

**As Introduced**

**133rd General Assembly  
Regular Session  
2019-2020**

**S. B. No. 46**

**Senator Eklund  
Cosponsor: Senator Huffman, M.**

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**A BILL**

To amend section 2315.21 of the Revised Code to  
expand the exemption from punitive or exemplary  
damages limitations in tort law that is related  
to certain felony convictions.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 2315.21 of the Revised Code be  
amended to read as follows:

**Sec. 2315.21.** (A) As used in this section:

(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 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.

(2) "Trier of fact" means the jury or, in a nonjury  
action, the court.

(3) "Home" has the same meaning as in section 3721.10 of

the Revised Code. 18

(4) "Employer" includes, but is not limited to, a parent, 19  
subsidiary, affiliate, division, or department of the employer. 20  
If the employer is an individual, the individual shall be 21  
considered an employer under this section only if the subject of 22  
the tort action is related to the individual's capacity as an 23  
employer. 24

(5) "Small employer" means an employer who employs not 25  
more than one hundred persons on a full-time permanent basis, 26  
or, if the employer is classified as being in the manufacturing 27  
sector by the North American industrial classification system, 28  
"small employer" means an employer who employs not more than 29  
five hundred persons on a full-time permanent basis. 30

(B)(1) In a tort action that is tried to a jury and in 31  
which a plaintiff makes a claim for compensatory damages and a 32  
claim for punitive or exemplary damages, upon the motion of any 33  
party, the trial of the tort action shall be bifurcated as 34  
follows: 35

(a) The initial stage of the trial shall relate only to 36  
the presentation of evidence, and a determination by the jury, 37  
with respect to whether the plaintiff is entitled to recover 38  
compensatory damages for the injury or loss to person or 39  
property from the defendant. During this stage, no party to the 40  
tort action shall present, and the court shall not permit a 41  
party to present, evidence that relates solely to the issue of 42  
whether the plaintiff is entitled to recover punitive or 43  
exemplary damages for the injury or loss to person or property 44  
from the defendant. 45

(b) If the jury determines in the initial stage of the 46

trial that the plaintiff is entitled to recover compensatory 47  
damages for the injury or loss to person or property from the 48  
defendant, evidence may be presented in the second stage of the 49  
trial, and a determination by that jury shall be made, with 50  
respect to whether the plaintiff additionally is entitled to 51  
recover punitive or exemplary damages for the injury or loss to 52  
person or property from the defendant. 53

(2) In a tort action that is tried to a jury and in which 54  
a plaintiff makes a claim for both compensatory damages and 55  
punitive or exemplary damages, the court shall instruct the jury 56  
to return, and the jury shall return, a general verdict and, if 57  
that verdict is in favor of the plaintiff, answers to an 58  
interrogatory that specifies the total compensatory damages 59  
recoverable by the plaintiff from each defendant. 60

(3) In a tort action that is tried to a court and in which 61  
a plaintiff makes a claim for both compensatory damages and 62  
punitive or exemplary damages, the court shall make its 63  
determination with respect to whether the plaintiff is entitled 64  
to recover compensatory damages for the injury or loss to person 65  
or property from the defendant and, if that determination is in 66  
favor of the plaintiff, shall make findings of fact that specify 67  
the total compensatory damages recoverable by the plaintiff from 68  
the defendant. 69

(C) Subject to division (E) of this section, punitive or 70  
exemplary damages are not recoverable from a defendant in 71  
question in a tort action unless both of the following apply: 72

(1) The actions or omissions of that defendant demonstrate 73  
malice or aggravated or egregious fraud, or that defendant as 74  
principal or master knowingly authorized, participated in, or 75  
ratified actions or omissions of an agent or servant that so 76

demonstrate.	77
(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.	78 79 80 81
(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.	82 83 84
(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:	85 86 87
(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.	88 89 90 91 92
(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 <del>percent</del> <u>per cent</u> 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.	93 94 95 96 97 98 99 100
(c) Any <del>attorneys</del> <u>attorney's</u> 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.	101 102 103
(3) No award of prejudgment interest under division (C) (1) of section 1343.03 of the Revised Code shall include any	104 105

prejudgment interest on punitive or exemplary damages found by 106  
the trier of fact. 107

(4) In a tort action, the burden of proof shall be upon a 108  
plaintiff in question, by clear and convincing evidence, to 109  
establish that the plaintiff is entitled to recover punitive or 110  
exemplary damages. 111

(5) (a) In any tort action, except as provided in division 112  
(D) (5) (b) or (6) of this section, punitive or exemplary damages 113  
shall not be awarded against a defendant if that defendant files 114  
with the court a certified judgment, judgment entries, or other 115  
evidence showing that punitive or exemplary damages have already 116  
been awarded and have been collected, in any state or federal 117  
court, against that defendant based on the same act or course of 118  
conduct that is alleged to have caused the injury or loss to 119  
person or property for which the plaintiff seeks compensatory 120  
damages and that the aggregate of those previous punitive or 121  
exemplary damage awards exceeds the maximum amount of punitive 122  
or exemplary damages that may be awarded under division (D) (2) 123  
of this section against that defendant in the tort action. 124

(b) Notwithstanding division (D) (5) (a) of this section and 125  
except as provided in division (D) (6) of this section, punitive 126  
or exemplary damages may be awarded against a defendant in 127  
either of the following types of tort actions: 128

(i) In subsequent tort actions involving the same act or 129  
course of conduct for which punitive or exemplary damages have 130  
already been awarded, if the court determines by clear and 131  
convincing evidence that the plaintiff will offer new and 132  
substantial evidence of previously undiscovered, additional 133  
behavior of a type described in division (C) of this section on 134  
the part of that defendant, other than the injury or loss for 135

which the plaintiff seeks compensatory damages. In that case, 136  
the court shall make specific findings of fact in the record to 137  
support its conclusion. The court shall reduce the amount of any 138  
punitive or exemplary damages otherwise awardable pursuant to 139  
this section by the sum of the punitive or exemplary damages 140  
awards previously rendered against that defendant in any state 141  
or federal court. The court shall not inform the jury about the 142  
court's determination and action under division (D) (5) (b) (i) of 143  
this section. 144

(ii) In subsequent tort actions involving the same act or 145  
course of conduct for which punitive or exemplary damages have 146  
already been awarded, if the court determines by clear and 147  
convincing evidence that the total amount of prior punitive or 148  
exemplary damages awards was totally insufficient to punish that 149  
defendant's behavior of a type described in division (C) of this 150  
section and to deter that defendant and others from similar 151  
behavior in the future. In that case, the court shall make 152  
specific findings of fact in the record to support its 153  
conclusion. The court shall reduce the amount of any punitive or 154  
exemplary damages otherwise awardable pursuant to this section 155  
by the sum of the punitive or exemplary damages awards 156  
previously rendered against that defendant in any state or 157  
federal court. The court shall not inform the jury about the 158  
court's determination and action under division (D) (5) (b) (ii) of 159  
this section. 160

(6) Division (D) (2) of this section does not apply to a 161  
tort action where the alleged injury, death, or loss to person 162  
or property resulted from the defendant acting ~~with one or more~~ 163  
~~of the culpable mental states of purposely and knowingly as~~ 164  
~~described in section 2901.22 of the Revised Code in violation of~~ 165  
a law and when the defendant has been convicted of or pleaded 166

guilty to a criminal offense that is a felony, that is a strict 167  
criminal liability offense or that had as an element of the 168  
offense one or more of the culpable mental states of purposely 169  
and knowingly as described in ~~that~~ section 2901.22 of the 170  
Revised Code, and that is the basis of the tort action. 171

(E) This section does not apply to tort actions against 172  
the state in the court of claims, including, but not limited to, 173  
tort actions against a state university or college that are 174  
subject to division (B) (1) of section 3345.40 of the Revised 175  
Code, to tort actions against political subdivisions of this 176  
state that are commenced under or are subject to Chapter 2744. 177  
of the Revised Code, or to the extent that another section of 178  
the Revised Code expressly provides any of the following: 179

(1) Punitive or exemplary damages are recoverable from a 180  
defendant in question in a tort action on a basis other than 181  
that the actions or omissions of that defendant demonstrate 182  
malice or aggravated or egregious fraud or on a basis other than 183  
that the defendant in question as principal or master knowingly 184  
authorized, participated in, or ratified actions or omissions of 185  
an agent or servant that so demonstrate. 186

(2) Punitive or exemplary damages are recoverable from a 187  
defendant in question in a tort action irrespective of whether 188  
the plaintiff in question has adduced proof of actual damages. 189

(3) The burden of proof upon a plaintiff in question to 190  
recover punitive or exemplary damages from a defendant in 191  
question in a tort action is one other than clear and convincing 192  
evidence. 193

(4) Punitive or exemplary damages are not recoverable from 194  
a defendant in question in a tort action. 195

(F) If the trier of fact is a jury, the court shall not 196  
instruct the jury with respect to the limits on punitive or 197  
exemplary damages pursuant to division (D) of this section, and 198  
neither counsel for any party or a witness shall inform the jury 199  
or potential jurors of those limits. 200

(G) When determining the amount of an award of punitive or 201  
exemplary damages against either a home or a residential 202  
facility licensed under section 5123.19 of the Revised Code, the 203  
trier of fact shall consider all of the following: 204

(1) The ability of the home or residential facility to pay 205  
the award of punitive or exemplary damages based on the home's 206  
or residential facility's assets, income, and net worth; 207

(2) Whether the amount of punitive or exemplary damages is 208  
sufficient to deter future tortious conduct; 209

(3) The financial ability of the home or residential 210  
facility, both currently and in the future, to provide 211  
accommodations, personal care services, and skilled nursing 212  
care. 213

**Section 2.** That existing section 2315.21 of the Revised 214  
Code is hereby repealed. 215