



**Sub. S.B. 80**

125th General Assembly  
(As Reported by H. Judiciary)

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

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**BILL SUMMARY**

*Specific causes of action*

- Provides that no civil action that is based upon a cause of action that accrued in any other state, territory, district, or foreign jurisdiction may be commenced and maintained if the period of limitation that applies to that action under the laws of that other state, territory, district, or foreign jurisdiction has expired or the period of limitation that applies to that action under the laws of this state has expired.
- Requires that generally an action based on a product liability claim and an action for bodily injury or injury to personal property be brought within two years after the cause of action accrues and provides that generally such a cause of action accrues when the injury or loss to person or property occurs.
- Provides that a cause of action for bodily injury that is not caused by exposure to chromium or asbestos, not incurred by a veteran through exposure to chemical defoliants or herbicides or other causative agents, not caused by exposure to DES or other nonsteroidal synthetic estrogens, and not caused by exposure to asbestos and is caused by exposure to hazardous or toxic chemicals, ethical drugs, or ethical medical devices accrues upon the earlier of the date competent medical authority informs the plaintiff of the injury that is related to the exposure or the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff has an injury that is related to the exposure.

- Provides that a cause of action for bodily injury incurred by a veteran through the exposure to chemical defoliants or herbicides or other causative agents, including agent orange, accrues upon the earlier of the date on which competent medical authority informs the plaintiff of the injury that is related to the exposure or the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff had an injury that is related to the exposure.
- Provides that a cause of action for bodily injury caused by exposure to DES or other nonsteroidal synthetic estrogens accrues upon the earlier of the date on which competent medical authority informs the plaintiff that the plaintiff has an injury that is related to the exposure or on the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff has an injury that is related to the exposure.
- Provides that a cause of action for bodily injury caused by exposure to asbestos accrues upon the earlier of when the plaintiff is informed by competent medical authority that the plaintiff has an injury related to the exposure or the date on which the plaintiff by the exercise of reasonable diligence should have known that the plaintiff has an injury that is related to the exposure.

**Statutes of repose**

- Prohibits the accrual of a wrongful death action involving, or another cause of action based on, a product liability claim against the manufacturer or supplier of a product later than ten years from the date the product was delivered to the first purchaser or first lessee who was not engaged in a business involving the product, but excepts a wrongful death action or another cause of action from this statute of repose if the manufacturer or supplier engaged in fraud in regard to information about the product and the fraud contributed to the harm alleged.
- Specifies that the ten-year statute of repose described in the prior dot point does not bar a civil action for wrongful death or another tort action 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 or the accrual of the cause of action, has not expired and permits a wrongful death action or another tort action involving such a product liability claim to be commenced within two years after the death or after the cause of

action accrues, if the death occurs or the cause of action accrues less than two years prior to the expiration date of the ten-year statute of repose.

- Provides that if the decedent's death occurs or the claimant's cause of action accrues during the above-described ten-year statute of repose and the claimant cannot commence a civil action during that period due to a disability, a civil action for wrongful death or a tort action based on such a product liability claim may be commenced within two years after the disability is removed.
- Provides that the ten-year statute of repose does not bar a civil action for wrongful death or bodily injury based on a product liability claim against a manufacturer or supplier of a product if the product involved is a hazardous or toxic chemical, ethical drug, ethical medical device, chromium, chemical defoliant or herbicide, other causative agent, DES, or other nonsteroidal synthetic estrogen and the decedent's death or the claimant's bodily injury resulted from exposure to the product during the ten-year period of repose and that the cause of action in such a case accrues upon the earlier of the date on which the claimant is informed by competent medical authority that the death or bodily injury was related to the exposure to the product or the date on which by the exercise of reasonable diligence the claimant should have known that the death or bodily injury was related to the exposure to the product, requires that a civil action for wrongful death or bodily injury based on this type of cause of action be commenced within two years after the cause of action accrues, and prohibits the civil action from commencing more than two years after the cause of action accrues.
- Provides that the ten-year statute of repose 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 asbestos, that the cause of action based on asbestos 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 asbestos, whichever date occurs first, and that the civil action for wrongful death must be commenced within two years after the cause of action accrues and may not be commenced more than two years after the cause of action accrues.

- Provides that the ten-year statute of repose does not bar an action based on a product liability claim against a manufacturer or supplier of a product for bodily injury caused by exposure to asbestos if the cause of action that is the basis of the action accrues upon the date on which the plaintiff is informed by competent medical authority that the plaintiff has an injury that is related to the exposure, or upon the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff has an injury that is related to the exposure, whichever date occurs first.
- Prohibits a cause of action to recover damages for injury or wrongful death that arises out of a defective and unsafe condition of an improvement to real property and a cause of action for contribution or indemnity for such damages that arises out of a defective and unsafe condition of an improvement to real property from accruing later than ten years from the date of substantial completion of the improvement.
- Allows a cause of action to recover damages for injury or wrongful death to be brought within two years from the date of discovery of a defective and unsafe condition of an improvement to real property if that discovery is made during the ten-year statute of repose but less than two years prior to the expiration of that period.
- Specifies that the ten-year statute of repose described in the prior two dot points does not apply to a civil action for injury or wrongful death against the owner of, tenant of, landlord of, or other person in possession and control of an improvement to real property and who is in actual possession and control of the improvement at the time the defective and unsafe condition of the improvement constitutes proximate cause of the injury or wrongful death.
- Prohibits the above-described ten-year statute of repose from being asserted as an affirmative defense by any defendant who engages in fraud with regards to an improvement to real property.

**Trial, liability, damages, and judgment**

- Requires that the court in all tort actions instruct the jury regarding the extent to which an award of compensatory damages or punitive or exemplary damages is or is not subject to federal or state income tax.

- Permits the trier of fact to determine based on evidence that the failure to wear a seat belt contributed to the harm alleged in the tort action and to diminish a recovery of compensatory damages that represents noneconomic loss that could have been recovered but for the plaintiff's failure to wear a seat belt.
- Modifies the categories of persons who may be awarded compensatory damages in a civil action for wrongful death to include the decedent's "dependent children" instead of minor children.
- Prohibits a trier of fact from considering specified evidence when determining an award of compensatory damages for noneconomic loss in a tort action other than a civil action upon a medical, dental, optometric, or chiropractic claim.
- Requires a trial court, upon a post-judgment motion, to review the evidence supporting an award of compensatory damages for noneconomic loss that is challenged as inadequate or excessive.
- Specifies factors that the trial court must consider when reviewing an award of compensatory damages for noneconomic loss that has been challenged as inadequate or excessive.
- Requires an appellate court to use a de novo standard of review when considering an appeal of an award of compensatory damages for noneconomic loss on the grounds that the award is inadequate or excessive.
- Requires, upon the motion of any party, the bifurcation of a tort action that is being tried to a jury and involves compensatory damages and punitive or exemplary damages and provides procedures for a bifurcated trial for a tort action that is tried by a jury.
- Modifies the conditions under which punitive or exemplary damages may be awarded.
- Limits the recovery of punitive or exemplary damages to the amount of two times the compensatory damages awarded or, if the defendant is an individual or a small employer, to the lesser of two times the amount of compensatory damages awarded or 10% of the individual's or employer's net worth up to a maximum of \$350,000.

- Provides that the limitation on punitive or exemplary damages does not apply to a tort action where the alleged injury, death, or loss to person or property resulted from the defendant acting with one or more of the culpable mental states of purposely and knowingly and when the defendant has been convicted of or pleaded guilty to a criminal offense that is a felony and had as an element of the offense one or more of the culpable mental states of purposely and knowingly.
- Prohibits the award of punitive or exemplary damages if punitive damages have already been awarded or collected based on the same act or course of conduct that is alleged and the aggregate of those damages exceeds the limits described in the prior dot point.
- Permits awarding punitive or exemplary damages in subsequent tort actions involving the same act or courses of conduct for which punitive or exemplary damages have already been awarded if it is determined that the plaintiff will offer new and substantial evidence of previously undiscovered, additional behavior of the defendant other than the injury or loss for which compensatory damages are sought.
- Permits awarding punitive or exemplary damages in subsequent tort actions involving the same act or course of conduct for which punitive or exemplary damages have already been awarded if the total amount of prior punitive or exemplary damages awards was insufficient to punish the defendant's behavior and to deter the defendant and others from similar behavior in the future.
- Prohibits an award of prejudgment interest on punitive or exemplary damages.
- Prohibits the court from instructing the jury with respect to the limits on punitive or exemplary damages, and prohibits counsel for either party or a witness from informing the jury or potential jurors of those limits.
- Prohibits any attorneys fees awarded as a result of a claim for punitive or exemplary damages to be considered for purposes of determining the cap on punitive damages.

### *Frivolous conduct*

- Expands the definition of "conduct" with regards to frivolous conduct actions to include the filing of a pleading, motion, or other paper in a civil action.
- Expands the definition of "frivolous conduct" to include conduct that is for another improper purpose, conduct that cannot be supported by a good faith argument for establishment of new law, conduct that consists of allegations or other factual contentions that have no evidentiary support, or conduct that consists of denials or factual contentions that are not warranted by the evidence.

### *Product liability actions*

- Specifically states that R.C. 2307.71 to 2307.80 (Product Liability Law) are intended to abrogate all common law product liability causes of action.
- Modifies the provision regarding defects in design or formulation of a product by specifying that a product is defective only if, at the time it left the control of the manufacturer, the foreseeable risks exceeded the benefits associated with the design or formulation.
- Removes the provision that provided that a product is defective in design or formulation if it is more dangerous than expected when used in an intended or reasonably foreseeable manner.
- Prohibits the award of punitive or exemplary damages against the manufacturer of an over-the-counter drug marketed pursuant to federal regulations and generally recognized as safe and effective and not misbranded; provides for the forfeiture of that immunity from punitive or exemplary damages if the manufacturer fraudulently and in violation of FDA regulations withheld from the FDA information known to be material and relevant to the harm allegedly suffered or misrepresented to the FDA that type of information; and defines "fraudulently" for this provision.
- Specifies that a manufacturer or supplier is not liable for punitive or exemplary damages if the harm is caused by a product other than a drug or device and if the manufacturer or supplier fully complied with all

applicable government safety and performance standards whether or not designated as such by the government with regard to the product's manufacture, construction, design, formulation, warnings, instructions, and representations when it left the manufacturer's or supplier's control and the claimant's injury results from an alleged defect of a product's manufacture or construction, the product's design or formulation, adequate warnings or instructions, and representations for which there is an applicable government safety or performance standard.

- Specifies that the manufacturer or supplier of a product other than a drug or device is subject to punitive or exemplary damages if the claimant establishes, by a preponderance of the evidence, that the manufacturer or supplier of the product other than a drug or device fraudulently withheld from an applicable government agency information known to be material and relevant to the harm that the claimant allegedly suffered or misrepresented to an applicable government agency information of that type.
- Specifies that the bifurcated trial provisions, the ceiling on recoverable punitive and exemplary damages, and the exclusion of prejudgment interest apply to awards of punitive or exemplary damages awarded under the Product Liability Law.
- Incorporates the product liability contributory fault provisions into the general contributory fault provisions.

### *Miscellaneous*

- Permits defendants in tort actions to introduce evidence of the plaintiff's receipt of collateral benefits, except if the source of the benefits has a mandatory self-effectuating federal right of subrogation or a contractual or statutory right of subrogation or if the source pays the plaintiff a benefit that is in the form of a life insurance payment or a disability payment.
- Provides that notwithstanding any contract or policy language to the contrary, a subrogee has the right to recover its subrogation interest against a third party, and is subrogated to the rights of a claimant against a third party in two specified ways.

- Provides that an order determining the constitutionality of any changes made by this bill, including amendments to specified provisions, are final orders that may be reviewed, affirmed, modified, or reversed, with or without retrial.
- Removes the definition of and references to "negligence claim" from the law dealing with civil actions and trial procedure and replaces the references with "tort claim."
- Provides the General Assembly's findings of fact and intent.
- Specifically requests the Supreme Court to adopt a legal consumer's bill of rights and to amend Ohio Civil Procedure Rule 68 to conform to Federal Rules of Civil Procedure Rule 68.
- Makes other technical changes.

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## CONTENT AND OPERATION

### *Specific causes of action and general availability of causes of action*

#### *Persons who may bring a wrongful death action*

The bill modifies the list of persons for whom compensatory damages for loss of society of the decedent and mental anguish may be awarded in a wrongful death action by changing "minor children" to "dependent children" (R.C. 2125.02(B)). The bill changes "deceased child" to "deceased minor" in the provision precluding a parent who abandoned the minor from receiving damages in a wrongful death action based on the minor's death (R.C. 2125.02(E)). The bill makes various technical changes to the wrongful death statutes such as changing "wrongful death action" to "civil action for wrongful death," "party injured" to "injured person," and "action filed" to "commenced" (R.C. 2125.02 and 2125.04).

See "*Statute of repose*," below, for discussion of the bill's provisions related to product liability claim statutes of repose in wrongful death actions.

#### *Borrowing statute-foreign period of limitation applies to foreign civil action*

Current law provides that a civil action, unless a different limitation is prescribed by statute, may be commenced only within the period prescribed in R.C. 2305.03 to 2305.22. When interposed by proper plea by a party to an action, lapse of time is a bar to a civil action. The bill modifies this provision by providing that no civil action that is based upon a cause of action that accrued in any other state, territory, district, or foreign jurisdiction may be commenced and maintained in this state if the period of limitation that applies to that action under the laws of that other state, territory, district, or foreign jurisdiction has expired or

the period of limitation that applies to that action under the laws of this state has expired. (R.C. 2305.03.)

**Accrual of certain causes of action**

Under current law, an action for bodily injury or injuring personal property must be brought within two years after the cause of action arose. The bill modifies this provision by providing that generally an action based on a product liability claim and an action for bodily injury or injuring personal property must be brought within two years after the cause of action accrues and that generally such a cause of action accrues when the injury or loss to person or property occurs. (R.C. 2305.10(A).)

The bill provides that a cause of action for bodily injury that is not caused by exposure to chromium in any of its chemical forms, that is not incurred by a veteran through exposure to chemical defoliants or herbicides or other causative agents, including agent orange, that is not caused by exposure to diethylstilbestrol (DES) or other nonsteroidal synthetic estrogens, including exposure before birth, and that is not caused by exposure to asbestos and that is caused by exposure to hazardous or toxic chemicals, ethical drugs, or ethical medical devices accrues upon the date on which the plaintiff is informed by competent medical authority that the plaintiff has an injury that is related to the exposure, or upon the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff has an injury that is related to the exposure, whichever date occurs first. (R.C. 2305.10(B)(1).)

The bill retains but technically amends the existing provision regarding the accrual of a cause of action for bodily injury caused by exposure to chromium in any of its chemical forms, removes asbestos from this provision, and creates a new similar provision for asbestos as discussed below (R.C. 2305.10(B)(2)).

The bill modifies the existing provision regarding the accrual of a cause of action for bodily injury incurred by a veteran through the exposure to chemical defoliants or herbicides or other causative agents, including agent orange, by stating that the cause of action accrues upon the date on which the plaintiff is informed by competent medical authority that the plaintiff has an injury that is related to the exposure, *or upon the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff had an injury that is related to exposure, whichever date occurs first.* (R.C. 2305.10(B)(3).)

The bill modifies the existing provision regarding the accrual of a cause of action for bodily injury caused by exposure to DES or other nonsteroidal estrogens by providing that it accrues upon the date on which the plaintiff *is informed by competent medical authority* (replaces "learns from a licensed physician") that the

plaintiff has an injury *that is* (replaces "which may be") related to the exposure, or upon the date on which by exercise of reasonable diligence the plaintiff should have *known* (replaces "becomes aware") that the plaintiff has an injury *that is* (replaces "which may be") related to the exposure, whichever date occurs first. (R.C. 2305.10(B)(4).)

The bill provides that a cause of action for bodily injury caused by exposure to asbestos accrues upon the date on which the plaintiff is informed by competent medical authority that the plaintiff has an injury that is related to the exposure, or upon the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff has an injury that is related to the exposure, whichever date occurs first (R.C. 2305.10(B)(5)).

### **Statutes of repose--product liability actions**

The bill generally prohibits the accrual of a wrongful death action involving, or another cause of action based on, a product liability claim 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. The bill excepts a wrongful death action or another cause of action from the above-described ten-year statute of repose 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. (R.C. 2125.02(D)(2)(a) and (b) and 2305.10(C)(1) and (2).) (See **COMMENT 1**.)

The bill specifies that the above-described ten-year statute of repose does not bar a civil action for wrongful death, or another tort action, involving or based on a product liability claim against a manufacturer or supplier of a product who made an express, written warranty as to the safety of the product that was for a period longer than ten years and that, at the time of the decedent's death or the accrual of the cause of action, has not expired in accordance with the warranty's terms. The bill permits a wrongful death action, or another cause of action, involving a product liability claim to be commenced within two years after the decedent's death or after the cause of action accrues, if the death occurs or the cause of action accrues less than two years prior to the expiration date of the ten-year period prior to repose. (R.C. 2125.02(D)(2)(c) and (d) and 2305.10(C)(3) and (4).)

The bill provides that if the decedent's death occurs, or the claimant's cause of action accrues, during the ten-year period of repose and the claimant cannot commence an action during that ten-year period due to a disability described in the

tolling statute, a civil action for wrongful death involving, or an action based on, the product liability claim may be commenced within two years after the disability is removed (R.C. 2125.02(D)(2)(e) and 2305.10(C)(5)).

The bill provides that the above-described ten-year statute of repose 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 asbestos. If this provision 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 asbestos 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 asbestos, whichever date occurs first. A civil action for wrongful death based on a cause of action described above must be commenced within two years after the cause of action accrues and may not be commenced more than two years after the cause of action accrues. (R.C. 2125.02(D)(2)(g).)

The bill also provides that the above-described ten year statute of repose does not bar an action for bodily injury caused by exposure to asbestos if the cause of action that is the basis of the action accrues upon the date on which the plaintiff is informed by competent medical authority that the plaintiff has an injury that is related to the exposure, or upon the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff has an injury that is related to the exposure, whichever date occurs first (R.C. 2305.10(C)(6)).

The bill also provides that the ten-year statute of repose does not bar a civil action for wrongful death or bodily injury based on a product liability claim against a manufacturer or supplier of a product if the product involved is a hazardous or toxic chemical, ethical drug, ethical medical device, chromium, chemical defoliant or herbicide or other causative agent (involving a decedent or claimant who is a veteran), DES, or other nonsteroidal synthetic estrogen and the decedent's death or claimant's bodily injury resulted from exposure to the product during the ten-year period. In such a case, 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 or claimant's bodily injury was related to the exposure to the product or upon the date on which by the exercise of reasonable diligence the claimant should have known that the decedent's death or the claimant's bodily injury was related to the exposure to the product, whichever date occurs first. A civil action for wrongful death or bodily injury based on this cause of action must be commenced within two years after the cause of action accrues and must not be commenced more than two years after the cause of action accrues (R.C. 2125.02(D)(2)(f) and 2305.10(C)(7)).

The bill provides that R.C. 2125.02 and 2305.10 (contain the above-described statute of repose provisions) do not create a new cause of action or substantive legal right against any person involving a product liability claim (R.C. 2125.02(F) and 2305.10(D)).

For the purposes of a wrongful death action, the bill defines "harm" as death. For the purposes of a tort action for bodily injury arising out of a product liability claim, "harm" means injury, death, or loss to person or property. (R.C. 2125.02(G)(5) and 2305.10(E)(3).)

The bill specifies that the above-described provisions dealing with a ten-year statute of repose for wrongful death actions involving a products liability claim (R.C. 2125.02(D) and (G)(5) to (7)) and all provisions contained in R.C. 2305.10 are to be considered purely remedial in operation and are to be applied in a remedial manner in any civil action commenced on or after the effective date of those provisions, in which those provisions are relevant, regardless of when the cause of action accrued and notwithstanding any other provision of statute or prior rule of law of this state. It also specifies that the above-described provisions dealing with a ten-year statute of repose for wrongful death actions involving a products liability claim and all provisions contained in R.C. 2305.10 are not to be construed to apply to any civil action pending prior to the effective date of those provisions. (R.C. 2125.02(H) and 2305.10(F).) (See **COMMENT 1**.)

#### **Statutes of repose--improvements to real property**

The bill generally prohibits a cause of action to recover damages for bodily injury, an injury to real or personal property, or wrongful death that arises out of a defective and unsafe condition of an improvement to real property and a cause of action for contribution or indemnity for such damages that arises out of a defective and unsafe condition of an improvement to real property from accruing against a person who performed services for the improvement to real property or a person who furnished the design, planning, supervision of construction, or construction of the improvement to real property later than ten years from the date of substantial completion of such improvement. The bill defines "substantial completion" as the date the improvement to real property is first used by the owner or tenant of the real property or when the real property is first available for use after having the improvement completed in accordance with the contract or agreement covering the improvement, including any agreed changes to the contract or agreement, whichever occurs first.

The bill permits a claimant who discovers a defective and unsafe condition of an improvement to real property during the above described ten-year period but less than two years prior to the expiration of that ten-year period to commence a civil action to recover damages for bodily injury, an injury to real or personal

property, or wrongful death that arises from that condition within two years from the date of discovery of that defective and unsafe condition. It also provides that if a cause of action that arises out of a defective and unsafe condition of an improvement to real property accrues during that ten-year period and the plaintiff cannot commence an action during that ten-year period due to a disability described in the tolling statute, the plaintiff may commence a civil action to recover damages within two years from the removal of that disability. (R.C. 2305.131(A) and (G).) (See **COMMENT 1**.)

The bill specifies that the above described ten-year statute of repose does not apply to a civil action commenced against a person who is an owner of, tenant of, landlord of, or other person in possession and control of an improvement to real property and who is in actual possession and control of the improvement to real property at the time that the defective and unsafe condition of the improvement to real property constitutes the proximate cause of the bodily injury, injury to real or personal property, or wrongful death that is the subject matter of the civil action. The ten-year statute of repose may not be asserted as an affirmative defense by any defendant who engages in fraud in regard to furnishing the design, planning, supervision of construction, or construction of an improvement to real property or in regard to any relevant fact or other information that pertains to the act or omission constituting the alleged basis of the bodily injury, injury to real or personal property, or wrongful death or to the defective and unsafe condition of the improvement to real property. (R.C. 2305.131(B) and (C).)

The above-described statute of repose does not prohibit the commencement of a civil action for damages against a person who has expressly warranted or guaranteed an improvement to real property for a period longer than the ten-year period described above and whose warranty or guarantee has not expired as of the time of the alleged bodily injury, injury to real or personal property, or wrongful death in accordance with the terms of the warranty or guarantee. The above-described statute of repose does not create a new cause of action or substantive legal right against any person resulting from the design, planning, supervision of construction, or construction of an improvement to real property. Finally, the bill specifies that the statute that creates the above-described statute of repose is to be considered purely remedial in operation and is to be applied in a remedial manner in any civil action commenced on or after the effective date of the statute, in which the statute is relevant, regardless of when the cause of action accrued and notwithstanding any other provision of law or prior rule of law of this state. It also specifies that the statute is not to be construed to apply to any civil action pending prior to its effective date. (R.C. 2305.131(D), (E), and (F).) (See **COMMENT 1**.)

## *Trial, liability, damages, and judgment*

### *Instruction to jury regarding taxability of damages awarded*

The bill requires the court in all tort actions to instruct the jury regarding the extent to which an award of compensatory damages or punitive or exemplary damages is or is not subject to taxation under federal or state income tax laws. The bill defines "tort action" as a civil action for damages for injury, death, or loss to person or property, including a product liability claim and an asbestos claim but not including a civil action for damages for breach of contract or another agreement between persons. The bill specifies that the above provision is to be considered purely remedial in operation and is to be applied in a remedial manner in any civil action commenced on or after the effective date of the provision, in which the provision is relevant, regardless of when the cause of action accrued and notwithstanding any other provision of law or prior rule of law of this state. It also specifies that the above provision is not to be construed to apply to any civil action pending prior to the effective date of the provision. (R.C. 2315.01(B).)

### *Seat belts*

Under current law, both of the following apply:

(1) Generally the failure of a person to wear all of the available elements of a properly adjusted occupant restraining device or to ensure that each passenger of an automobile being operated by the person is wearing all of the available elements of such a device, may not be considered or used as evidence of negligence or contributory negligence, does not diminish recovery for damages in any civil action involving the person arising from the ownership, maintenance, or operation of an automobile, may not be used as a basis for a criminal prosecution other than a prosecution for a violation of the Seat Belt Law, and is not admissible as evidence in any civil or criminal action involving the person other than a prosecution for a violation of the law regulating the use of such devices (Seat Belt Law).

(2) However, if at the time of an accident involving a passenger car equipped with occupant restraining devices, any occupant of the passenger car who sustained injury or death was not wearing an available occupant restraining device, was not wearing all of the available elements of such a device, or was not wearing such a device as properly adjusted, then, consistent with the Rules of Evidence, that fact is admissible in evidence in relation to any claim for relief in a tort action to the extent that the claim for relief seeks to recover damages for injury or death to the occupant, the defendant in question is the manufacturer, designer, distributor, or seller of the passenger car, and the claim for relief against the defendant in question is 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. (R.C. 4513.263(F).)

The bill modifies paragraph (1) above such that it refers to ensuring that each *minor* passenger is wearing all of the available elements of a properly adjusted occupant restraining device and repeals paragraph (2) above. It also permits the trier of fact to determine based on evidence admitted consistent with the Ohio Rules of Evidence that the failure of a person to wear all available elements of a properly adjusted occupant restraining device or the failure of a person to ensure that each minor who is a passenger of an automobile being operated by that person contributed to the harm alleged in the tort action and to diminish a recovery of compensatory damages that represents noneconomic loss in a tort action that could have been recovered but for the plaintiff's failure to wear all of the available elements of a properly adjusted occupant restraining device. (R.C. 4513.263(F).)

### **Compensatory damages in a wrongful death action**

The bill continues to authorize a trier of fact to award compensatory damages in a civil action for wrongful death for the loss of support from the reasonably expected earning capacity of the decedent, for the loss of services of the decedent, for the loss of society of the decedent (including loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education, suffered by specific individuals), for loss of prospective inheritance to the decedent's heirs, and for the "mental anguish" incurred by specific individuals by reason of the decedent's death. However, the bill modifies the categories of those specified individuals to include the decedent's surviving spouse, parents, and next of kin (continuing law, although the bill specifies that it is the next of kin of the decedent) and also all of the decedent's dependent children (not the decedent's "minor" children as under current law). (R.C. 2125.02(B).)

### **Noneconomic damages**

The bill sets forth what evidence is to be considered by the trier of fact when determining an award of compensatory damages for noneconomic loss. It also provides that an award for noneconomic loss is subject to post-trial and appellate review. The bill specifies that in determining an award of compensatory damages for noneconomic loss in a tort action, the trier of fact is prohibited from considering any of the following (R.C. 2315.19(B)):

- (1) Evidence of a defendant's alleged wrongdoing, misconduct, or guilt;
- (2) Evidence of the defendant's wealth or financial resources;



(3) All other evidence that is offered for the purpose of punishing the defendant, rather than offered for a compensatory purpose.

Upon a post-judgment motion, a trial court in a tort action is required to review the evidence supporting an award of compensatory damages for noneconomic loss that is challenged as inadequate or excessive. That review must include, but is not limited to, the following factors (R.C. 2315.19(C)):

(1) Whether the evidence presented or the arguments of the attorneys resulted in one or more of the following events in the determination of an award of compensatory damages for noneconomic loss:

(a) It inflamed the passion or prejudice of the trier of fact.

(b) It resulted in the improper consideration of the wealth or lack of wealth of the defendant.

(c) It resulted in the improper consideration of the misconduct of a party so as to punish that party improperly or in circumvention of the limitation on punitive or exemplary damages as provided in section 2315.21 of the Revised Code.

(2) Whether the verdict is less than or in excess of verdicts involving comparable injuries to similarly situated plaintiffs;

(3) Whether there were any extraordinary circumstances in the record to account for an award of compensatory damages for noneconomic loss less than or in excess of what was granted by courts to similarly situated plaintiffs, with consideration given to the type of injury, the severity of the injury, and the plaintiff's age at the time of the injury.

The bill also provides that the party that has challenged an award of compensatory damages for noneconomic loss as inadequate or excessive has the burden of proof to show that the award for damages for noneconomic loss is inadequate or excessive.

The bill requires a trial court upholding an award of compensatory damages for noneconomic loss that a party has challenged as inadequate or excessive to set forth in writing its reasons for upholding the award. The bill also requires an appellate court to use a de novo standard of review when considering an appeal of an award of compensatory damages for noneconomic loss on the grounds that the award is inadequate or excessive. (R.C. 2315.19(D) and (E).)

### **Definitions**

"Noneconomic loss" is defined for these provisions as nonpecuniary harm that results from an injury or loss to person or property that is a subject of a tort action, including, but not limited to, pain and suffering, loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education, disfigurement, mental anguish, and any other intangible loss. (R.C. 2315.19(A)(2).)

"Tort action" is defined for these provisions as a civil action for damages for injury or loss to person or property. "Tort action" includes a civil action upon a product liability claim or an asbestos claim. "Tort action" does not include a civil action upon a medical, dental, optometric, or chiropractic claim or a civil action for damages for a breach of contract or other agreement between persons. (R.C. 2315.19(A)(4).)

### **General Punitive and Exemplary Damages Law changes**

#### **Bifurcated trial**

The bill requires, upon the motion of any party, the bifurcation of a tort action that is tried to a jury and in which a plaintiff seeks compensatory damages and punitive or exemplary damages. The initial stage of the trial must relate only to the presentation of evidence, and a determination by the jury, 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, all parties are prohibited from presenting, and the court is prohibited from permitting 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. If the jury determines in the initial stage of the trial that the plaintiff is entitled to recover compensatory damages from the defendant, evidence may be presented in the second stage of the trial, and a determination by that jury must be made, with respect to whether the plaintiff additionally is entitled to recover punitive or exemplary damages from the defendant. (R.C. 2315.21(B)(1).)

In a tort action in which a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, either of the following applies: (1) if the action is tried to a jury, the court must instruct the jury to return, and the jury must 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, or (2) if the action is tried to a court, the court must 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, must make findings of fact that specify the total compensatory damages recoverable by the plaintiff from the defendant (R.C. 2315.21(B)(2) and (3)).

**When punitive or exemplary damages may be awarded**

Under current law, generally punitive or exemplary damages are not recoverable from a defendant in question in a tort action unless both of the following apply:

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

(2) The plaintiff in question has adduced proof of actual damages that resulted from actions or omissions as described in paragraph (1).

The bill removes the references to "oppression" and "insult" from paragraph (1) and replaces paragraph (2) with a prohibition against the recovery of punitive or exemplary damages unless the trier of fact returns a verdict for or makes a determination of the total compensatory damages recoverable by the plaintiff from that defendant. The bill provides that the defendant as "principal" or "master" as described in paragraph (1) must have "knowingly" authorized, participated in, or ratified actions or omissions of an agent or servant in order for punitive or exemplary damages to be awarded. (R.C. 2315.21(C) and (E)(1).)

**Cap on punitive or exemplary damages**

Under current law, in a tort action, the trier of fact must determine the liability of any defendant for punitive and exemplary damages and the amount of those damages. The bill retains this provision but generally prohibits the court from entering judgment for punitive or exemplary damages in excess of two times the amount of the compensatory damages awarded to the plaintiff from that defendant. If the defendant is an individual or a small employer,<sup>1</sup> the court is

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<sup>1</sup> "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 must be considered an employer under R.C. 2315.21 only if the subject of the tort action is related to the individual's capacity as an employer. (R.C. 2315.21(A)(4).)

"Small employer" means an employer who employs not more than 100 persons on a full-time permanent basis or, if, the employer is classified as being in the manufacturing sector by the North American Industrial Classification System, "small employer" means

prohibited from entering judgment for punitive or exemplary damages in excess of the lesser of the amount of two times the compensatory damages awarded to the plaintiff from the defendant or 10% of the employer's or individual's net worth up to a maximum of \$350,000. The bill also states that a court of common pleas does not have jurisdiction, in any tort action to which the amounts apply, to award punitive or exemplary damages that exceed these amounts. (R.C. 2315.21(D)(1) and (2) and 2305.01.)

The bill generally prohibits the award in any tort action of punitive or exemplary damages against a defendant if the defendant files with the court a certified judgment, judgment entries, or other evidence showing that punitive or exemplary damages have already been awarded and collected, in any state or federal court, against the defendant based on the same act or course of conduct that is alleged to have caused the injury or loss to person or property for which the plaintiff seeks compensatory damages and that the aggregate of those previous punitive or exemplary damages exceeds the amount specified in the preceding paragraph (R.C. 2315.21(D)(5)(a)). Notwithstanding this prohibition, the bill permits the award of punitive or exemplary damages in either of the following types of tort actions (R.C. 2315.21(D)(5)(b)):

(1) In subsequent tort actions involving the same act or course of conduct for which punitive or exemplary damages have already been awarded, if the court determines by clear and convincing evidence that the plaintiff will offer new and substantial evidence of previously undiscovered, additional behavior of a type described above in "When punitive or exemplary damages may be awarded" on the part of that defendant, other than the injury or loss for which the plaintiff seeks compensatory damages. In that case, the court must make specific findings of fact in the record to support its conclusion. The court must reduce the amount of any punitive or exemplary damages otherwise awardable by the sum of the punitive or exemplary damages awards previously rendered against that defendant in any state or federal court. The court is prohibited from informing the jury about the court's determination and action.

(2) In subsequent tort actions involving the same act or course of conduct for which punitive or exemplary damages have already been awarded, if the court determines by clear and convincing evidence that the total amount of prior punitive or exemplary damages awards was totally insufficient to punish the defendant's behavior and to deter that defendant and others from similar behavior in the future. In that case, the court must make specific findings of fact in the record to support its conclusion. The court must reduce the amount of any

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*an employer who employs not more than 500 persons on a full-time permanent basis (R.C. 2315.21(A)(5)).*

punitive or exemplary damages otherwise awardable by the sum of the punitive or exemplary damages previously rendered against that defendant in any state or federal court. The court is prohibited from informing the jury about the court's determination and action. (See **COMMENT 2**.)

The bill provides that the limitation on punitive or exemplary damages does not apply to a tort action where the alleged injury, death, or loss to person or property resulted from the defendant acting with one or more of the culpable mental states of purposely and knowingly and when the defendant has been convicted of or pleaded guilty to a criminal offense that is a felony that had as an element of the offense one or more of the culpable mental states of purposely and knowingly. (R.C. 2915.21(D)(6).)

The bill prohibits the court from instructing the jury with respect to the limits on punitive or exemplary damages, and neither counsel for any party or a witness are permitted to inform the jury or potential jurors of those limits (R.C. 2315.21(F)).

The bill also prohibits any attorneys fees awarded as a result of a claim for punitive or exemplary damages from being considered for purposes of determining the cap on punitive damages (R.C. 2315.21(D)(2)(c)).

Existing law provides that R.C. 2315.21, which deals with punitive or exemplary damages, does not apply to tort actions against the state in the Court of Claims. The bill further provides that R.C. 2315.21 does not apply to tort actions against a state university or college that are subject to R.C. 3345.40(B)(1) or to tort actions against a political subdivision of this state that are commenced under or are subject to R.C. Chapter 2744. (regarding political subdivision tort liability). (R.C. 2515.21(E).)

### **Judgment interest**

The bill retains the general judgment interest rate for tort and other civil actions at 10% per annum (R.C. 1343.03--not in the bill). The bill provides that no award of prejudgment interest is to include any prejudgment interest on punitive or exemplary damages found by the trier of fact (R.C. 2315.21(D)(3)).

### **Frivolous conduct**

The bill expands the definition of "conduct" for purposes of the law providing for the recovery of attorney's fees by a party to a civil action who is adversely affected by frivolous conduct to include the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes.

The bill also expands the definition of "frivolous conduct" that applies to that law to additionally include conduct that satisfies any of the following:

(1) Conduct that obviously serves merely to harass or maliciously injure another party to the civil action or appeal (current law) *or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation* (added by the bill).

(2) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law (current law), *or cannot be supported by a good faith argument for the establishment of new law* (added by the bill).

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

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

The bill allows the court on its own initiative to award court costs, reasonable attorney's fees, and other reasonable expenses because of frivolous conduct. (R.C. 2323.51(A)(1)(a) and (2)(a) and (B)(2).)

Under current law, generally at any time prior to the commencement of the trial in a civil action or within 21 days after the entry of judgment in a civil action or at any time prior to the hearing in an appeal against a government entity or employee that is filed by an inmate or within 21 days after the entry of judgment in an appeal of that nature, the court may award 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 award may be made against a party, the party's counsel of record, or both. (R.C. 2323.51(B)(1) and (4).) The bill modifies this provision by providing that generally, at any time not more than 30 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. The court may assess and make an award to any party to the civil action or appeal who was adversely affected by frivolous conduct, against a party, the party's counsel of record, or both. (R.C. 2323.51(B)(1).)

### **Negligence claim**

Under current law, for the purposes of the laws regarding civil actions and trial procedure (R.C. Chapters 2307. and 2315.), "negligence claim" means a civil action for damages for injury, death, or loss to person or property to the extent that the damages are sought or recovered based on allegation or proof of negligence (R.C. 2307.011(E)). The bill repeals this definition and removes references to "negligence claim" from R.C. 1775.14, 2307.29, 2315.32, 2315.34, 2315.36, and 4507.07 and replaces it with "tort claim."

### **Product liability actions**

#### **Abrogation of common law product liability causes of action**

The bill specifically states that R.C. 2307.71 to 2307.80 are intended to abrogate all common law product liability causes of action (R.C. 2307.71(B)). It limits the definition of "product liability claim" to a claim that is asserted in a civil action *pursuant to R.C. 2307.71 to 2307.80* (R.C. 2307.01(A)(13)). Consistent with the above statement, the bill specifies in several sections that the sections' references to product liability claims refer to such claims under R.C. 2307.71 to 2307.80 (R.C. 2305.25(H), 2307.011(J), and 2307.60(B)).

#### **Defects in design or formulation**

Under current law, a product is defective in design or formulation if either of the following applies (R.C. 2307.75(A)):

- (1) When it left the control of its manufacturer, the foreseeable risks associated with its design or formulation exceeded the benefits associated with that design or formulation.
- (2) It is more dangerous than an ordinary consumer would expect when used in an intended or reasonably foreseeable manner.

The bill modifies this provision by specifying that a product is defective in design or formulation *only if, at the time* it left the control of its manufacturer, the foreseeable risks associated with its design or formulation exceeded the benefits associated with that design or formulation and by repealing (2) above.

#### **Punitive or exemplary damages**

Under current law, subject to the provisions of the next paragraph, punitive or exemplary damages are not to be awarded against a manufacturer or supplier in question in connection with a product liability claim unless the claimant establishes, by clear and convincing evidence, that the harm for which the

claimant is entitled to recover compensatory damages was the result of misconduct of the manufacturer or supplier in question that manifested a flagrant disregard of the safety of persons who might be harmed by the product in question. The fact by itself that a product is defective does not establish a flagrant disregard of the safety of persons who might be harmed by that product. (R.C. 2307.80(A).)

Current law also provides that if a claimant alleges in a product liability claim that a drug caused harm to the claimant, the manufacturer of the drug is not liable for punitive or exemplary damages in connection with that product liability claim if the drug that allegedly caused the harm was manufactured and labeled in relevant and material respects in accordance with the terms of an approval or license issued by the Federal Food and Drug Administration (hereafter "FDA") under the "Federal Food, Drug, and Cosmetic Act" or the "Public Health Service Act" unless it is established by a preponderance of the evidence that the manufacturer fraudulently and in violation of applicable FDA regulations withheld from the FDA information known to be material and relevant to the claimant's harm or misrepresented to the FDA information of that type (R.C. 2307.80(C)).

The bill modifies the above provisions in several ways. First, it subjects the current general statement of when a manufacturer or supplier is liable for punitive or exemplary damages to another exception discussed in the second paragraph below. It also subjects the drug manufacturer immunity provision discussed in the prior paragraph to that new exception. It includes a "device" in the drug manufacturer immunity provision so that it applies to a manufacturer of a drug or a device and specifies that "device" has the same meaning as in the "Federal Food, Drug, and Cosmetic Act."<sup>2</sup> The bill also provides an additional set of circumstances when the manufacturer of a drug *or device* has immunity from punitive and exemplary damages. Under the bill, the manufacturer of a drug or device is not liable for punitive or exemplary damages if the drug or device that allegedly caused the harm that is the basis of the claim for damages was an over-the-counter drug marketed pursuant to federal regulations, was generally recognized as safe and effective and as not being misbranded pursuant to the

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<sup>2</sup> "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory that is (1) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them, (2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or (3) intended to affect the structure or any function of the body of man or other animals, and that does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and that is not dependant upon being metabolized for the achievement of its primary intended purposes.

applicable federal regulations, and satisfied in relevant and material respects each of the conditions contained in the applicable regulations and each of the conditions contained in an applicable monograph. (R.C. 2307.80(A), (C)(1)(b), and (C)(3)(b).)

The bill provides for the forfeiture of the proposed new immunity for over-the-counter drugs if a claimant establishes, by a preponderance of the evidence, that the manufacturer fraudulently and in violation of applicable regulations of the FDA withheld from the FDA information known to be material and relevant to the harm that the claimant allegedly suffered or misrepresented to the FDA information of that type. These same conditions result in the forfeiture of the existing immunity for a drug manufacturer as discussed above. (R.C. 2307.80(C)(2).)

The bill defines "fraudulently" for the purposes of the paragraph above as when the sponsor of the drug or medical device approval had not disclosed to the FDA, in the remarket approval application or new drug application and related submissions, that which was required to be disclosed in order to secure the approval from the FDA, which data came into the actual or constructive possession of the sponsor or its agents during the tendency of the investigational device exemption, investigational new drug application, new drug application, or remarket approval application or prior to or subsequent to the date of the actual approval of the new drug application. (R.C. 2307.80(C)(2).)

The bill specifies that a manufacturer or supplier is not liable for punitive or exemplary damages in connection with a claim if a claimant alleges in a product liability claim that a product other than a drug or device caused harm to the claimant and if the manufacturer or supplier fully complied with all applicable government safety and performance standards whether or not designated as such by the government relative to (1) the product's manufacture or construction, (2) the product's design or formulation, (3) adequate warnings or instructions, and (4) representations when it left the manufacturer's or supplier's control and the claimant's injury results from an alleged defect of a product's manufacture or construction, the product's design or formulation, adequate warnings or instructions, and representations for which there is an applicable government safety or performance standard.

The above provisions do not apply if a claimant establishes by a preponderance of the evidence that the manufacturer or supplier of the product other than a drug or device fraudulently and in violation of applicable government safety and performance standards withheld from an applicable government agency information known to be material and relevant to the harm that the claimant allegedly suffered or misrepresented to an applicable government agency information of that type. (R.C. 2307.80(D).)

The bill specifies that the bill's bifurcated trial provisions, the ceiling on recoverable punitive or exemplary damages, and the exclusion of pre-judgment interest described above under "General Punitive and Exemplary Damages Law changes" apply to awards of punitive or exemplary damages awarded under the Product Liability Law (R.C. 2307.80(E)).

### Product liability contributory fault

Current law, as enacted by Am. Sub. S.B. 120 of the 124th General Assembly, provides that contributory negligence or other contributory tortious conduct may be asserted as an affirmative defense to a product liability claim. Contributory negligence or other contributory tortious conduct of a plaintiff does not bar the plaintiff from recovering damages that have directly and proximately resulted from the tortious conduct of one or more other persons, if that contributory negligence or other contributory tortious conduct was not greater than the combined tortious conduct of all other persons from whom the plaintiff seeks recovery and of all other persons from whom the plaintiff does not seek recovery in this action. If the above applies, the compensatory damages recoverable by the plaintiff must be diminished by an amount that is proportionately equal to the percentage of negligence or other tortious conduct by the plaintiff. (R.C. 2315.43.)

If contributory negligence or other contributory tortious conduct is asserted and established as an affirmative defense to a product liability claim, the court in a nonjury action must make findings of fact, and the jury in a jury trial must return a general verdict accompanied by answers to interrogatories, that specify the following: (1) the total amount of compensatory damages that would have been recoverable on that product liability claim but for that negligence or other tortious conduct, (2) the portion of the compensatory damages that represents economic loss, (3) the portion of compensatory damages that represents noneconomic loss, and (4) the percentage of negligence or other tortious conduct attributable to all persons determined for the purposes of joint and several liability. (R.C. 2315.44.)

After the court makes its findings of fact or after the jury returns its general verdict accompanied by answers to the interrogatories, the court must diminish the total amount of the compensatory damages that would have been recoverable by an amount that is proportionately equal to the percentage of negligence or other tortious conduct that is attributable to the plaintiff. If that percentage of the negligence or other tortious conduct is greater than the sum of percentages of the tortious conduct determined to be attributable to all parties to the action from whom the plaintiff seeks recovery plus all persons from whom the plaintiff does not seek recovery in an action, the court must enter judgment in favor of the defendants. (R.C. 2315.45.)

After it makes findings of fact or after the jury returns its general verdict accompanied by answers to interrogatories, a court must enter a judgment that is in favor of the plaintiff and that imposes liability if all of the following apply: (1) contributory negligence or other contributory tortious conduct is asserted as an affirmative defense to a product liability claim, (2) it is determined that the plaintiff was contributory negligent or engaged in other contributory tortious conduct and that contributory negligence or other contributory tortious conduct was a direct and proximate cause of the injury, death, or loss involved, and (3) the plaintiff is entitled to recover compensatory damages from more than one party. (R.C. 2315.46.)

The bill repeals these provisions and incorporates them into the general contributory fault provisions in R.C. 2315.32 to 2315.36.

The bill removes from R.C. 1775.14, 2307.011, 2307.23, 2307.29, and 4507.07 references to R.C. 2315.41 to R.C. 2315.46.

***Express or implied assumption of the risk as an affirmative defense***

Current law provides that express or implied assumption of the risk may be asserted as an affirmative defense to a product liability claim, except that express or implied assumption of the risk may not be asserted as an affirmative defense to an intentional tort claim. If express or implied assumption of the risk is asserted as an affirmative defense to a product liability claim and if it is determined that the plaintiff expressly or impliedly assumed a risk and that express or implied assumption of the risk was a direct and proximate cause of harm for which the plaintiff seeks to recover damages, the express or implied assumption of the risk is a complete bar to the recovery of those damages. (R.C. 2315.42.)

The bill provides that, subject to the provisions described below, the general contributory fault provisions under R.C. 2315.32 to 2315.36 apply to a product liability claim that is asserted pursuant to the Product Liability Law under R.C. 2307.71 to 2307.80. The bill also generally continues and relocates the assumption of the risk provisions described above. However, it provides that if implied assumption of the risk is asserted as an affirmative defense to a product liability claim against a supplier for compensatory damages based on negligence under R.C. 2307.78(A)(1), the general contributory fault provisions under R.C. 2315.32 to 2315.36 are applicable to that affirmative defense and must be used to determine whether the claimant is entitled to recover compensatory damages based on that claim and the amount of any recoverable compensatory damages. (R.C. 2307.711.)

### **Collateral benefits**

The bill permits a defendant, in a tort action to introduce evidence of any amount payable as a benefit to the plaintiff as a result of damages that result from an injury, death, or loss to person or property that is the subject of the claim, except if the source of collateral benefits has a mandatory self-effectuating federal right of subrogation, a contractual right of subrogation, or a statutory right of subrogation or if the source pays the plaintiff a benefit that is in the form of a life insurance payment or disability payment. If a defendant introduces evidence of a plaintiff's right to receive collateral benefits, the plaintiff may introduce evidence of any amount the plaintiff has paid or contributed to secure any benefits of which the defendant has introduced evidence. A source of collateral benefits, of which evidence is introduced by the defendant, is prohibited from recovering any amount against the plaintiff and may not be subrogated to the plaintiff's rights against a defendant. (R.C. 2315.20.)

The bill defines "tort action" for these provisions as a civil action for damages for injury, death, or loss to person or property. "Tort action" includes a civil action upon a product liability claim and an asbestos claim. "Tort action" does not include a civil action upon a medical claim, dental claim, optometric claim, or chiropractic claim or a civil action for damages for a breach of contract or another agreement between persons. (R.C. 2315.20(D)(1).)

### **Subrogation**

The bill provides that notwithstanding any contract or policy language to the contrary, a subrogee has the right to recover its subrogation interest against a third party and is subrogated to the rights of a claimant against that third party only as follows (R.C. 2323.44(B)):

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

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

### **Definitions**

For purposes of the provisions above, the bill defines the following:

"Claimant" means a person, or the person's spouse, next of kin, or estate, who is eligible to receive compensation, medical benefits, or lost wage benefits under any health insurance plan, reimbursement plan, or wage continuation plan

that is purchased by or on behalf of the claimant or is purchased, paid for, or purchased and paid for by the claimant's employer (R.C. 2323.44(A)(2)).

"Net amount recovered" means the amount of any award, settlement, compromise, or recovery by a claimant against a third party, minus attorney fees, costs, or other expenses incurred by the claimant in securing the award, settlement, compromise, or recovery. "Net amount recovered" does not include any punitive damages that may be awarded by a judge or jury (R.C. 2323.44(A)(4)).

"Subrogation interest" includes past, present, and estimated future payments of compensation, medical benefits, or lost wage or wage continuation benefits paid or payable to or on behalf of the claimant by the subrogee (R.C. 2323.44(A)(6)).

"Subrogee" means the source of payment of compensation, medical benefits, or lost wage benefits payable to or on behalf of a claimant as a result of a health insurance plan, reimbursement plan, or lost wage payment or wage continuation plan that is purchased by or on behalf of a claimant or is purchased, paid for, or purchased and paid for by the claimant's employer (R.C. 2323.44(A)(7)).

"Third party" means an individual, private insurer, or public or private entity that is or may be liable to make payments to a claimant as a result of a civil action for damages for injury, death, or loss to person or property (R.C. 2323.44(A)(8)).

"Uncompensated damages" means the claimant's demonstrated or proven damages as a result of a tort action for injury, death, or loss to person or property minus the subrogee's subrogation interest (R.C. 2323.44(A)(10)).

### **Final appealable order**

#### **Current law**

Current law does not classify all court orders, judgments, and decrees as final orders that may be immediately appealed and affirmed, modified, or reversed on appeal. Orders not classified as final orders may not be appealed before the action is complete. Currently, R.C. 2505.02 classifies any court order determining the constitutionality of statutory changes brought about by the enactment of Am. Sub. S.B. 281 of the 124th General Assembly (relating to civil actions for damages arising out of medical malpractice claims) as a final order that may be immediately appealed and affirmed, modified, or reversed. (R.C. 2505.02(B)(6).)

### **Operation of the bill**

The bill classifies any court order determining the constitutionality of statutory changes brought about by the enactment of Sub. S.B. 80 of the 125th General Assembly, including the amendment of R.C. 2125.02, 2305.10, 2315.19, and 2315.21 as a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial. (R.C. 2505.02(B)(6).)

### **Contributory fault**

Current law states that the contributory fault of a person does not bar the person as plaintiff from recovering damages that have directly and proximately resulted from the tortious conduct of one or more other persons, if the contributory fault of the plaintiff was not greater than the combined tortious conduct of all other persons from whom the plaintiff seeks recovery in this action and of all other persons from whom the plaintiff does not seek recovery in this action. This contributory fault provision does not apply to actions brought to recover damages from an employer for personal injuries suffered by the employer's employee or for death resulting to the employee from the personal injuries, while in the employ of the employer, arising from the negligence of the employer. Under the bill, the contributory fault provision described above *does* apply to these actions. (R.C. 2315.33.)

### **Statement of findings and intent and other uncodified provisions**

The General Assembly makes the following statement of findings and intent in the bill (Section 6):

(A) The General Assembly finds:

(1) The current civil litigation system represents a challenge to the economic viability of the state of Ohio.

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

(3) 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. 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

11% and 12%, productivity growth of 7% to 8%, and total output growth between 10% and 20% 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 2 1/10% wage and salary tax, a 1 3/10% tax on personal consumption, and a 3 1/10% tax on capital investment income.

(c) The 2003 Harris Poll of 928 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 record rate in 2001, according to a February 2003 study published by Tillinghast-Towers Perrin. The system, however, failed to return even 50 cents for every dollar to people who were injured. Tillinghast-Towers Perrin also found that 54% of the total cost accounted for attorney's fees, both for plaintiffs and defendants, and administration. Only 22% of the tort system's cost was used directly to reimburse people for the economic damages associated with injuries and losses they sustain.

(e) The Tillinghast-Towers Perrin study also found that the cost of the United States tort system grew 14 3/10% in 2001, the highest increase since 1986, greatly exceeding overall economic growth of 2 6/10%. As a result, the cost of the United States tort system rose to \$205 billion total or \$721 per citizen, equal to a 5% tax on wages.

(f) As stated in testimony by Ohio Department of Development Director Bruce Johnson, as a percentage of the gross domestic product, United States tort costs have grown from 6/10% to 2% since 1950, about double the percentage that other industrialized nations pay annually. These tort costs put Ohio businesses at a disadvantage vis-a-vis foreign competition and are not helpful to development.

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

(b) In prohibiting a court from entering judgment for punitive or exemplary damages in excess of two times the amount of compensatory damages awarded to the plaintiff and, with respect to an individual or an employer that employs not more than 100 persons or if the employer is classified as being in the manufacturing sector not more than 500 persons from entering judgment for



punitive or exemplary damages in excess of the lesser of the amount of two times compensatory damages awarded to the plaintiff or 10% of the individual's or employer's net worth up to \$350,000, the General Assembly finds the following:

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

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

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

(c) 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 guidance recently provided by the United States Supreme Court in *State Farm Mutual Insurance v. Campbell* (2003), 123 S.Ct. 1513. In determining whether a \$145 million award of punitive damages was appropriate, the United States Supreme Court referred to the three 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 occasional multiple punitive damages awards and stating that a number of other states have imposed limits on punitive or exemplary damage awards.

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



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

(c) As stated in testimony by Jack Pottmeyer, architect and managing principal of MKC Associates, Inc., this unlimited liability forces professionals to maintain records in perpetuity, because those professionals cannot reasonably predict when a record from 15 or 20 years earlier may become the subject of a civil action. Those actions occur despite the fact that, over the course of many years, owners of the property or those responsible for its maintenance could make modifications or other substantial changes that would significantly change the intent or scope of the original design of the property designed by an architectural firm. The problem is compounded by the fact that professional liability insurance for architects and engineers is offered by relatively few insurance carriers and is written on what is known as a "claims made basis," meaning a policy must be in effect when the claim is made, not at the time of the service, in order for the claim to be paid. Without a statute of repose, professional liability insurance must be maintained forever to ensure coverage of any potential claim on previous services. These minimum annual premiums can add up, averaging between \$3,500 and \$5,000 annually, which is especially burdensome for a retired design professional.

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

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

(B) In enacting section 2305.131 of the Revised Code in this act, it is the intent of the General Assembly to do all of the 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.

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

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

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

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

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

(C) In enacting division (D)(2) of section 2125.02 and division (C) of section 2305.10 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 division (D)(2) of section 2125.02 and division (C) of section 2305.10 of the Revised Code, as enacted by this act, are specific provisions 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 statutes of limitations prescribed by sections 2125.02 and 2305.10 of the Revised Code, and other general statutes of limitations prescribed by the Revised Code;

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

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

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

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

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

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

(8) To declare that division (D)(2) of section 2125.02 and division (C) of section 2305.10 of the Revised Code, as enacted by this act, strike a rational balance between the rights of prospective claimants and the rights of product manufacturers and suppliers and to declare that the ten-year statutes of repose prescribed in those sections are rational periods of repose intended to preclude the

problems of stale litigation but not to affect civil actions against those in actual control and possession of a product at the time that the product causes an injury to real or personal property, bodily injury, or wrongful death;

(D) The General Assembly declares its intent that the amendment to R.C. 2307.71 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 (R.C. 2307.71 to 2307.80), and to abrogate all common law product liability causes of action.

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

The bill also provides the following in uncodified law (Section 4):

(A) The General Assembly acknowledges the Court's authority in prescribing rules governing practice and procedure in the courts of this state, as provided by Section 5 of Article IV of the Ohio Constitution.

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

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

#### "LEGAL CONSUMER'S BILL OF RIGHTS

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

Client rights and lawyer duties:

#### 1. COURTESY



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

## 2. PROFESSIONALISM

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

## 3. ATTENTION

You can expect your lawyer's independent professional judgment and loyalty uncompromised by conflicts of interest. Your lawyer will maintain accurate records and protect any funds you provide regarding your legal matter.

## 4. FEE DISCLOSURE

You can expect your lawyer to fully disclose fee arrangements and other costs at the onset of your relationship, and to provide a written fee agreement or contingency fee contract.

## 5. RESPONSIVENESS

You can expect to have your questions answered and telephone calls returned by your lawyer in a reasonable time in accordance with professional standards.

## 6. CONTROL

You can expect your lawyer to keep you informed about the progress of your legal matter, to disclose alternative approaches to resolving your legal matter, and to have you participate meaningfully in the resolution process.

## 7. RESPECT

You can expect to have your lawyer respect your legitimate objectives and to include you in making settlement decisions regarding your legal dispute.

## 8. CONFIDENTIALITY

You can expect to have your lawyer honor the attorney-client privilege, protect your right to privacy and preserve your secrets and confidences.



## 9. ETHICS

You can expect ethical conduct from your lawyer in accord with the Code of Professional Responsibility.

## 10. NON-DISCRIMINATION

You may not be refused representation based upon race, creed, color, religion, sex, age, national origin or disability.

## 11. GRIEVANCES

You may file a grievance with the certified grievance committee of your local bar association or the Ohio State Bar Association or with the Board of Commissioners on Grievances and Discipline of the Supreme Court if you are not satisfied with the legal services you have retained. The committee and the board include nonattorneys as members. The Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio has the authority to discipline and to impose sanctions on attorneys in Ohio.

Client responsibilities:

### 1. TRUTHFULNESS

Your lawyer can expect you to be truthful and to have you provide a full disclosure of pertinent information needed to handle your legal matter.

### 2. RESPONSIVENESS

Your lawyer can expect you to provide timely responses to reasonable requests for information, and to be on time for legal proceedings. Your lawyer can expect you to pay your legal bills in a timely manner.

### 3. COURTESY

Just as you expect to be treated with respect and courtesy, your lawyer can expect you to set appointments in advance to meet with your lawyer, to be responsible for making reasonable requests of your lawyer's time, and to be treated respectfully.

### 4. COMMUNICATION

Your lawyers can expect you to communicate in a timely manner about your legal matter, or if you are unhappy with the way your matter is being handled. There is a grievance procedure in place to handle disputes with your lawyer that you are not able to resolve on your own.



## 5. ETHICS

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

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

The bill includes severability clauses (Sections 5 and 6).

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## COMMENT

1. An issue may be raised that a statute of repose infringes upon the "open courts, right-to-remedy, and due course of law" provisions of Section 16 of Article I of the Ohio Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. See *Brenneman v. R.M.I. Co.* (1994), 70 Ohio St.3d 460 (R.C. 2305.131's ten-year statute of repose is unconstitutional as being violative of Section 16 of Article I of the Ohio Constitution); *Cyrus v. Henes* (1994), 70 Ohio St.3d 640; *Ross v. Tom Reith, Inc.* (1995), 71 Ohio St.3d 563; *Cleveland City School Dist. Bd. of Edn. v. URS Co.* (1995), 72 Ohio St.3d 188; and *State ex rel. Ohio Academy of Trial Lawyers et al. v. Sheward* (1999), 86 Ohio St.3d 451. An issue may also be raised that a statute of repose infringes upon the "equal protection" provision of Section 2 of Article I of the Ohio Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

2. Issues may be raised that the cap provisions on punitive or exemplary damages are unconstitutional as being violative of the "open courts, right-to-remedy, and due course of law" provisions of Section 16 of Article I of the Ohio Constitution, the right to a trial by jury established by Section 5 of Article I of the Ohio Constitution, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. See *Morris v. Savoy* (1991), 61 Ohio St. 3d 684, and *State ex. Rel. Ohio Academy of Trial Lawyers et al. v. Sheward, supra.*

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-01-03	pp. 310-311
Reported, S. Judiciary on Civil Justice	06-11-03	p. 447
Passed Senate (19-13)	06-11-03	pp. 453-469
Reported, H. Judiciary	12-02-04	pp. 2343-2344

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