



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

S.B. 46
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Eklund

Lisa Sandberg, Attorney

Summary

- Expands the exemption from punitive or exemplary damages limitations in tort law to apply to an act that results in a felony conviction for a strict liability offense.

Detailed Analysis

Limitations on award of punitive or exemplary damages in a tort action

Existing law provides caps on punitive and exemplary damages (hereafter “damages”) in tort actions that courts must observe. However, tort law provides exemptions from these caps and the bill expands the exemptions from the caps to include strict liability offenses.

Under existing law, except as described below in “**Exception to limitations on punitive or exemplary damages,**” all of the following apply regarding an award of punitive or exemplary damages in a tort action:¹

1. The court cannot enter judgment for damages in excess of two times the amount of the compensatory damages awarded to the plaintiff from the defendant.
2. If the defendant is a “small employer” or individual, the court cannot enter judgment for 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 \$350,000. “Small employer” means an employer who employs not more than 100 persons on a full-time permanent basis, or, if the employer is in the manufacturing sector as classified by the North American Industrial Classification System, it means an employer who employs not more than 500 persons on a full-time permanent basis.²

¹ R.C. 2315.21(D)(2).

² R.C. 2315.21(A)(5).

3. Any attorney's fees awarded as a result of a claim for damages cannot be considered for purposes of determining the cap on those damages.

Exception to limitations on punitive or exemplary damages

Under existing law, the above limitations on damage awards do not apply to a tort action in which:

1. 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 R.C. 2901.22; and
2. 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 and that is the basis of the tort action.

Under the bill, the above limitations on the damage awards do not apply to a tort action in which:

1. The alleged injury, death, or loss to person or property resulted from the defendant acting "in violation of a law" (added by the bill); and
2. The defendant has been convicted of or pleaded guilty to a criminal offense that is a felony (existing law not changed), that "is a strict criminal liability offense" (added by the bill) or that had as an element of the offense one or more of the culpable mental states of purposely and knowingly, and that is the basis of the tort action.³

Punitive or exemplary damages already awarded by another court

Generally in a tort action, damages cannot be awarded against a defendant if all of the following apply:

1. The defendant files with the court evidence showing that damages have already been awarded and collected in a state or federal court;
2. The damages were awarded against the defendant based on the same act or conduct alleged to have caused the injury or loss to person or property for which the plaintiff seeks compensatory damages;
3. The aggregate of those previous damage awards exceeds the maximum amount of punitive or exemplary damages that may be awarded as described above in "**Limitations on award of punitive or exemplary damages in a tort action**" against that defendant in the tort action.⁴

³ R.C. 2315.21(D)(6).

⁴ R.C. 2315.21(D)(5)(a).

The bill applies the exception described above in “**Exception to limitations on punitive or exemplary damages**” to these provisions on damages already awarded by another court.⁵

Background – strict criminal liability

Under Am. S.B. 361 of the 130th General Assembly, effective March 23, 2015, any new criminal offense established on or after that date must specify the degree of mental culpability required for commission of the offense. A criminal offense for which no degree of mental culpability is specified as so required is void.⁶

When the language defining an offense does not specify any degree of culpability, and plainly indicates a purpose to impose strict criminal liability for the conduct that includes either a voluntary act, or an omission to perform an act or duty that the person is capable of performing, then culpability is not required for a person to be guilty of the offense.⁷

History

Action	Date
Introduced	02-12-19

S0046-I-133/ks

⁵ *Id.*

⁶ R.C. 2901.20(A), not in the bill.

⁷ R.C. 2901.21(A) and (B), not in the bill.