Ohio’s PRODUCT LIABILITY ACT & RELATED STATUTES
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Frost Brown Todd has a distinguished reputation defending manufacturers and distributors of a wide variety of products, as well as counseling clients concerning product liability prevention measures and product recalls. Our practice encompasses litigation in state and federal courts throughout the country. Our experience includes multidistrict litigation, serial product liability cases and single-incident loss cases. Our attorneys have represented clients in product liability matters in all 50 states and Puerto Rico and have tried more than 300 jury cases to verdict. Whether we are acting as national trial counsel or local counsel, our product liability expertise has been invaluable to the successful defense of our clients’ products and brands.

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OHIO’S PRODUCT LIABILITY ACT
AND RELATED STATUTES

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OHIO’S PRODUCT LIABILITY ACT

DEFINITIONS USED IN OHIO’S PRODUCT LIABILITY ACT*

Product Liability Definitions
Ohio Rev. Code § 2307.71

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

(1) “Claimant” means either of the following:

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

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

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

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

1 The Ohio Product Liability Act is found in Ohio Revised Code §§ 2307.71 through 2307.80. These sections “are intended to abrogate all common law product liability claims or causes of action.” Ohio Rev. Code § 2307.71(B). In 2007, the Ohio General Assembly amended the Act to clarify that a product liability claim “also includes any public nuisance claim or cause of action at common law in which it is alleged that the design, manufacture, supply, marketing, distribution, promotion, advertising, labeling, or sale of a product unreasonably interferes with a right common to the general public.” Ohio Rev. Code § 2307.71(A)(13)(c). The Act therefore applies to all product liability claims—including, for instance, negligence or breach of warranty claims—that arise and are brought in actions commenced on or after April 7, 2005. A common law product liability claim may still be available for claims arising prior to April 7, 2005. Please contact Frost Brown Todd LLC for more information about common law claims.

Also note that the Product Liability Act does not apply to silicosis, mixed dust disease, and asbestosis claims. Silicosis and mixed dust disease claims are governed by Ohio Revised Code §§ 2307.84 through 2307.902. Asbestosis claims are governed by Ohio Revised Code §§ 2307.91 through 2307.98. These statutes are not reprinted here, but please contact Frost Brown Todd LLC for more information about silicosis, mixed dust disease, or asbestosis claims.

2 In this booklet, the headings provided directly above the statutory citations were taken from the website of the Ohio Revised Code at http://codes.ohio.gov/orc. These headings are editorial and not part of the law. See Ohio Rev. Code § 1.01 (“Title, Chapter, and section headings and marginal General Code section numbers do not constitute any part of the law as contained in the ‘Revised Code.’”). Headings followed by an asterisk (*) do not appear in the text of the Ohio Revised Code and have been added for the reader’s convenience. By including these headings, Frost Brown Todd LLC makes no representation regarding their content.
(2) “Economic loss” means direct, incidental, or consequential pecuniary loss, including, but not limited to, damage to the product in question, and nonphysical damage to property other than that product. Harm is not “economic loss.”

(3) “Environment” means only navigable waters, surface water, ground water, drinking water supplies, land surface, subsurface strata, and air.

(4) “Ethical drug” means a prescription drug that is prescribed or dispensed by a physician or any other person who is legally authorized to prescribe or dispense a prescription drug.

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

(6) “Foreseeable risk” means a risk of harm that satisfies both of the following:

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

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

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

      (ii) Any superior attention, perception, memory, knowledge or intelligence that the manufacturer in question possesses.

(7) “Harm” means death, physical injury to person, serious emotional distress or physical damage to property other than the product in question. Economic loss is not “harm.”

(8) “Hazardous or toxic substances” include, but are not limited to, hazardous waste as defined in section 3734.01 of the Revised Code, hazardous waste as specified in the rules of the director of environmental protection pursuant to division (A) of section 3734.12 of the Revised Code, hazardous substances as defined in section 3716.01 of the Revised Code, and hazardous substances, pollutants, and contaminants as defined in or by regulations adopted pursuant to the “Comprehensive Environmental Response, Compensation, and Liability Act of 1980,” 94 Stat. 2767, 42 U.S.C. 9601, as amended.

(9) “Manufacturer” means a person engaged in a business to design, formulate, produce, create, make, construct, assemble, or rebuild a product or a component of a product.

(10) “Person” has the same meaning as in division (C) of section 1.59 of the Revised Code and also includes governmental entities.
(11) “Physician” means a person who is licensed to practice medicine and surgery or osteopathic medicine and surgery by the state medical board.

(12) (a) “Product” means, subject to division (A)(12)(b) of this section, any object, substance, mixture or raw material that constitutes tangible personal property and that satisfies all of the following:

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

(ii) It is produced, manufactured, or supplied for introduction into trade or commerce.

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

(b) “Product” does not include human tissue, blood, or organs.

(13) “Product liability claim” means a claim or cause of action that is asserted in a civil action pursuant to sections 2307.71 to 2307.80 of the Revised Code that seeks to recover compensatory damages from a manufacturer or supplier for death, physical injury to person, emotional distress, or physical damage to property other than the product in question, that allegedly arose from any of the following:

(a) The design, formulation, production, construction, creation, assembly, rebuilding, testing, or marketing of that product;

(b) Any warning or instruction, or lack of warning or instruction, associated with that product;

(c) Any failure of that product to conform to any relevant representation or warranty. “Product liability claim” also includes any public nuisance claim or cause of action at common law in which it is alleged that the design, manufacture, supply, marketing, distribution, promotion, advertising, labeling, or sale of a product unreasonably interferes with a right common to the general public.

(14) “Representation” means an express representation of a material fact concerning the character, quality, or safety of a product.

(15) (a) “Supplier” means, subject to division (A)(15)(b) of this section, either of the following:

(i) A person that, in the course of a business conducted for the purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise participates in the placing of a product in the stream of commerce;
(ii) A person that, in the course of a business conducted for the purpose, installs, repairs, or maintains any aspect of a product that allegedly causes harm.

(b) “Supplier” does not include any of the following:

(i) A manufacturer;

(ii) A seller of real property;

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

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

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

Act Intended to Abrogate All Common Law Product Liability Claims or Causes of Action*

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

Effective Date: 07-06-2001; 04-07-2005; 2006 SB117 10-31-2007

AFFIRMATIVE DEFENSES*3

Assumption of Risk as Affirmative Defense to Product Liability Claim
Ohio Rev. Code § 2307.711

(A) Subject to divisions (B)(1), (2), and (3) of this section, sections 2315.32 to 2315.36 of the Revised Code apply to a product liability claim4 that is asserted pursuant to sections 2307.71 to 2307.80 of the Revised Code.

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

3 For other statutory affirmative defenses, see Ohio Rev. Code § 2703.23 (percentage of tortious conduct attributable to non-party) and Ohio Rev. Code § 2315.32 (contributory fault). Depending on the underlying facts of a claim, common law affirmative defenses may also be available.

4 For the reader’s convenience, the terms which maintain specific meaning for use in the Ohio Product Liability Act, Ohio Rev. Code §§ 2307.71-2307.80, have been identified by italic typeset in this text.
(2) Subject to division (B)(3) of this section, if expressed or implied assumption of the risk is asserted as an affirmative defense to a product liability claim under sections 2307.71 to 2307.80 of the Revised Code and if it is determined that the express or implied assumption of the risk was a direct and proximate cause of harm for which the claimant seeks to recover damages, the express or implied assumption of risk is a complete bar to the recovery of those damages.

(3) If implied assumption of the risk is asserted as an affirmative defense to a product liability claim against a supplier under division (A)(1) of section 2307.78 of the Revised Code, sections 2315.32 to 2315.36 of the Revised Code are applicable to that affirmative defense and shall 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.

Effective Date: 04-07-2005

PRODUCT LIABILITY ACTIONS GENERALLY*

Civil Action for Product Liability Claim
Ohio Rev. Code § 2307.72

(A) Any recovery of compensatory damages based on a product liability claim is subject to sections 2307.71 to 2307.79 of the Revised Code.

(B) Any recovery of punitive or exemplary damages in connection with a product liability claim is subject to sections 2307.71 to 2307.80 of the Revised Code.

(C) Any recovery of compensatory damages for economic loss based on a claim that is asserted in a civil action, other than a product liability claim, is not subject to sections 2307.71 to 2307.79 of the Revised Code, but may occur under the common law of this state or other applicable sections of the Revised Code.

(D) (1) Sections 2307.71 to 2307.80 of the Revised Code do not supersede, modify, or otherwise affect any statute, regulation, or rule of this state or of the United States, or the common law of this state or of the United States, that relates to liability in compensatory damages or punitive or exemplary damages for injury, death, or loss to person or property, or to relief in the form of the abatement of a nuisance, civil penalties, cleanup costs, cost recovery, an injunction or temporary restraining order, or restitution, that arises, in whole or in part, from contamination or pollution of the environment or a threat of contamination or pollution of the environment, including contamination or pollution or a threat of contamination or pollution from hazardous or toxic substances.

(2) Consistent with the Rules of Civil Procedure, in the same civil action against the same defendant or different defendants, a claimant may assert both of the following:

(a) A product liability claim, including a claim for the recovery of punitive or exemplary damages in connection with a product liability claim;
(b) A claim for the recovery of compensatory damages or punitive or exemplary damages for injury, death, or loss to person or property, or for relief in the form of the abatement of a nuisance, civil penalties, cleanup costs, cost recovery, an injunction or temporary restraining order, or restitution, that arises, in whole or in part, from contamination or pollution of the environment or a threat of contamination or pollution of the environment, including contamination or pollution or a threat of contamination or pollution from hazardous or toxic substances.

Effective Date: 07-06-2001

MANUFACTURER LIABILITY*

Liability of Manufacturer – Enterprise Liability Rejected
Ohio Rev. Code § 2307.73

Causation and Required Proof*

(A) A manufacturer is subject to liability for compensatory damages based on a product liability claim only if the claimant establishes, by a preponderance of the evidence, all of the following:

(1) Subject to division (B) of this section, the manufacturer’s product in question was defective in manufacture or construction as described in section 2307.74 of the Revised Code, was defective in design or formulation as described in section 2307.75 of the Revised Code, was defective due to inadequate warning or instruction as described in section 2307.76 of the Revised Code, or was defective because it did not conform to a representation made by its manufacturer as described in section 2307.77 of the Revised Code;

(2) A defective aspect of the manufacturer’s product in question as described in division (A)(1) of this section was a proximate cause of harm for which the claimant seeks to recover compensatory damages;

(3) The manufacturer designed, formulated, produced, constructed, created, assembled, or rebuilt the actual product that was the cause of harm for which the claimant seeks to recover compensatory damages.

Destruction of Product*

(B) If a claimant is unable because the manufacturer’s product in question was destroyed to establish by direct evidence that the manufacturer’s product in question was defective or if a claimant otherwise is unable to establish by direct evidence that the manufacturer’s product in question was defective, then, consistent with the Rules of Evidence, it shall be sufficient for the claimant to present circumstantial or other competent evidence that establishes, by a preponderance of the evidence, that the manufacturer’s product in question was defective in any one of the four respects specified in division (A)(1) of this section.

No Market Share, Enterprise, or Industry-wide Liability*

(C) Proof that a manufacturer designed, formulated, produced, constructed, created, assembled, or rebuilt the type of product in question is not proof that the manufacturer
designed, formulated, produced, constructed, created, assembled, or rebuilt the actual defective product in the product liability claim. A manufacturer may not be held liable in a product liability action based on market share, enterprise, or industry-wide liability.

Effective Date: 07-06-2001; 2006 SB117 10-31-2007

PRODUCT DEFECTS*

Product Defective in Manufacture or Construction
Ohio Rev. Code § 2307.74

A product is defective in manufacture or construction if, when it left the control of its manufacturer, it deviated in a material way from the design specifications, formula, or performance standards of the manufacturer, or from otherwise identical units manufactured to the same design specifications, formula, or performance standards. A product may be defective in manufacture or construction as described in this section even though its manufacturer exercised all possible care in its manufacture or construction.

Effective Date: 01-05-1988

Product Defective in Design or Formulation
Ohio Rev. Code § 2307.75

(A) Subject to divisions (D), (E), and (F) of this section, a product is defective in design or formulation if, at the time it left the control of its manufacturer, the foreseeable risks associated with its design or formulation as determined pursuant to division (B) of this section exceeded the benefits associated with that design or formulation as determined pursuant to division (C) of this section.

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

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

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

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

(4) The extent to which that design or formulation conformed to any applicable public or private product standard that was in effect when the product left the control of its manufacturer;
(5) The extent to which that design or formulation is more dangerous than a reasonably prudent consumer would expect when used in an intended or reasonably foreseeable manner.

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

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

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

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

Unavoidably Unsafe Ethical Drugs or Medical Devices*

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

Inherently Dangerous Products*

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

Product Not Defective if Design is State of the Art*

(F) A product is not defective in design or formulation if, at the time the product left the control of its manufacturer, a practical and technically feasible alternative design or formulation was not available that would have prevented the harm for which the claimant seeks to recover compensatory damages without substantially impairing the usefulness or intended purpose of the product.

Effective Date: 07-06-2001; 04-07-2005

Product Defective Due to Inadequate Warning or Instruction
Ohio Rev. Code § 2307.76

(A) Subject to divisions (B) and (C) of this section, a product is defective due to inadequate warning or instruction if either of the following applies:

(1) It is defective due to inadequate warning or instruction at the time of marketing if, when it left the control of its manufacturer, both of the following applied:
(a) The manufacturer knew or, in the exercise of reasonable care, should have known about a risk that is associated with the product and that allegedly caused harm for which the claimant seeks to recover compensatory damages;

(b) The manufacturer failed to provide the warning or instruction that a manufacturer exercising reasonable care would have provided concerning that risk, in light of the likelihood that the product would cause harm of the type for which the claimant seeks to recover compensatory damages and in light of the likely seriousness of that harm.

(2) It is defective due to inadequate post-marketing warning or instruction if, at a relevant time after it left the control of its manufacturer, both of the following applied:

(a) The manufacturer knew or, in the exercise of reasonable care, should have known about a risk that is associated with the product and that allegedly caused harm for which the claimant seeks to recover compensatory damages;

(b) The manufacturer failed to provide the post-marketing warning or instruction that a manufacturer exercising reasonable care would have provided concerning that risk, in light of the likelihood that the product would cause harm of the type for which the claimant seeks to recover compensatory damages and in light of the likely seriousness of that harm.

Product Not Defective Due to Failure to Warn of Open and Obvious Risk*

(B) A product is not defective due to lack of warning or instruction or inadequate warning or instruction as a result of the failure of its manufacturer to warn or instruct about an open and obvious risk or a risk that is a matter of common knowledge.

(C) An ethical drug is not defective due to inadequate warning or instruction if its manufacturer provides otherwise adequate warning and instruction to the physician or other legally authorized person who prescribes or dispenses that ethical drug for a claimant in question and if the federal food and drug administration has not provided that warning or instruction relative to that ethical drug is to be given directly to the ultimate user of it.

Effective Date: 01-05-1988

Product Conforming to Representation Made by Manufacturer
Ohio Rev. Code § 2307.77

A product is defective if it did not conform, when it left the control of its manufacturer, to a representation made by that manufacturer. A product may be defective because it did not conform to a representation even though its manufacturer did not act fraudulently, recklessly, or negligently in making the representation.

Effective Date: 01-05-1988
SUPPLIER LIABILITY*

Liability of Supplier
Ohio Rev. Code § 2307.78

(A) Subject to division (B) of this section, a supplier is subject to liability for compensatory damages based on a product liability claim only if the claimant establishes, by a preponderance of the evidence, that either of the following applies:

1. The supplier in question was negligent and that, negligence was a proximate cause of harm for which the claimant seeks to recover compensatory damages;

2. The product in question did not conform, when it left the control of the supplier in question, to a representation made by that supplier, and that representation and the failure to conform to it were a proximate cause of harm for which the claimant seeks to recover compensatory damages. A supplier is subject to liability for such a representation and the failure to conform to it even though the supplier did not act fraudulently, recklessly, or negligently in making the representation.

(B) A supplier of a product is subject to liability for compensatory damages based on a product liability claim under sections 2307.71 to 2307.77 of the Revised Code, as if it were the manufacturer of that product, if the manufacturer of that product is or would be subject to liability for compensatory damages based on a product liability claim under sections 2307.71 to 2307.77 of the Revised Code and any of the following applies:

1. The manufacturer of that product is not subject to judicial process in this state;

2. The claimant will be unable to enforce a judgment against the manufacturer of that product due to actual or asserted insolvency of the manufacturer;

3. The supplier in question owns or, when it supplied that product, owned, in whole or in part, the manufacturer of that product;

4. The supplier in question is owned or, when it supplied that product, was owned, in whole or in part, by the manufacturer of that product;

5. The supplier in question created or furnished a manufacturer with the design or formulation that was used to produce, create, make, construct, assemble, or rebuild that product or a component of that product;

6. The supplier in question altered, modified, or failed to maintain that product after it came into the possession of, and before it left the possession of, the supplier in question, and the alteration, modification, or failure to maintain that product rendered it defective;

7. The supplier in question marketed that product under its own label or trade name;
(8) The supplier in question failed to respond timely and reasonably to a written request by or on behalf of the claimant to disclose to the claimant the name and address of the manufacturer of that product.

Effective Date: 07-06-2001

DAMAGES*

Compensatory Damages for Economic Loss from Manufacturer or Supplier
Ohio Rev. Code § 2307.79

(A) If a claimant is entitled to recover compensatory damages for harm from a manufacturer in accordance with section 2307.73 of the Revised Code or from a supplier in accordance with division (B) of section 2307.78 of the Revised Code, the claimant may recover from the manufacturer or supplier in question, in that action, compensatory damages for any economic loss that proximately resulted from the defective aspect of the product in question.

(B) If a claimant is entitled to recover compensatory damages for harm from a supplier in accordance with division (A) of section 2307.78 of the Revised Code, the claimant may recover from the supplier in question, in that action, compensatory damages for any economic loss that proximately resulted from the negligence of that supplier or from the representation made by that supplier and the failure of the product in question to conform to that representation.

Effective Date: 01-05-1988

Punitive or Exemplary Damages from Manufacturer or Supplier
Ohio Rev. Code § 2307.80

(A) Subject to divisions (C) and (D) of this section, punitive or exemplary damages shall not 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 harm for which the claimant is entitled to recover compensatory damages in accordance with section 2307.73 or 2307.78 of the Revised Code 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.

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

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

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

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

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

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

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

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

(a) It 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 under the “Federal Food, Drug, and Cosmetic Act,” 52 Stat. 1040 (1938), 21 U.S.C. 301-392, as amended, or the “Public Health Service Act,” 58 Stat. 682 (1944), 42 U.S.C. 201-300cc-15, as amended.

(b) It 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 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.

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

(3) For purposes of divisions (C) and (D) of this section:


(D) (1) If a claimant alleges in a product liability claim that a product other than a drug or device caused harm to the claimant, the manufacturer or supplier of the product shall not be liable for punitive or exemplary damages in connection with the claim 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 the product’s manufacture or construction, the product’s design or formulation, adequate warnings or instructions, and representations when the product left the control of the manufacturer or supplier, 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.

(2) Division (D)(1) of this section does not apply 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 and in violation of applicable government safety and performance standards, whether or not designated as such by the government, 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.

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

Effective Date: 07-06-2001; 04-07-2005
OHIO’S STATUTES OF LIMITATIONS

STATUTE OF LIMITATIONS FOR BODILY INJURY OR INJURY TO PERSONAL PROPERTY*5

Bodily Injury or Injury to Personal Property
Ohio Rev. Code § 2305.10

(A) Except as provided in division (C) or (E) of this section, an action based on a product liability claim and an action for bodily injury or injuring personal property shall be brought within two years after the cause of action accrues. Except as provided in divisions (B)(1), (2), (3), (4), and (5) of this section, a cause of action accrues under this division when the injury or loss to person or property occurs.

Discovery Rule for Certain Causes of Action*

(B) (1) For purposes of division (A) of this section, a cause of action for bodily injury that is not described in division (B)(2), (3), (4), or (5) of this section 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.

(2) For purposes of division (A) of this section, a cause of action for bodily injury caused by exposure to chromium in any of its chemical forms 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.

(3) For purposes of division (A) of this section, a cause of action for bodily injury incurred by a veteran through exposure to chemical defoliants or herbicides or other causative agents, including agent orange, 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.

(4) For purposes of division (A) of this section, a cause of action for bodily injury caused by exposure to diethylstilbestrol or other nonsteroidal synthetic estrogens, including exposure before birth, accrues upon the date on which the

5 Ohio does not have a specific statute of limitations for product liability actions concerning damage to real property. Depending on the underlying facts, an action may be governed by either a four-year (Rev. Code § 2305.09) or ten-year (Rev. Code § 2305.14) period of limitations.
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.

(5) For purposes of division (A) of this section, a cause of action for bodily injury
cau sed 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.

Statute of Repose*

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

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

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

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

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

(6) Division (C)(1) of this section does not bar an action for bodily injury caused by
exposure to asbestos if the cause of action that is the basis of the action accrues
upon the date on which the plaintiff is informed by competent medical authority
that the plaintiff has an injury that is related to the exposure, or upon the date on
which by the exercise of reasonable diligence the plaintiff should have known
that the plaintiff has an injury that is related to the exposure, whichever date
occurs first.
Division (C)(1) of this section does not bar an action based on a product liability claim against a manufacturer or supplier of a product if all of the following apply:

(i) The action is for bodily injury.
(ii) The product involved is a substance or device described in division (B)(1), (2), (3), or (4) of this section.
(iii) The bodily injury results from exposure to the product during the ten-year period described in division (C)(1) of this section.

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

No New Cause of Action or Substantive Legal Right Created*

This section does not create a new cause of action or substantive legal right against any person involving a product liability claim.

An action brought by a victim of childhood sexual abuse asserting any claim resulting from childhood sexual abuse, as defined in section 2305.111 of the Revised Code, shall be brought as provided in division (C) of that section.

As used in this section:
1. “Agent orange,” “causative agent,” and “veteran” have the same meanings as in section 5903.21 of the Revised Code.
2. “Ethical drug,” “ethical medical device,” “manufacturer,” “product,” “product liability claim,” and “supplier” have the same meanings as in section 2307.71 of the Revised Code.
3. “Harm” means injury, death, or loss to person or property.

Section Purely Remedial, Applied in Any Civil Action Commenced On or After April 7, 2005*

This section shall be considered to be purely remedial in operation and shall be applied in a remedial manner in any civil action commenced on or after April 7, 2005, in which this section is relevant, regardless of when the cause of action accrued and notwithstanding any other section of the Revised Code or prior rule of law of this state, but shall not be construed to apply to any civil action pending prior to April 7, 2005.

Effective Date: 07-06-2001; 04-07-2005; 08-03-2006
STATUTES OF LIMITATIONS FOR DAMAGE TO REAL PROPERTY*

Four Years – Certain Torts
Ohio Rev. Code § 2305.09

Except as provided for in division (C) of this section, an action for any of the following causes shall be brought within four years after the cause thereof accrued:
(A) For trespassing upon real property;

(B) For the recovery of personal property, or for taking or detaining it;

(C) For relief on the ground of fraud, except when the cause of action is a violation of section 2913.49 of the Revised Code, in which case the action shall be brought within five years after the cause thereof accrued;

(D) For an injury to the rights of the plaintiff not arising on contract nor enumerated in sections 1304.35, 2305.10 to 2305.12, and 2305.14 of the Revised Code;

(E) For relief on the grounds of a physical or regulatory taking of real property. If the action is for trespassing under ground or injury to mines, or for the wrongful taking of personal property, the causes thereof shall not accrue until the wrongdoer is discovered; nor, if it is for fraud, until the fraud is discovered.

Effective Date: 03-02-2004; 2008 HB46 09-01-2008

For Other Relief
Ohio Rev. Code § 2305.14

An action for relief not provided for in sections 2305.04 to 2305.131 and section 1304.35 of the Revised Code shall be brought within ten years after the cause thereof accrued. This section does not apply to an action on a judgment rendered in another state or territory.

Effective Date: 08-19-1994
SELECTED OHIO STATUTES REGARDING CIVIL ACTIONS

Civil Action Definitions
Ohio Rev. Code § 2307.011

As used in Chapters 2307. and 2315. of the Revised Code:

(A) “Conduct” means actions or omissions.

(B) “Contributory fault” means contributory negligence, other contributory tortious conduct, or, except as provided with respect to product liability claims in section 2307.711 of the Revised Code, express or implied assumption of the risk.

(C) “Economic loss” means any of the following types of pecuniary harm:
   (1) All wages, salaries, or other compensation lost as a result of an injury, death, or loss to person or property that is a subject of a tort action, including wages, salaries, or other compensation lost as of the date of a judgment and future expected lost earnings;
   (2) All expenditures for medical care or treatment, rehabilitation services, or other care, treatment, services, products, or accommodations incurred as a result of an injury, death, or loss to person that is a subject of a tort action, including expenditures for those purposes that were incurred as of the date of a judgment and expenditures for those purposes that, in the determination of the trier of fact, will be incurred in the future because of the injury, whether paid by the injured person or by another person on behalf of the injured person;
   (3) All expenditures of a person whose property was injured or destroyed or of another person on behalf of the person whose property was injured or destroyed in order to repair or replace the property;
   (4) Any other expenditures incurred as a result of an injury, death, or loss to person or property that is a subject of a tort action, except expenditures of the injured person, the person whose property was injured or destroyed, or another person on behalf of the injured person or the person whose property was injured or destroyed in relation to the actual preparation or presentation of the claim involved.

(D) “Intentional tort claim” means a claim alleging that a tortfeasor intentionally caused or intentionally contributed to the injury or loss to person or property or the wrongful death or that a tortfeasor knew or believed that the injury or loss to person or property or the wrongful death was substantially certain to result from the tortfeasor’s conduct. As used in sections 2307.22, 2307.711, and 2315.32 of the Revised Code, “intentional tort claim” does not include an intentional tort claim alleged by an employee or the employee’s legal representative against the employee’s employer and that arises from the tortfeasor’s conduct that occurs on premises owned, leased, or supervised by the employer.

(E) “Noneconomic loss” means nonpecuniary harm that results from an injury, death, or loss to person 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; mental anguish; and any other intangible loss.
“Person” has the same meaning as in division (C) of section 1.59 of the Revised Code and additionally includes a political subdivision and the state.

“Persons from whom the plaintiff does not seek recovery in this action” includes, but is not limited to, the following:

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

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

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

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

“Plaintiff” includes the person for whom the plaintiff is legal representative.

“Political subdivision” and “state” have the same meanings as in section 2744.01 of the Revised Code.

“Tort action” means a civil action for damages for injury, death, or loss to person or property. “Tort action” includes a product liability claim, as defined in section 2307.71 of the Revised Code, and an asbestos claim, as defined in section 2307.91 of the Revised Code, but does not include a civil action for damages for a breach of contract or another agreement between persons.

“Trier of fact” means the jury or, in a nonjury action, the court.

Effective Date: 04-09-2003; 04-07-2005

Joint and Several Tort Liability
Ohio Rev. Code § 2307.22

Subject to sections 2307.23 and 2307.24 and except as provided in division (B) of section 2307.70, division (B) of section 4507.07, section 4399.02, or another section of the Revised Code that expressly establishes joint and several tort liability for specified persons, joint and several tort liability shall be determined as follows:

(1) In a tort action in which the trier of fact determines that two or more persons proximately caused the same injury or loss to person or property or the same wrongful death and in which the trier of fact determines that more than fifty per cent of the tortious conduct is attributable to one defendant, that defendant shall be jointly and severally liable in tort for all compensatory damages that represent economic loss.

(2) If division (A)(1) of this section is applicable, each defendant who is determined by the trier of fact to be legally responsible for the same injury or loss to person

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6 For claims arising on and after April 9, 2003.
or property or the same wrongful death and to whom fifty per cent or less of
the tortious conduct is attributable shall be liable to the plaintiff only for that
defendant’s proportionate share of the compensatory damages that represent
economic loss. The proportionate share of a defendant shall be calculated by
multiplying the total amount of the economic damages awarded to the plaintiff
by the percentage of tortious conduct as determined pursuant to section 2307.23
of the Revised Code that is attributable to that defendant.

(3) In a tort action in which the trier of fact determines that two or more persons
proximately caused the same injury or loss to person or property or the same
wrongful death and in which the trier of fact determines that fifty per cent or
less of the tortious conduct is attributable to any defendant against whom an
intentional tort claim has been alleged and established, that defendant shall be
jointly and severally liable in tort for all compensatory damages that represent
economic loss.

(4) If division (A)(3) of this section is applicable, each defendant against whom an
intentional tort claim has not been alleged and established, who is determined
by the trier of fact to be legally responsible for the same injury or loss to person
or property or the same wrongful death, and to whom fifty per cent or less of
the tortious conduct is attributable shall be liable to the plaintiff only for that
defendant’s proportionate share of the compensatory damages that represent
economic loss. The proportionate share of a defendant shall be calculated by
multiplying the total amount of the economic damages awarded to the plaintiff
by the percentage of tortious conduct as determined pursuant to section 2307.23
of the Revised Code that is attributable to that defendant.

(B) Except as otherwise provided in divisions (A)(3) and (4) of this section, in a tort
action in which the trier of fact determines that two or more persons proximately
caused the same injury or loss to person or property or the same wrongful death and
in which the trier of fact determines that fifty per cent or less of the tortious conduct
is attributable to each defendant, each defendant shall be liable to the plaintiff only
for that defendant’s proportionate share of the compensatory damages that represent
economic loss. The proportionate share of a defendant shall be calculated by
multiplying the total amount of the economic damages awarded to the plaintiff by
the percentage of tortious conduct as determined pursuant to section 2307.23 of the
Revised Code that is attributable to that defendant.

(C) In a tort action in which the trier of fact determines that two or more persons proximately
caused the same injury or loss to person or property or the same wrongful death, each
defendant who is determined by the trier of fact to be legally responsible for the same
injury or loss to person or property or for the same wrongful death shall be liable
to the plaintiff only for that defendant’s proportionate share of the compensatory
damages that represent noneconomic loss. The proportionate share of a defendant
shall be calculated by multiplying the total amount of the noneconomic damages
awarded to the plaintiff by the percentage of tortious conduct as determined pursuant
to section 2307.23 of the Revised Code that is attributable to that defendant.

(D) Sections 2307.25 to 2307.29 of the Revised Code shall apply to joint and several tort
liability that is described in division (A) of this section.

Effective Date: 04-09-2003
Determining Percentage of Tortious Conduct Attributable to Party in Tort Action\(^7\)
Ohio Rev. Code § 2307.23

(A) In determining the percentage of tortious conduct attributable to a party in a tort action under section 2307.22 or sections 2315.32 to 2315.36 of the Revised Code, the court in a nonjury action shall make findings of fact, and the jury in a jury action shall return a general verdict accompanied by answers to interrogatories, that shall specify all of the following:

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

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

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

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

Effective Date: 04-09-2003; 04-07-2005

Right of Contribution\(^8\)
Ohio Rev. Code § 2307.25

(A) Except as otherwise provided in sections 2307.25 to 2307.28 of the Revised Code, if one or more persons are jointly and severally liable in tort for the same injury or loss to person or property or for the same wrongful death, there may be a right of contribution even though judgment has not been recovered against all or any of them. The right of contribution exists only in favor of a tortfeasor who has paid more than that tortfeasor’s proportionate share of the common liability, and that tortfeasor’s total recovery is limited to the amount paid by that tortfeasor in excess of that tortfeasor’s proportionate share. No tortfeasor may be compelled to make contribution beyond that tortfeasor’s own proportionate share of the common liability. There is no right of contribution in favor of any tortfeasor against whom an intentional tort claim has been alleged and established.

\(^7\), \(^8\) For claims arising on and after April 9, 2003.
(B) A tortfeasor who enters into a settlement with a claimant is not entitled to contribution from another tortfeasor whose liability for the injury or loss to person or property or the wrongful death is not extinguished by the settlement, or in respect to any amount paid in a settlement that is in excess of what is reasonable.

(C) A liability insurer that by payment has discharged in full or in part the liability of a tortfeasor and has discharged in full by the payment its obligation as insurer is subrogated to the tortfeasor’s right of contribution to the extent of the amount it has paid in excess of the tortfeasor’s proportionate share of the common liability. This division does not limit or impair any right of subrogation arising from any other relationship.

(D) This section does not impair any right of indemnity under existing law. If one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of the indemnity obligation.

(E) This section does not apply to breaches of trust or of other fiduciary obligations.

(F) The proportionate shares of tortfeasors in the common liability shall be based upon their relative degrees of legal responsibility. If equity requires the collective liability of some as a group, the group shall constitute a single share, and principles of equity applicable to contribution generally shall apply.

(G) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or loss to person or property or for the same wrongful death, contribution may be enforced by separate action.

(H) Whenever the provisions of the “Federal Tort Claims Act,” 60 Stat. 842 (1946), 28 U.S.C. 2671 et seq., are applicable to a tort and the United States is held liable in tort, the United States has no right of contribution under this section against the state pursuant to the waiver of sovereign immunity contained in Chapter 2743. of the Revised Code.

Effective Date: 04-09-2003

Fellow Servant Rule Not Applicable
Ohio Rev. Code § 4113.03

In all actions brought to recover from an employer for personal injuries suffered by his employee or for death resulting to such employee from such personal injuries, while in the employ of such employer, arising from the negligence of such employer or any of such employer’s officers, agents, or employees, it shall be held in addition to any other liability existing by law that any person in the employ of such employer, in any way having power or authority in directing or controlling any other employee of such employer, is not the fellow servant, but superior to such other employee; any person in the employ of such employer in any way having charge or control of employees in any separate branch or department shall be held to be the superior and not the fellow servant of all employees in any other branch or department in which they are employed; any person in the employ of such employer whose duty it is to repair or inspect the works, works, boats, wharves,
plant, machinery, appliances, or tools, in any way connected with or in any way used in the business of the employer, or to receive, give, or transmit any signal, instruction, or warning to or for such employees, shall be held to be the superior and not the fellow servant of such other employees of such employer.

**Effective Date: 10-01-1953**

**Immunity of Employer**

**Ohio Rev. Code § 4123.74**

Employers who comply with section 4123.35 [regarding payments into the state Workers’ Compensation insurance fund] of the Revised Code shall not be liable to respond in damages at common law or by statute for any injury, or occupational disease, or bodily condition, received or contracted by any employee in the course of or arising out of his employment, or for any death resulting from such injury, occupational disease, or bodily condition occurring during the period covered by such premium so paid into the state insurance fund, or during the interval the employer is a self-insuring employer, whether or not such injury, occupational disease, bodily condition, or death is compensable under this chapter.

**Effective Date: 10-20-1993**
**OHIO’S COMPARATIVE FAULT STATUTES**

**Asserting Contributory Fault**
Ohio Rev. Code § 2315.32

(A) Sections 2315.32 to 2315.36 of the Revised Code do not apply to actions described in section 4113.03 of the Revised Code.

(B) The contributory fault of the plaintiff may be asserted as an affirmative defense to a tort claim, except that the contributory fault of the plaintiff may not be asserted as an affirmative defense to an intentional tort claim.

*Effective Date: 04-09-2003; 04-07-2005*

**Contributory Fault Effect on Right to Recover**
Ohio Rev. Code § 2315.33

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. The court shall diminish any compensatory damages recoverable by the plaintiff by an amount that is proportionately equal to the percentage of tortious conduct of the plaintiff as determined pursuant to section 2315.34 of the Revised Code.

*Effective Date: 04-09-2003; 04-07-2005*

**Findings of Fact by Court – General Verdict and Interrogatories by Jury**
Ohio Rev. Code § 2315.34

If contributory fault is asserted and established as an affirmative defense to a tort claim, the court in a nonjury action shall make findings of fact, and the jury in a jury action shall return a general verdict accompanied by answers to interrogatories, that shall specify the following:

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

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

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

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9 For Ohio Rev. Code § 4113.03, see page 27.
(D) The percentage of tortious conduct attributable to all persons as determined pursuant to section 2307.23 of the Revised Code.\(^\text{10}\)

**Effective Date: 04-09-2003; 04-07-2005**

**Diminishing Compensatory Damages by Percentage of Tortious Conduct**  
**Ohio Rev. Code § 2315.35**

After the court makes its findings of fact or after the jury returns its general verdict accompanied by answers to interrogatories as described in section 2315.34 of the Revised Code, the court shall diminish the total amount of the compensatory damages that would have been recoverable by an amount that is proportionately equal to the percentage of tortious conduct determined under section 2307.23 of the Revised Code that is attributable to the plaintiff. If the percentage of the tortious conduct determined to be attributable to the plaintiff is greater than the sum of the percentages of the tortious conduct determined to be attributable to all parties to the tort action from whom the plaintiff seeks recovery plus all persons from whom the plaintiff does not seek recovery in this action, the court shall enter judgment in favor of the defendants.

*Effective Date: 04-09-2003*

**Apportionment of Liability**  
**Ohio Rev. Code § 2315.36**

If contributory fault is asserted as an affirmative defense to a tort claim, if it is determined that the plaintiff was contributorily at fault and that contributory fault was a direct and proximate cause of the injury, death, or loss to person or property that is the subject of the tort action, and if the plaintiff is entitled to recover compensatory damages pursuant to section 2315.33 of the Revised Code from more than one party, after it makes findings of fact or after the jury returns its general verdict accompanied by answers to interrogatories as described in section 2315.34 of the Revised Code, the court shall enter a judgment that is in favor of the plaintiff and that imposes liability pursuant to section 2307.22 of the Revised Code.\(^\text{11}\)

*Effective Date: 04-09-2003; 04-07-2005*

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\(^{10}\) For Ohio Rev. Code § 2307.23, see page 26.  
\(^{11}\) For Ohio Rev. Code § 2307.22, see page 24.
(A) As used in this section and in section 2315.19 of the Revised Code:
   (1) “Asbestos claim” has the same meaning as in section 2307.91 of the Revised Code.
   (2) “Economic loss” means any of the following types of pecuniary harm:
       (a) All wages, salaries, or other compensation lost as a result of an injury or loss to person or property that is a subject of a tort action;
       (b) All expenditures for medical care or treatment, rehabilitation services, or other care, treatment, services, products, or accommodations as a result of an injury or loss to person or property that is a subject of a tort action;
       (c) Any other expenditures incurred as a result of an injury or loss to person or property that is a subject of a tort action, other than attorney’s fees incurred in connection with that action.
   (3) “Medical claim,” “dental claim,” “optometric claim,” and “chiropractic claim” have the same meanings as in section 2305.113 of the Revised Code.
   (4) “Noneconomic loss” means 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.
   (5) “Occurrence” means all claims resulting from or arising out of any one person’s bodily injury.
   (6) “Product liability claim” has the same meaning as in section 2307.71 of the Revised Code.
   (7) “Tort action” means 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 claim, dental claim, optometric claim, or chiropractic claim or a civil action for damages for a breach of contract or another agreement between persons.
   (8) “Trier of fact” means the jury or, in a nonjury action, the court.

(B) In a tort action to recover damages for injury or loss to person or property, all of the following apply:

12 For claims arising on and after April 7, 2005.
No Limitation on Compensatory Damages for Economic Loss*

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

Limitation on Compensatory Damages for Noneconomic Loss*

(2) Except as otherwise provided in division (B)(3) of this section, the amount of compensatory damages that represents damages for noneconomic loss that is recoverable in a tort action under this section to recover damages for injury or loss to person or property shall not exceed the greater of two hundred fifty thousand dollars or an amount that is equal to three times the economic loss, as determined by the trier of fact, of the plaintiff in that tort action to a maximum of three hundred fifty thousand dollars for each plaintiff in that tort action or a maximum of five hundred thousand dollars for each occurrence that is the basis of that tort action.

Exceptions to Limitation on Compensatory Damages for Noneconomic Loss*

(3) There shall not be any limitation on the amount of compensatory damages that represents damages for noneconomic loss that is recoverable in a tort action to recover damages for injury or loss to person or property if the noneconomic losses of the plaintiff are for either of the following:

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

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

Certain Evidence Excluded in Determining Award of Compensatory Damages for Noneconomic Loss*

(C) In determining an award of compensatory damages for noneconomic loss in a tort action, the trier of fact shall not consider any of the following:

(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.

Procedure for Award of Compensatory Damages*

(D) If a trial is conducted in a tort action to recover damages for injury or loss to person or property and a plaintiff prevails in that action, the court in a nonjury trial shall make findings of fact, and the jury in a jury trial shall return a general verdict accompanied by answers to interrogatories, that shall specify all of the following:

(1) The total compensatory damages recoverable by the plaintiff;
(2) The portion of the total compensatory damages that represents damages for economic loss;

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

(E) (1) After the trier of fact in a tort action to recover damages for injury or loss to person or property complies with division (D) of this section, the court shall enter a judgment in favor of the plaintiff for compensatory damages for economic loss in the amount determined pursuant to division (D)(2) of this section, and, subject to division (F)(1) of this section, the court shall enter a judgment in favor of the plaintiff for compensatory damages for noneconomic loss. Except as provided in division (B)(3) of this section, in no event shall a judgment for compensatory damages for noneconomic loss exceed the maximum recoverable amount that represents damages for noneconomic loss as provided in division (B)(2) of this section. Division (B) of this section shall be applied in a jury trial only after the jury has made its factual findings and determination as to the damages.

(2) Prior to the trial in the tort action described in division (D) of this section, any party may seek summary judgment with respect to the nature of the alleged injury or loss to person or property, seeking a determination of the damages as described in division (B)(2) of this section.

(F) (1) 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 set forth in this section.

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

(G) With respect to a tort action to which division (B)(2) of this section applies, any excess amount of compensatory damages for noneconomic loss that is greater than the applicable amount specified in division (B)(2) of this section shall not be reallocated to any other tortfeasor beyond the amount of compensatory damages that the tortfeasor would otherwise be responsible for under the laws of this state.

Exceptions to Application of this Section*

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

(1) Tort actions that are brought against the state in the court of claims, including, but not limited to, those actions in which a state university or college is a defendant and to which division (B)(3) of section 3345.40 of the Revised Code applies;

(2) Tort actions that are brought against political subdivisions of this state and that are commenced under or are subject to Chapter 2744. of the Revised Code. Division (C) of section 2744.05 of the Revised Code applies to recoverable damages in those actions.
(3) Wrongful death actions brought pursuant to Chapter 2125. of the Revised Code.

(I) If the provisions regarding the limits on compensatory damages for noneconomic loss set forth in division (B)(2) of this section have been determined to be unconstitutional, then division (C) of this section and section 2315.19 of the Revised Code shall govern the determination of an award of compensatory damages for noneconomic loss in a tort action.

Effective Date: 04-07-2005

Review of Evidence Supporting Damages for Noneconomic Loss
Ohio Rev. Code § 2315.19

(A) Upon a post-judgment motion, a trial court in a tort action shall review the evidence supporting an award of compensatory damages for noneconomic loss that the defendant has challenged as excessive. That review shall include, but is not limited to, the following factors:

(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 of the defendant.

(c) It resulted in the improper consideration of the misconduct of the defendant so as to punish the defendant 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 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 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.

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

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

Effective Date: 04-07-2005

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13 For claims arising on and after April 7, 2005.
Evidence of Benefits to Plaintiff from Collateral Sources\textsuperscript{14}

Ohio Rev. Code § 2315.20

(A) In any tort action, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the damages that result from an injury, death, or loss to person or property that is the subject of the claim upon which the action is based, except if the source of collateral benefits has a mandatory self-effectuating federal right of subrogation, a contractual right of subrogation, or a statutory right of subrogation or if the source pays the plaintiff a benefit that is in the form of a life insurance payment or a disability payment. However, evidence of the life insurance payment or disability payment may be introduced if the plaintiff’s employer paid for the life insurance or disability policy, and the employer is a defendant in the tort action.

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

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

(D) As used in this section:

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

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

(3) “Product liability claim” has the same meaning as in section 2307.71 of the Revised Code.

(4) “Asbestos claim” has the same meaning as in section 2307.91 of the Revised Code.

Effective Date: 04-07-2005

\textsuperscript{14} For claims arising on and after April 7, 2005.
Punitive or Exemplary Damages\textsuperscript{15}
Ohio Rev. Code § 2315.21

(A) (1) “Tort action” means a civil action for damages for injury or loss to person or property. “Tort action” includes a product liability claim for damages for injury or loss to a person or property that is subject to sections 2307.71 to 2307.80 of the Revised Code, but does not include a civil action for damages for a breach of contract or another agreement between persons.

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

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

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

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

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

(2) The trier of fact has returned a verdict or has made a determination pursuant to division (B)(2) or (3) of this section of the total compensatory damages recoverable by the plaintiff from that defendant.

\textsuperscript{15} For claims arising on and after April 7, 2005.
Limitations on a Punitive Damages Award*

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

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

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

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

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

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

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

(5) (a) In any tort action, except as provided in division (D)(5)(b) or (6) of this section, punitive or exemplary damages shall not be awarded against a defendant if that defendant files with the court a certified judgment, judgment entries, or other evidence showing that punitive or exemplary damages have already been awarded and have been collected, in any state or federal court, against that 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 damage awards exceeds the maximum amount of punitive or exemplary damages that may be awarded under division (D)(2) of this section against that defendant in the tort action.

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

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(i) 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 in division (C) of this section on the part of that defendant, other than the injury or loss for which the plaintiff seeks compensatory damages. In that case, the court shall make specific findings of fact in the record to support its conclusion. The court shall reduce the amount of any punitive or exemplary damages otherwise awardable pursuant to this section by the sum of the punitive or exemplary damages awards previously rendered against that defendant in any state or federal court. The court shall not inform the jury about the court’s determination and action under division (D)(5)(b)(i) of this section.

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

(6) Division (D)(2) of this section 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 as described in section 2901.22 of the Revised Code 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 as described in that section, and that is the basis of the tort action.

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

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

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

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

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

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

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

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

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

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

Effective Date: 11-07-2002; 04-07-2005
Applicability of Prejudgment Interest to Tort Claims*
Ohio Rev. Code § 1343.03

Post-judgment Interest*
(A) In cases other than those provided for in sections 1343.01 and 1343.02 of the Revised Code, when money becomes due and payable upon any bond, bill, note, or other instrument of writing, upon any book account, upon any settlement between parties, upon all verbal contracts entered into, and upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of tortious conduct or a contract or other transaction, the creditor is entitled to interest at the rate per annum determined pursuant to section 5703.47 of the Revised Code, unless a written contract provides a different rate of interest in relation to the money that becomes due and payable, in which case the creditor is entitled to interest at the rate provided in that contract. Notification of the interest rate per annum shall be provided pursuant to sections 319.19, 1901.313, 1907.202, 2303.25, and 5703.47 of the Revised Code.

Computation of Prejudgment Interest*
(B) Except as provided in divisions (C) and (D) of this section and subject to section 2325.18 of the Revised Code, interest on a judgment, decree, or order for the payment of money rendered in a civil action based on tortious conduct or a contract or other transaction, including, but not limited to a civil action based on tortious conduct or a contract or other transaction that has been settled by agreement of the parties, shall be computed from the date the judgment, decree, or order is rendered to the date on which the money is paid and shall be at the rate determined pursuant to section 5703.47 of the Revised Code that is in effect on the date the judgment, decree, or order is rendered. That rate shall remain in effect until the judgment, decree, or order is satisfied.

(C) (1) If, upon motion of any party to a civil action that is based on tortious conduct, that has not been settled by agreement of the parties, and in which the court has rendered a judgment, decree, or order for the payment of money, the court determines at a hearing held subsequent to the verdict or decision in the action that the party required to pay the money failed to make a good faith effort to settle the case and that the party to whom the money is to be paid did not fail to make a good faith effort to settle the case, interest on the judgment, decree, or order shall be computed as follows:

(a) In an action in which the party required to pay the money has admitted liability in a pleading, from the date the cause of action accrued to the date on which the order, judgment, or decree was rendered;

(b) In an action in which the party required to pay the money engaged in the conduct resulting in liability with the deliberate purpose of causing harm to the party to whom the money is to be paid, from the date the cause of action accrued to the date on which the order, judgment, or decree was rendered;
(c) In all other actions, for the longer of the following periods:

(i) From the date on which the party to whom the money is to be paid gave the first notice described in division (C)(1)(c)(i) of this section to the date on which the judgment, order, or decree was rendered. The period described in division (C)(1)(c)(i) of this section shall apply only if the party to whom the money is to be paid made a reasonable attempt to determine if the party required to pay had insurance coverage for liability for the tortious conduct and gave to the party required to pay and to any identified insurer, as nearly simultaneously as practicable, written notice in person or by certified mail that the cause of action had accrued.

(ii) From the date on which the party to whom the money is to be paid filed the pleading on which the judgment, decree, or order was based to the date on which the judgment, decree, or order was rendered.

(2) No court shall award interest under division (C)(1) of this section on future damages, as defined in section 2323.56 of the Revised Code, that are found by the trier of fact.

(D) Division (B) of this section does not apply to a judgment, decree, or order rendered in a civil action based on tortious conduct or a contract or other transaction, and division (C) of this section does not apply to a judgment, decree, or order rendered in a civil action based on tortious conduct, if a different period for computing interest on it is specified by law, or if it is rendered in an action against the state in the court of claims, or in an action under Chapter 4123. of the Revised Code.

Effective Date: 06-02-2004
OHIO’S WRONGFUL DEATH STATUTE

Action for Wrongful Death
Ohio Rev. Code § 2125.01

When the death of a person is caused by wrongful act, neglect, or default which would have entitled the party injured to maintain an action and recover damages if death had not ensued, the person who would have been liable if death had not ensued, or the administrator or executor of the estate of such person, as such administrator or executor, shall be liable to an action for damages, notwithstanding the death of the person injured and although the death was caused under circumstances which make it aggravated murder, murder, or manslaughter. When the action is against such administrator or executor, the damages recovered shall be a valid claim against the estate of such deceased person. No action for the wrongful death of a person may be maintained against the owner or lessee of the real property upon which the death occurred if the cause of the death was the violent unprovoked act of a party other than the owner, lessee, or a person under the control of the owner or lessee, unless the acts or omissions of the owner, lessee, or person under the control of the owner or lessee constitute gross negligence.

When death is caused by a wrongful act, neglect, or default in another state or foreign country, for which a right to maintain an action and recover damages is given by a statute of such other state or foreign country, such right of action may be enforced in this state. Every such action shall be commenced within the time prescribed for the commencement of such actions by the statute of such other state or foreign country.

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

Effective Date: 07-06-2001

Parties – Damages
Ohio Rev. Code § 2125.02

(A) (1) Except as provided in this division, a civil action for wrongful death shall be brought in the name of the personal representative of the decedent for the exclusive benefit of the surviving spouse, the children, and the parents of the decedent, all of whom are rebuttably presumed to have suffered damages by reason of the wrongful death, and for the exclusive benefit of the other next of kin of the decedent. A parent who abandoned a minor child who is the decedent shall not receive a benefit in a civil action for wrongful death brought under this division.

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

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

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

(ii) Consistent with the Rules of Evidence, a party to a civil action for wrongful death may present evidence of the cost of an annuity in connection with an issue of recoverable future damages. If that evidence is presented, then, in addition to the factors described in division (A)(3)(b)(i) of this section and, if applicable, division (A)(3)(b)(iii) of this section, the jury or court may consider that evidence in determining the future damages suffered by reason of the wrongful death. If that evidence is presented, the present value in dollars of an annuity is its cost.

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

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

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

(2) Loss of services of the decedent;

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

(4) Loss of prospective inheritance to the decedent’s heirs at law at the time of the decedent’s death;
(5) The mental anguish incurred by the surviving spouse, dependent children, parents, or next of kin of the decedent.

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

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

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

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

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

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

(e) If the decedent’s death occurs during the ten-year period described in division (D)(2)(a) of this section and the claimant cannot commence an action during that period due to a disability described in section 2305.16 of the Revised Code, a civil action for wrongful death involving a product liability claim may be commenced within two years after the disability is removed.

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

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

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

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

(2) The movant who files a motion described in division (E)(1) of this section shall name the parent who abandoned the deceased minor and, whether or not that parent is a resident of this state, the parent shall be served with a summons and a copy of the motion in accordance with the Rules of Civil Procedure. Upon the filing of the motion, the court shall conduct a hearing. In the hearing on the motion, the movant has the burden of proving, by a preponderance of the evidence, that the parent abandoned the minor. If, at the hearing, the court finds
that the movant has sustained that burden of proof, the court shall issue an order
that includes its findings that the parent abandoned the minor and that, because
of the prohibition set forth in division (A)(1) of this section, the parent is not
entitled to recover damages in the action based on the death of the minor.

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

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

(G) As used in this section:

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

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

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

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

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

(3) “Abandoned” means that a parent of a minor failed without justifiable cause to
communicate with the minor, care for the minor, and provide for the maintenance
or support of the minor as required by law or judicial decree for a period of at
least one year immediately prior to the date of the death of the minor.
(4) “Minor” means a person who is less than eighteen years of age.

(5) “Harm” means death.

(6) “Manufacturer,” “product,” “product liability claim,” and “supplier” have the same meanings as in section 2307.71 of the Revised Code.

(H) Divisions (D), (G)(5), and (G)(6) of this section shall be considered to be purely remedial in operation and shall be applied in a remedial manner in any civil action commenced on or after the effective date of this amendment, in which those divisions are relevant, regardless of when the cause of action accrued and notwithstanding any other section of the Revised Code or prior rule of law of this state, but shall not be construed to apply to any civil action pending prior to the effective date of this amendment.

Effective Date: 07-06-2001; 04-07-2005
Seat Safety Belt or Anchorage Units Required
Ohio Rev. Code § 4513.262

(A) As used in this section and in section 4513.263 of the Revised Code, the component parts of a “seat safety belt” include a belt, anchor attachment assembly, and a buckle or closing device.

(B) No person shall sell, lease, rent, or operate any passenger car, as defined in division (E) of section 4501.01 of the Revised Code, that is registered or to be registered in this state and that is manufactured or assembled on or after January 1, 1962, unless the passenger car is equipped with sufficient anchorage units at the attachment points for attaching at least two sets of seat safety belts to its front seat. Such anchorage units at the attachment points shall be of such construction, design, and strength to support a loop load pull of not less than four thousand pounds for each belt.

(C) No person shall sell, lease, or rent any passenger car, as defined in division (E) of section 4501.01 of the Revised Code, that is registered or to be registered in this state and that is manufactured or assembled on or after January 1, 1966, unless the passenger car has installed in its front seat at least two seat safety belt assemblies.

(D) After January 1, 1966, neither any seat safety belt for use in a motor vehicle nor any component part of any such seat safety belt shall be sold in this state unless the seat safety belt or the component part satisfies the minimum standard of specifications established by the society of automotive engineers for automotive seat belts and unless the seat safety belt or component part is labeled so as to indicate that it meets those minimum standard specifications.

(E) Each sale, lease, or rental in violation of this section constitutes a separate offense.

(F) Whoever violates this section is guilty of a minor misdemeanor.

Effective Date: 01-01-2004

Occupant Restraining Devices
Ohio Rev. Code § 4513.263 [Selected Provisions]

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

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

(2) Operate an automobile on any street or highway unless each passenger in the automobile who is subject to the requirement set forth in division (B)(3) of this section is wearing all of the available elements of a properly adjusted occupant restraining device;
(3) Occupy, as a passenger, a seating position on the front seat of an automobile being operated on any street or highway unless that person is wearing all of the available elements of a properly adjusted occupant restraining device;

**Admissibility of Evidence of Failure to Use Available Restraining Device**

(F) (1) Subject to division (F)(2) of this section, the failure of a person to wear all of the available elements of a properly adjusted occupant restraining device in violation of division (B)(1) or (3) of this section or the failure of a person to ensure that each minor who is a passenger of an automobile being operated by that person is wearing all of the available elements of a properly adjusted occupant restraining device in violation of division (B)(2) of this section shall not be considered or used by the trier of fact in a tort action as evidence of negligence or contributory negligence. But, the trier of fact may determine based on evidence admitted consistent with the Ohio Rules of Evidence that the failure contributed to the harm alleged in the tort action and may diminish a recovery of compensatory damages that represents noneconomic loss, as defined in section 2307.011 of the Revised Code, 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. Evidence of that failure shall not be used as a basis for a criminal prosecution of the person other than a prosecution for a violation of this section; and shall not be admissible as evidence in a criminal action involving the person other than a prosecution for a violation of this section.

(2) 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, the fact that the occupant was not wearing the 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 is admissible in evidence in relation to any claim for relief in a tort action to the extent that the claim for relief satisfies all of the following:

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

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

(c) 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.

*Effective Date: 03-09-2004; 04-07-2005; 2007 HB119 06-30-2007; 2008 HB320 10-07-2009*