionals cannot reasonably predict when a 3460
record from fifteen or twenty years earlier may become the subject 3461
of a civil action. Those actions occur despite the fact that, over 3462
the course of many years, owners of the property or those 3463
responsible for its maintenance could make modifications or other 3464
substantial changes that would significantly change the intent or 3465
scope of the original design of the property designed by an 3466
architectural firm. The problem is compounded by the fact that 3467

professional liability insurance for architects and engineers is 3468
offered by relatively few insurance carriers and is written on 3469
what is known as a "claims made basis," meaning a policy must be 3470
in effect when the claim is made, not at the time of the service, 3471
in order for the claim to be paid. Without a statute of repose, 3472
professional liability insurance must be maintained forever to 3473
ensure coverage of any potential claim on previous services. These 3474
minimum annual premiums can add up, averaging between three 3475
thousand five hundred dollars and five thousand dollars annually, 3476
which is especially burdensome for a retired design professional. 3477

(8)(a) The collateral source rule prohibits a defendant from 3478
introducing evidence that the plaintiff received any benefits from 3479
sources outside the dispute. The General Assembly recognizes that 3480
this rule allows a plaintiff to recover the full amount of damages 3481
twice and also undermines the basis of a fault-based liability 3482
system. 3483

(b) Twenty-one states have modified or abolished the 3484
collateral source rule. 3485

(9)(a) Asbestos claims have created an increased amount of 3486
litigation in state and federal courts that the United States 3487
Supreme Court has characterized as "an elephant mass" of cases 3488
that "defies customary judicial administration and calls for 3489
national legislation." *Ortiz v. Fibreboard Corporation* (1999), 119 3490
S.Ct. 2295, 2303. 3491

(b) The current asbestos personal injury litigation system is 3492
unfair and inefficient, imposing a severe burden on litigants and 3493
taxpayers alike. 3494

(c) The extraordinary volume of nonmalignant asbestos cases 3495
continue to strain federal and state courts, with over two hundred 3496
thousand cases pending and over fifty thousand new cases filed 3497
each year. 3498

(d) Asbestos personal injury litigation has already 3499
contributed to the bankruptcy of more than sixty companies, 3500
including nearly all manufacturers of asbestos textile and 3501
insulation products, and the ratio of asbestos-driven bankruptcies 3502
is accelerating. 3503

(e) The General Assembly recognizes that the vast majority of 3504
asbestos claims are filed by individuals who allege they have been 3505
exposed to asbestos and who have some physical sign of exposure to 3506
asbestos, but who do not suffer from an asbestos-related 3507
impairment. 3508

(f) The cost of compensating exposed individuals who are not 3509
ill jeopardizes the ability of defendants to compensate people 3510
with cancer and other serious asbestos-related diseases, now and 3511
in the future; threatens savings, retirement benefits, and jobs of 3512
the state's current and retired employees; adversely affects the 3513
communities in which these defendants operate; and impairs Ohio's 3514
economy. 3515

(g) As stated in testimony by Robert Bunda, a trial lawyer 3516
who has been involved with the defense of asbestos claims on 3517
behalf of Owens-Illinois, Inc. for twenty-four years, there is 3518
something terribly wrong with the current civil justice system, 3519
evidenced by the fact that Owens-Illinois has been sued over three 3520
hundred thousand times for its brief involvement in manufacturing 3521
asbestos. According to Mr. Bunda, at least five Ohio-based 3522
companies have gone bankrupt because of the cost of paying people 3523
who are not sick. These bankruptcies have imperiled the 3524
availability of even modest compensation for the most seriously 3525
injured asbestos workers. They have also imperiled jobs, the 3526
health benefits, and the retirement funds of tens of thousands of 3527
blue-collar workers. New jobs are not being created in Ohio, and 3528
existing Ohio jobs are being destroyed. 3529

(h) According to a study conducted by NERA Economic Consulting, in 2000, Owens-Corning laid off two hundred and seventy-five employees from its Granville, Ohio plant. The ripple effect of those job losses predicts total employment in the county of almost five hundred jobs and a fifteen million to twenty million dollar annual reduction in regional income.

(i) The public interest requires the deferring of claims of exposed individuals who are not ill in order to preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related injuries and to safeguard the jobs, benefits, and savings of the state's employees and the well being of the Ohio economy.

(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 following:

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

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

(a) They lack control over the improvement, the ability to make determinations with respect to the improvement, and the opportunity or responsibility to maintain or undertake the

maintenance of the improvement. 3561

(b) They lack control over other forces, uses, and 3562
intervening causes that may cause stress, strain, or wear and tear 3563
to the improvement. 3564

(c) They have no right or opportunity to be made aware of, to 3565
evaluate the effect of, or to take action to overcome the effect 3566
of the forces, uses, and intervening causes described in division 3567
(E)(5)(b) of this section. 3568

(3) To recognize that, more than ten years after the 3569
completion of the construction of an improvement to real property, 3570
the availability of relevant evidence pertaining to the 3571
improvement and the availability of witnesses knowledgeable with 3572
respect to the improvement is problematic; 3573

(4) To recognize that maintaining records and other 3574
documentation pertaining to services provided for an improvement 3575
to real property or the design, planning, supervision of 3576
construction, or construction of an improvement to real property 3577
for a reasonable period of time is appropriate and to recognize 3578
that, because the useful life of an improvement to real property 3579
may be substantially longer than ten years after the completion of 3580
the construction of the improvement, it is an unacceptable burden 3581
to require the maintenance of those types of records and other 3582
documentation for a period in excess of ten years after that 3583
completion; 3584

(5) To declare that section 2305.131 of the Revised Code, as 3585
enacted by this act, strikes a rational balance between the rights 3586
of prospective claimants and the rights of design professionals, 3587
construction contractors, and construction subcontractors and to 3588
declare that the ten-year statute of repose prescribed in that 3589
section is a rational period of repose intended to preclude the 3590
pitfalls of stale litigation but not to affect civil actions 3591

against those in actual control and possession of an improvement 3592
to real property at the time that a defective and unsafe condition 3593
of that improvement causes an injury to real or personal property, 3594
bodily injury, or wrongful death. 3595

(C) In enacting division (D)(2) of section 2125.02 and 3596
division (C) of section 2305.10 of the Revised Code in this act, 3597
it is the intent of the General Assembly to do all of the 3598
following: 3599

(1) To declare that the ten-year statute of repose prescribed 3600
by division (D)(2) of section 2125.02 and division (C) of section 3601
2305.10 of the Revised Code, as enacted by this act, are specific 3602
provisions intended to promote a greater interest than the 3603
interest underlying the general four-year statute of limitations 3604
prescribed by section 2305.09 of the Revised Code, the general 3605
two-year statutes of limitations prescribed by sections 2125.02 3606
and 2305.10 of the Revised Code, and other general statutes of 3607
limitations prescribed by the Revised Code; 3608

(2) To declare that, subject to the two-year exceptions 3609
prescribed in division (D)(2)(d) of section 2125.02 and in 3610
division (C)(4) of section 2305.10 of the Revised Code, the 3611
ten-year statutes of repose shall serve as a limitation upon the 3612
commencement of a civil action in accordance with an otherwise 3613
applicable statute of limitations prescribed by the Revised Code; 3614

(3) To recognize that subsequent to the delivery of a 3615
product, the manufacturer or supplier lacks control over the 3616
product, over the uses made of the product, and over the 3617
conditions under which the product is used; 3618

(4) To recognize that under the circumstances described in 3619
division (C)(3) of this section, it is more appropriate for the 3620
party or parties who have had control over the product during the 3621
intervening time period to be responsible for any harm caused by 3622

the product; 3623

(5) To recognize that, more than ten years after a product 3624
has been delivered, it is very difficult for a manufacturer or 3625
supplier to locate reliable evidence and witnesses regarding the 3626
design, production, or marketing of the product, thus severely 3627
disadvantaging manufacturers or suppliers in their efforts to 3628
defend actions based on a product liability claim; 3629

(6) To recognize the inappropriateness of applying current 3630
legal and technological standards to products manufactured many 3631
years prior to the commencement of an action based on a product 3632
liability claim; 3633

(7) To recognize that a statute of repose for product 3634
liability claims would enhance the competitiveness of Ohio 3635
manufacturers by reducing their exposure to disruptive and 3636
protracted liability with respect to products long out of their 3637
control, by increasing finality in commercial transactions, and by 3638
allowing manufacturers to conduct their affairs with increased 3639
certainty; 3640

(8) To declare that division (D)(2) of section 2125.02 and 3641
division (C) of section 2305.10 of the Revised Code, as enacted by 3642
this act, strike a rational balance between the rights of 3643
prospective claimants and the rights of product manufacturers and 3644
suppliers and to declare that the ten-year statutes of repose 3645
prescribed in those sections are rational periods of repose 3646
intended to preclude the problems of stale litigation but not to 3647
affect civil actions against those in actual control and 3648
possession of a product at the time that the product causes an 3649
injury to real or personal property, bodily injury, or wrongful 3650
death; 3651

(D) In enacting sections 2307.91 to 2307.97 of the Revised 3652
Code, it is the intent of the General Assembly to: (1) give 3653

priority to those asbestos claimants who can demonstrate actual
physical harm or illness caused by exposure to asbestos; (2) fully
preserve the rights of claimants who were exposed to asbestos to
pursue compensation should those claimants become impaired in the
future as a result of such exposure; (3) enhance the ability of
the state's judicial systems and federal judicial systems to
supervise and control litigation and asbestos-related bankruptcy
proceedings; and (4) conserve the scarce resources of the
defendants to allow compensation of cancer victims and others who
are physically impaired by exposure to asbestos while securing the
right to similar compensation for those who may suffer physical
impairment in the future.

(E) 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.

(F) 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
Sedar v. Knowlton Constr. Co. (1990) 49 Ohio St. 3d 193.

Section 7. (A) As used in this section, "asbestos," "asbestos
claim," "exposed person," and "substantial contributing factor"
have the same meanings as in section 2307.91 of the Revised Code.

(B) The General Assembly acknowledges the Court's authority

in prescribing rules governing practice and procedure in the 3685
courts of this state, as provided by Section 5 of Article IV of 3686
the Ohio Constitution. 3687

3688

(C) The General Assembly hereby requests the Supreme Court to 3689
adopt a "Legal Consumer's Bill of Rights." 3690

(D) The General Assembly hereby requests the Supreme Court to 3691
adopt rules to specify procedures for venue and consolidation of 3692
asbestos claims brought pursuant to sections 2307.91 to 2307.95 of 3693
the Revised Code. 3694

(E) With respect procedures for venue in regard to asbestos 3695
claims, the General Assembly hereby requests the Supreme Court to 3696
adopt a rule that requires that an asbestos claim meet specific 3697
nexus requirements, including the requirement that the plaintiff 3698
be domiciled in Ohio or that Ohio is the state in which the 3699
plaintiff's exposure to asbestos is a substantial contributing 3700
factor. 3701

(F) With respect to procedures for consolidation of asbestos 3702
claims, the General Assembly hereby requests the Supreme Court to 3703
adopt a rule that permits consolidation of asbestos claims only 3704
with the consent of all parties, and in absence of that consent, 3705
permits a court to consolidate for trial only those asbestos 3706
claims that relate to the same exposed person and members of the 3707
exposed person's household. 3708

Section 8. If any item of law that constitutes the whole or 3709
part of a section of law contained in this act, or if any 3710
application of any item of law that constitutes the whole or part 3711
of a section of law contained in this act, is held invalid, the 3712
invalidity does not affect other items of law or applications of 3713
items of law that can be given effect without the invalid item of 3714

law or application. To this end, the items of law of which the 3715
sections contained in this act are composed, and their 3716
applications, are independent and severable. 3717

Section 9. If any item of law that constitutes the whole or 3718
part of a section of law contained in this act, or if any 3719
application of any item of law contained in this act, is held to 3720
be preempted by federal law, the preemption of the item of law or 3721
its application does not affect other items of law or applications 3722
that can be given affect. The items of law of which the sections 3723
of this act are composed, and their applications, are independent 3724
and severable. 3725