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Senator John Eklund – Sponsor Testimony
Senate Bill 46
Senate Oversight and Reform Committee
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Good Afternoon Chairman Coley, Vice-Chair Matt Huffman, Ranking Member Craig, and fellow colleagues. Thank you for the opportunity to give testimony on Senate Bill 46, which will expand the exemption from damage limits in tort law.

Through tort reform efforts undertaken over the years, there currently exists in Ohio a statutory limit on the amount of exemplary or punitive damages that may be awarded to a plaintiff in a tort case. *See, generally*, R.C. Sec. 2315.21(D)(2).

However, these limitations do not apply to a tort claim when the basis for the claim is conduct that constituted a felony offense with a culpable mental state of purposely and knowingly, and the defendant has pleaded or been found guilty for having so acted (purposefully and knowingly). R.C. Sec. 2315.21(D)(6).

As you know, there are in Ohio felony offenses for which no culpable mental state must be proven. These “per se” offenses merely require the State to prove that the defendant committed the acts that are elements of the offense. For example, some forms of Aggravated Vehicular Homicide (R.C. Sec. 2903.06(A)(1)) and Aggravated Vehicular Assault (R.C. Sec. 2903.08(A)(1)) are “per se” felony offenses. These two examples involve causing a death, or serious physical harm, when operating a vehicle as a proximate result of violating OVI laws.

The exception to the punitive damages limits do not apply in a tort case based on conduct that would be a per se felony offense. I believe that is an anomalous result. If Ohio deems certain conduct to be sufficiently blameworthy as to forego the need to prove a culpable state of mind to find someone guilty of a felony offense, then it should be treated, for purposes of removing the punitive damages limitation in tort cases, on a par with conduct condemned only when it is done purposefully and knowingly.

That, quite simply, is what Senate Bill 46 proposes to do – apply the existing exception to punitive/exemplary limitations to tort claims based on violations of per se felony offenses in Ohio.

Thank you, again Mr. Chairman. I am happy to answer any questions from you or the members.