



CORRECTED VERSION

Synopsis of Senate Committee Amendments*

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Legislative Service Commission

Sub. H.B. 350

125th General Assembly

(S. Judiciary)

Changes to provisions of the House-passed version of the bill

Eliminated the "intentional tort" exemption that was contained in the provisions of the House-passed version of the bill that pertain to civil liability and immunity regarding users of recreational trails (R.C. 1519.07).

Replaced the provisions of the House-passed version of the bill that provided civil immunity for food manufacturers, sellers, and trade associations for claims related to a person's cumulative consumption, weight gain, obesity, or a related health condition with provisions that specify that no manufacturer, seller, or supplier of a food or nonalcoholic beverage is subject to injunctive relief or declaratory relief or is liable for compensatory, punitive, or exemplary damages, including noneconomic loss, in a tort action based on a claim resulting from a person's weight gain, obesity, or physical or mental health condition related to weight gain or obesity, that is the result of consumption of the food or nonalcoholic beverage, unless the person who brings the action proves that, at the time of the sale of the food or nonalcoholic beverage consumed, it was not in compliance with applicable statutory and regulatory requirements, and the noncompliance was the proximate cause of the claim of injury, death, or loss resulting from weight gain, obesity, or physical or mental condition related to weight gain or obesity, and the award of damages or other relief complies with the Product Liability Law (R.C. 2305.36).

Issues not addressed in the House-passed version of the bill

Added to the bill provisions that do the following, regarding various issues that were not addressed in the House-passed version of the bill (R.C. 1775.14, 2117.06, 2125.01, 2125.02, 2125.04, 2305.01, 2305.03, 2305.10, 2305.117, 2305.25, 2307.011, 2307.23, 2307.29, 2307.60, 2307.71, 2307.711, 2307.75, 2307.80, 2315.01, 2315.21, 2315.32, 2315.33, 2315.34, 2315.36, 2323.41, 2323.43, 4507.07, 4513.263, 4705.15, and 4705.16, Sections 3 to 6, and repeal of R.C. 2315.41, 2315.42, 2315.43, 2315.44, 2315.45, and 2315.46):

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

Specific causes of action

Prohibit the commencement of a wrongful death action if the decedent was compensated for the decedent's injuries prior to the decedent's death, the decedent executed a valid release of the decedent's claim, and the decedent's personal injuries were sustained under the same circumstances that otherwise could be the basis of a civil action for wrongful death.

Prohibit the commencement of a wrongful death action if a judgment for damages was entered in a civil action prior to the decedent's death, the judgment was fully satisfied, and the decedent's personal injuries that were the subject of that civil action were sustained under the same circumstances that otherwise could have been the basis of a civil action for wrongful death.

Provide 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.

Require 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.

Provide 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, and not caused by exposure to DES or other nonsteroidal synthetic estrogens, 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.

Provide 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.

Provide 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.

Statutes of repose

Prohibit 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.

Specify 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.

Provide 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.

Provide 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.

Provide 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.

Provide 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.

Prohibit 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 the performance of the services or the furnishing of the design, planning, supervision of construction, or construction.

Allow 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.

Specify 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.

Prohibit 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

Require 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 not subject to federal or state income tax.

Require the trier of fact to consider the failure to wear a seat belt as contributory fault or other tortious conduct or for any other relevant purpose with regards to an injury if the failure to wear the seat belt contributed to the harm alleged and permits the trier of fact, because of that failure, to reduce compensatory damages.

Modify 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.

Limit the compensatory damages for noneconomic loss that may be awarded in a tort action as follows:

(1) Generally, the greater of \$250,000 or an amount equal to three times the plaintiff's economic loss, to a maximum of \$350,000 for each plaintiff or a maximum of \$500,000 for each occurrence;

(2) If the noneconomic losses are for permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system, or for permanent physical functional injury that permanently prevents the injured person from being able to independently care for self and perform life-sustaining activities, \$500,000 for each plaintiff or \$1 million for each occurrence.

Provide that a court of common pleas has no jurisdiction to enter judgment on an award of compensatory damages for noneconomic loss in excess of the limits in the prior dot point.

Require, upon the motion of any party, the bifurcation of a tort action involving compensatory damages and punitive or exemplary damages and provides procedures for a bifurcated trial for a tort action that is tried by a jury and for a tort action that is tried by a judge.

Modify the conditions under which punitive or exemplary damages may be awarded.

Limit the recovery of punitive or exemplary damages to the amount of compensatory damages awarded or \$100,000, whichever is greater or, if the defendant is a small employer, to the lesser of the amount of compensatory damages awarded or \$100,000.

Provide that the limitation on punitive or exemplary damages does not apply to a tort action for bodily injury against a defendant who has been convicted of or pleaded guilty to rape, sexual battery, unlawful sexual conduct with a minor, OMVI, or OMVUAC if the bodily injury that is the basis of the tort action was caused by that defendant.

Prohibit 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.

Permit 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.

Permit 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.

Prohibit an award of prejudgment interest on punitive or exemplary damages.

Product liability actions

Specifically state that R.C. 2307.71 to 2307.80 (Product Liability Law) are intended to abrogate all common law product liability causes of action.

Modify 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.

Remove 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.

Prohibit 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.

Specify 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 standards with regard to the product's manufacture, construction, design, formulation, warnings, instructions, and representations when it left the manufacturer's or supplier's control.

Specify 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.

Incorporate the product liability contributory fault provisions into the general contributory fault provisions.

Miscellaneous

Permit 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.

Limit attorney contingency fees in connection with a tort action, other than an action based on a medical, dental, optometric, or chiropractic claim, to not exceed 35% of the first \$100,000 recovered, 25% of the next \$500,000 recovered, and 15% on any amounts recovered over \$600,000.

Require each attorney who is licensed to practice law in Ohio to append to every written retainer agreement or contract for legal services a legal consumer's bill of rights and provides the form for that document.

Remove 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."

Specify that a person who files a complaint in a tort action may only name two defendants in the complaint, unless such person knows with reasonable certainty that an additional party or parties are culpable defendants; that the person may amend the complaint to include additional defendants determined through discovery for which the statute of limitations had not expired at the time the person filed the original complaint; and that if the statute of limitations has not expired when the person files the complaint and, after filing the complaint, the person determines through discovery additional defendants that were not named in the original complaint and that need to be included in the complaint, the statute of limitations for the tort action with respect to those additional defendants is tolled between the date of the filing of the original complaint and the date the additional defendants are included in the complaint but in no event later than the date the court enters judgment.

Request the Supreme Court to collect data regarding the number of awards made to parties in civil actions in the courts of common pleas who were adversely affected by frivolous conduct or by the bringing of a civil action including a medical claim, dental claim, optometric claim, or chiropractic claim for which there was not a reasonable good faith basis.

Provide the General Assembly's findings of fact and intent.

Specifically request the Supreme Court to adopt a legal consumer's bill of rights.

Make other technical changes.

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