



*Synopsis of House Committee Amendments**

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The Committee restructured the Senate passed version to have the joint and several liability provisions (R.C. 2307.22 to 2307.24), right of contribution and related provisions (R.C. 2307.25 to 2307.29), and contributory fault provisions (R.C. 2315.32 to 2315.36) apply to *tort actions* in general, which is redefined to include product liability actions based either *on a product's defective design or formulation or on a defective product because of inadequate warning or instruction* and to have separate joint and several liability provisions (R.C. 2315.44) and right of contribution and related provisions (R.C. 2315.45 and 2315.46) (which are similar to the provisions applicable to general tort actions) apply to *strict liability product liability actions*, which is defined as product liability claims based *upon a product's defective manufacture or construction or upon a defective product because it did not conform to a representation made by its manufacturer*. With respect to civil actions in which the plaintiff *combines* a product liability claim based either on a product's defective design or formulation or on a defective product because of inadequate warning or instruction with a product liability claim based upon a product's defective manufacture or construction or upon a defective product because it did not conform to a representation made by its manufacturer, all of the provisions that apply to general tort actions apply to the combined product liability claims (R.C. 2315.47).

The Committee modified the Senate passed version by providing that contributory negligence or other contributory tortious conduct *may not* be asserted as an affirmative defense to a strict liability product liability claim, and express or implied assumption of the risk may be asserted as an affirmative defense *only* to a product liability claim based upon a product's defective manufacture or construction or upon a defective product because it did not conform to a representation made by its manufacturer (R.C. 2315.42(A) and 2315.43). In making this modification, the Committee deleted all of the provisions in the Senate passed version relating to contributory negligence or contributory tortious conduct as an affirmative defense to all product liability claims.

* This synopsis does not address amendments that may have been adopted on the House floor.

The Committee added the provisions that the contributory fault of a plaintiff or the express or implied assumption of the risk *may not* be asserted as an affirmative defense to a product liability claim that is equivalent to a strict liability product liability claim or to an "intentional tort claim," a defined term (R.C. 2315.32(C), 2315.42(A), and 2307.011(D)). It further added the following provisions with respect to intentional tort claims in tort actions (R.C. 2307.22(A)(3) and (4)):

(1) If the trier of fact determines that *50% or less* of the tortious conduct is attributable to any defendant against whom an intentional tort claim has been alleged and established, that defendant is jointly and severally liable for all compensatory damages for economic loss.

(2) If paragraph (1), above, applies, each defendant against whom an intentional tort claim has *not* been alleged or established and to whom 50% or less of the tortious conduct is attributable is liable only for that defendant's proportionate share of the compensatory damages for economic loss.

The Committee added a new provision in the Product Liability Law that states that no cause of action may exist as a product liability claim unless it is defined and governed by that Law (R.C. 2307.71 to 2307.80).

The Committee added a provision that for purposes of the apportionment of tortious conduct in tort actions and in strict liability product liability actions, it is an *affirmative defense* for each party to the action from whom the plaintiff seeks recovery in the action that a specific percentage of the tortious conduct is attributable to one or more "persons from whom the plaintiff does not seek recovery in the action," a defined term (R.C. 2307.23(C) and 2315.44(A)(2)). In the definition of "persons from whom the plaintiff does not seek recovery in this action," the Committee added the provision that the term covers persons who are not a party to the action *if the name of the person has been disclosed prior to trial* (R.C. 2307.011(H)(4)).

The Committee added the following exception to the provision that a release or a covenant not to sue or not to enforce judgment reduces the claim against the other tortfeasors or defendants to the extent of the greater or any amount stipulated by the release or covenant or the amount of the consideration paid for it: (1) such reduction does not apply if it results in the plaintiff recovering less than the total amount of compensatory damages awarded, and (2) in any case in which the reduction does not apply, the plaintiff cannot recover more than the total amount of compensatory damages awarded (R.C. 2307.28 and 2316.46(C)).