

As Introduced

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

H. B. No. 324

Representative Miller, A.

A BILL

To amend sections 2307.80, 2315.18, 2315.21, 1
2323.43, and 3345.40 of the Revised Code to 2
raise the limitations on damages for noneconomic 3
loss and punitive damages in certain tort 4
actions based on adjustments for inflation from 5
the year 2005 to 2019. 6

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

Section 1. That sections 2307.80, 2315.18, 2315.21, 7
2323.43, and 3345.40 of the Revised Code be amended to read as 8
follows: 9

Sec. 2307.80. (A) Subject to divisions (C) and (D) of this 10
section, punitive or exemplary damages shall not be awarded 11
against a manufacturer or supplier in question in connection 12
with a product liability claim unless the claimant establishes, 13
by clear and convincing evidence, that harm for which the 14
claimant is entitled to recover compensatory damages in 15
accordance with section 2307.73 or 2307.78 of the Revised Code 16
was the result of misconduct of the manufacturer or supplier in 17
question that manifested a flagrant disregard of the safety of 18
persons who might be harmed by the product in question. The fact 19

by itself that a product is defective does not establish a 20
flagrant disregard of the safety of persons who might be harmed 21
by that product. 22

(B) Whether the trier of fact is a jury or the court, if 23
the trier of fact determines that a manufacturer or supplier in 24
question is liable for punitive or exemplary damages in 25
connection with a product liability claim, the amount of those 26
damages shall be determined by the court. In determining the 27
amount of punitive or exemplary damages, the court shall 28
consider factors including, but not limited to, the following: 29

(1) The likelihood that serious harm would arise from the 30
misconduct of the manufacturer or supplier in question; 31

(2) The degree of the awareness of the manufacturer or 32
supplier in question of that likelihood; 33

(3) The profitability of the misconduct to the 34
manufacturer or supplier in question; 35

(4) The duration of the misconduct and any concealment of 36
it by the manufacturer or supplier in question; 37

(5) The attitude and conduct of the manufacturer or 38
supplier in question upon the discovery of the misconduct and 39
whether the misconduct has terminated; 40

(6) The financial condition of the manufacturer or 41
supplier in question; 42

(7) The total effect of other punishment imposed or likely 43
to be imposed upon the manufacturer or supplier in question as a 44
result of the misconduct, including awards of punitive or 45
exemplary damages to persons similarly situated to the claimant 46
and the severity of criminal penalties to which the manufacturer 47

or supplier in question has been or is likely to be subjected. 48

(C) (1) Except as provided in division (C) (2) of this 49
section, if a claimant alleges in a product liability claim that 50
a drug or device caused harm to the claimant, the manufacturer 51
of the drug or device shall not be liable for punitive or 52
exemplary damages in connection with that product liability 53
claim if the drug or device that allegedly caused the harm 54
satisfies either of the following: 55

(a) It was manufactured and labeled in relevant and 56
material respects in accordance with the terms of an approval or 57
license issued by the federal food and drug administration under 58
the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 59
(1938), 21 U.S.C. 301-392, as amended, or the "Public Health 60
Service Act," 58 Stat. 682 (1944), 42 U.S.C. 201-300cc-15, as 61
amended. 62

(b) It was an over-the-counter drug marketed pursuant to 63
federal regulations, was generally recognized as safe and 64
effective and as not being misbranded pursuant to the applicable 65
federal regulations, and satisfied in relevant and material 66
respects each of the conditions contained in the applicable 67
regulations and each of the conditions contained in an 68
applicable monograph. 69

(2) Division (C) (1) of this section does not apply if the 70
claimant establishes, by a preponderance of the evidence, that 71
the manufacturer fraudulently and in violation of applicable 72
regulations of the food and drug administration withheld from 73
the food and drug administration information known to be 74
material and relevant to the harm that the claimant allegedly 75
suffered or misrepresented to the food and drug administration 76
information of that type. 77

(3) For purposes of divisions (C) and (D) of this section:	78
(a) "Drug" has the same meaning as in the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040, 1041 (1938), 21 U.S.C. 321(g) (1), as amended.	79 80 81
(b) "Device" has the same meaning as in the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040, 1041 (1938), 21 U.S.C. 321(h), as amended.	82 83 84
(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.	85 86 87 88 89 90 91 92 93 94 95 96 97 98 99
(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	100 101 102 103 104 105 106 107

applicable government agency information of that type.	108
(E) The bifurcated trial provisions of division (B) of	109
section 2315.21 of the Revised Code, the ceiling on recoverable	110
punitive or exemplary damages specified in division (D) (1) <u>(2)</u>	111
of that section, and the provisions of division (D) (3) of that	112
section apply to awards of punitive or exemplary damages under	113
this section.	114
Sec. 2315.18. (A) As used in this section and in section	115
2315.19 of the Revised Code:	116
(1) "Asbestos claim" has the same meaning as in section	117
2307.91 of the Revised Code.	118
(2) "Economic loss" means any of the following types of	119
pecuniary harm:	120
(a) All wages, salaries, or other compensation lost as a	121
result of an injury or loss to person or property that is a	122
subject of a tort action;	123
(b) All expenditures for medical care or treatment,	124
rehabilitation services, or other care, treatment, services,	125
products, or accommodations as a result of an injury or loss to	126
person or property that is a subject of a tort action;	127
(c) Any other expenditures incurred as a result of an	128
injury or loss to person or property that is a subject of a tort	129
action, other than attorney's fees incurred in connection with	130
that action.	131
(3) "Medical claim," "dental claim," "optometric claim,"	132
and "chiropractic claim" have the same meanings as in section	133
2305.113 of the Revised Code.	134
(4) "Noneconomic loss" means nonpecuniary harm that	135

results from an injury or loss to person or property that is a 136
subject of a tort action, including, but not limited to, pain 137
and suffering, loss of society, consortium, companionship, care, 138
assistance, attention, protection, advice, guidance, counsel, 139
instruction, training, or education, disfigurement, mental 140
anguish, and any other intangible loss. 141

(5) "Occurrence" means all claims resulting from or 142
arising out of any one person's bodily injury. 143

(6) "Product liability claim" has the same meaning as in 144
section 2307.71 of the Revised Code. 145

(7) "Tort action" means a civil action for damages for 146
injury or loss to person or property. "Tort action" includes a 147
civil action upon a product liability claim or an asbestos 148
claim. "Tort action" does not include a civil action upon a 149
medical claim, dental claim, optometric claim, or chiropractic 150
claim or a civil action for damages for a breach of contract or 151
another agreement between persons. 152

(8) "Trier of fact" means the jury or, in a nonjury 153
action, the court. 154

(B) In a tort action to recover damages for injury or loss 155
to person or property, all of the following apply: 156

(1) There shall not be any limitation on the amount of 157
compensatory damages that represents the economic loss of the 158
person who is awarded the damages in the tort action. 159

(2) Except as otherwise provided in division (B) (3) of 160
this section, the amount of compensatory damages that represents 161
damages for noneconomic loss that is recoverable in a tort 162
action under this section to recover damages for injury or loss 163
to person or property shall not exceed the greater of ~~two~~ three 164

hundred ~~fifty-twenty-nine~~ thousand dollars or an amount that is 165
equal to three times the economic loss, as determined by the 166
trier of fact, of the plaintiff in that tort action to a maximum 167
of ~~three-four~~ hundred ~~fifty-sixty-one~~ thousand dollars for each 168
plaintiff in that tort action or a maximum of ~~five-six~~ hundred 169
~~fifty-nine~~ thousand dollars for each occurrence that is the 170
basis of that tort action. 171

(3) There shall not be any limitation on the amount of 172
compensatory damages that represents damages for noneconomic 173
loss that is recoverable in a tort action to recover damages for 174
injury or loss to person or property if the noneconomic losses 175
of the plaintiff are for either of the following: 176

(a) Permanent and substantial physical deformity, loss of 177
use of a limb, or loss of a bodily organ system; 178

(b) Permanent physical functional injury that permanently 179
prevents the injured person from being able to independently 180
care for self and perform life-sustaining activities. 181

(C) In determining an award of compensatory damages for 182
noneconomic loss in a tort action, the trier of fact shall not 183
consider any of the following: 184

(1) Evidence of a defendant's alleged wrongdoing, 185
misconduct, or guilt; 186

(2) Evidence of the defendant's wealth or financial 187
resources; 188

(3) All other evidence that is offered for the purpose of 189
punishing the defendant, rather than offered for a compensatory 190
purpose. 191

(D) If a trial is conducted in a tort action to recover 192

damages for injury or loss to person or property and a plaintiff 193
prevails in that action, the court in a nonjury trial shall make 194
findings of fact, and the jury in a jury trial shall return a 195
general verdict accompanied by answers to interrogatories, that 196
shall specify all of the following: 197

(1) The total compensatory damages recoverable by the 198
plaintiff; 199

(2) The portion of the total compensatory damages that 200
represents damages for economic loss; 201

(3) The portion of the total compensatory damages that 202
represents damages for noneconomic loss. 203

(E) (1) After the trier of fact in a tort action to recover 204
damages for injury or loss to person or property complies with 205
division (D) of this section, the court shall enter a judgment 206
in favor of the plaintiff for compensatory damages for economic 207
loss in the amount determined pursuant to division (D) (2) of 208
this section, and, subject to division (F) (1) of this section, 209
the court shall enter a judgment in favor of the plaintiff for 210
compensatory damages for noneconomic loss. Except as provided in 211
division (B) (3) of this section, in no event shall a judgment 212
for compensatory damages for noneconomic loss exceed the maximum 213
recoverable amount that represents damages for noneconomic loss 214
as provided in division (B) (2) of this section. Division (B) of 215
this section shall be applied in a jury trial only after the 216
jury has made its factual findings and determination as to the 217
damages. 218

(2) Prior to the trial in the tort action described in 219
division (D) of this section, any party may seek summary 220
judgment with respect to the nature of the alleged injury or 221

loss to person or property, seeking a determination of the	222
damages as described in division (B) (2) of this section.	223
(F) (1) A court of common pleas has no jurisdiction to	224
enter judgment on an award of compensatory damages for	225
noneconomic loss in excess of the limits set forth in this	226
section.	227
(2) If the trier of fact is a jury, the court shall not	228
instruct the jury with respect to the limit on compensatory	229
damages for noneconomic loss described in division (B) (2) of	230
this section, and neither counsel for any party nor a witness	231
shall inform the jury or potential jurors of that limit.	232
(G) With respect to a tort action to which division (B) (2)	233
of this section applies, any excess amount of compensatory	234
damages for noneconomic loss that is greater than the applicable	235
amount specified in division (B) (2) of this section shall not be	236
reallocated to any other tortfeasor beyond the amount of	237
compensatory damages that the tortfeasor would otherwise be	238
responsible for under the laws of this state.	239
(H) This section does not apply to any of the following:	240
(1) Tort actions that are brought against the state in the	241
court of claims, including, but not limited to, those actions in	242
which a state university or college is a defendant and to which	243
division (B) (3) of section 3345.40 of the Revised Code applies;	244
(2) Tort actions that are brought against political	245
subdivisions of this state and that are commenced under or are	246
subject to Chapter 2744. of the Revised Code. Division (C) of	247
section 2744.05 of the Revised Code applies to recoverable	248
damages in those actions.	249
(3) Wrongful death actions brought pursuant to Chapter	250

2125. of the Revised Code.	251
(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.	252 253 254 255 256 257
Sec. 2315.21. (A) As used in this section:	258
(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.	259 260 261 262 263 264 265
(2) "Trier of fact" means the jury or, in a nonjury action, the court.	266 267
(3) "Home" has the same meaning as in section 3721.10 of the Revised Code.	268 269
(4) "Employer" includes, but is not limited to, a parent, subsidiary, affiliate, division, or department of the employer. If the employer is an individual, the individual shall be considered an employer under this section only if the subject of the tort action is related to the individual's capacity as an employer.	270 271 272 273 274 275
(5) "Small employer" means an employer who employs not more than one hundred persons on a full-time permanent basis, or, if the employer is classified as being in the manufacturing sector by the North American industrial classification system,	276 277 278 279

"small employer" means an employer who employs not more than 280
five hundred persons on a full-time permanent basis. 281

(B) (1) In a tort action that is tried to a jury and in 282
which a plaintiff makes a claim for compensatory damages and a 283
claim for punitive or exemplary damages, upon the motion of any 284
party, the trial of the tort action shall be bifurcated as 285
follows: 286

(a) The initial stage of the trial shall relate only to 287
the presentation of evidence, and a determination by the jury, 288
with respect to whether the plaintiff is entitled to recover 289
compensatory damages for the injury or loss to person or 290
property from the defendant. During this stage, no party to the 291
tort action shall present, and the court shall not permit a 292
party to present, evidence that relates solely to the issue of 293
whether the plaintiff is entitled to recover punitive or 294
exemplary damages for the injury or loss to person or property 295
from the defendant. 296

(b) If the jury determines in the initial stage of the 297
trial that the plaintiff is entitled to recover compensatory 298
damages for the injury or loss to person or property from the 299
defendant, evidence may be presented in the second stage of the 300
trial, and a determination by that jury shall be made, with 301
respect to whether the plaintiff additionally is entitled to 302
recover punitive or exemplary damages for the injury or loss to 303
person or property from the defendant. 304

(2) In a tort action that is tried to a jury and in which 305
a plaintiff makes a claim for both compensatory damages and 306
punitive or exemplary damages, the court shall instruct the jury 307
to return, and the jury shall return, a general verdict and, if 308
that verdict is in favor of the plaintiff, answers to an 309

interrogatory that specifies the total compensatory damages 310
recoverable by the plaintiff from each defendant. 311

(3) In a tort action that is tried to a court and in which 312
a plaintiff makes a claim for both compensatory damages and 313
punitive or exemplary damages, the court shall make its 314
determination with respect to whether the plaintiff is entitled 315
to recover compensatory damages for the injury or loss to person 316
or property from the defendant and, if that determination is in 317
favor of the plaintiff, shall make findings of fact that specify 318
the total compensatory damages recoverable by the plaintiff from 319
the defendant. 320

(C) Subject to division (E) of this section, punitive or 321
exemplary damages are not recoverable from a defendant in 322
question in a tort action unless both of the following apply: 323

(1) The actions or omissions of that defendant demonstrate 324
malice or aggravated or egregious fraud, or that defendant as 325
principal or master knowingly authorized, participated in, or 326
ratified actions or omissions of an agent or servant that so 327
demonstrate. 328

(2) The trier of fact has returned a verdict or has made a 329
determination pursuant to division (B) (2) or (3) of this section 330
of the total compensatory damages recoverable by the plaintiff 331
from that defendant. 332

(D) (1) In a tort action, the trier of fact shall determine 333
the liability of any defendant for punitive or exemplary damages 334
and the amount of those damages. 335

(2) Except as provided in division (D) (6) of this section, 336
all of the following apply regarding any award of punitive or 337
exemplary damages in a tort action: 338

(a) The court shall not enter judgment for punitive or 339
exemplary damages in excess of two times the amount of the 340
compensatory damages awarded to the plaintiff from that 341
defendant, as determined pursuant to division (B)(2) or (3) of 342
this section. 343

(b) If the defendant is a small employer or individual, 344
the court shall not enter judgment for punitive or exemplary 345
damages in excess of the lesser of two times the amount of the 346
compensatory damages awarded to the plaintiff from the defendant 347
or ~~ten percent~~ per cent of the employer's or individual's net 348
worth when the tort was committed up to a maximum of ~~three-four~~ 349
hundred ~~fifty-sixty-one~~ thousand dollars, as determined pursuant 350
to division (B)(2) or (3) of this section. 351

(c) Any ~~attorneys~~attorney's fees awarded as a result of a 352
claim for punitive or exemplary damages shall not be considered 353
for purposes of determining the cap on punitive damages. 354

(3) No award of prejudgment interest under division (C)(1) 355
of section 1343.03 of the Revised Code shall include any 356
prejudgment interest on punitive or exemplary damages found by 357
the trier of fact. 358

(4) In a tort action, the burden of proof shall be upon a 359
plaintiff in question, by clear and convincing evidence, to 360
establish that the plaintiff is entitled to recover punitive or 361
exemplary damages. 362

(5) (a) In any tort action, except as provided in division 363
(D)(5)(b) or (6) of this section, punitive or exemplary damages 364
shall not be awarded against a defendant if that defendant files 365
with the court a certified judgment, judgment entries, or other 366
evidence showing that punitive or exemplary damages have already 367

been awarded and have been collected, in any state or federal 368
court, against that defendant based on the same act or course of 369
conduct that is alleged to have caused the injury or loss to 370
person or property for which the plaintiff seeks compensatory 371
damages and that the aggregate of those previous punitive or 372
exemplary damage awards exceeds the maximum amount of punitive 373
or exemplary damages that may be awarded under division (D) (2) 374
of this section against that defendant in the tort action. 375

(b) Notwithstanding division (D) (5) (a) of this section and 376
except as provided in division (D) (6) of this section, punitive 377
or exemplary damages may be awarded against a defendant in 378
either of the following types of tort actions: 379

(i) In subsequent tort actions involving the same act or 380
course of conduct for which punitive or exemplary damages have 381
already been awarded, if the court determines by clear and 382
convincing evidence that the plaintiff will offer new and 383
substantial evidence of previously undiscovered, additional 384
behavior of a type described in division (C) of this section on 385
the part of that defendant, other than the injury or loss for 386
which the plaintiff seeks compensatory damages. In that case, 387
the court shall make specific findings of fact in the record to 388
support its conclusion. The court shall reduce the amount of any 389
punitive or exemplary damages otherwise awardable pursuant to 390
this section by the sum of the punitive or exemplary damages 391
awards previously rendered against that defendant in any state 392
or federal court. The court shall not inform the jury about the 393
court's determination and action under division (D) (5) (b) (i) of 394
this section. 395

(ii) In subsequent tort actions involving the same act or 396
course of conduct for which punitive or exemplary damages have 397

already been awarded, if the court determines by clear and 398
convincing evidence that the total amount of prior punitive or 399
exemplary damages awards was totally insufficient to punish that 400
defendant's behavior of a type described in division (C) of this 401
section and to deter that defendant and others from similar 402
behavior in the future. In that case, the court shall make 403
specific findings of fact in the record to support its 404
conclusion. The court shall reduce the amount of any punitive or 405
exemplary damages otherwise awardable pursuant to this section 406
by the sum of the punitive or exemplary damages awards 407
previously rendered against that defendant in any state or 408
federal court. The court shall not inform the jury about the 409
court's determination and action under division (D) (5) (b) (ii) of 410
this section. 411

(6) Division (D) (2) of this section does not apply to a 412
tort action where the alleged injury, death, or loss to person 413
or property resulted from the defendant acting with one or more 414
of the culpable mental states of purposely and knowingly as 415
described in section 2901.22 of the Revised Code and when the 416
defendant has been convicted of or pleaded guilty to a criminal 417
offense that is a felony, that had as an element of the offense 418
one or more of the culpable mental states of purposely and 419
knowingly as described in that section, and that is the basis of 420
the tort action. 421

(E) This section does not apply to tort actions against 422
the state in the court of claims, including, but not limited to, 423
tort actions against a state university or college that are 424
subject to division (B) (1) of section 3345.40 of the Revised 425
Code, to tort actions against political subdivisions of this 426
state that are commenced under or are subject to Chapter 2744. 427
of the Revised Code, or to the extent that another section of 428

the Revised Code expressly provides any of the following: 429

(1) Punitive or exemplary damages are recoverable from a 430
defendant in question in a tort action on a basis other than 431
that the actions or omissions of that defendant demonstrate 432
malice or aggravated or egregious fraud or on a basis other than 433
that the defendant in question as principal or master knowingly 434
authorized, participated in, or ratified actions or omissions of 435
an agent or servant that so demonstrate. 436

(2) Punitive or exemplary damages are recoverable from a 437
defendant in question in a tort action irrespective of whether 438
the plaintiff in question has adduced proof of actual damages. 439

(3) The burden of proof upon a plaintiff in question to 440
recover punitive or exemplary damages from a defendant in 441
question in a tort action is one other than clear and convincing 442
evidence. 443

(4) Punitive or exemplary damages are not recoverable from 444
a defendant in question in a tort action. 445

(F) If the trier of fact is a jury, the court shall not 446
instruct the jury with respect to the limits on punitive or 447
exemplary damages pursuant to division (D) of this section, and 448
neither counsel for any party or a witness shall inform the jury 449
or potential jurors of those limits. 450

(G) When determining the amount of an award of punitive or 451
exemplary damages against either a home or a residential 452
facility licensed under section 5123.19 of the Revised Code, the 453
trier of fact shall consider all of the following: 454

(1) The ability of the home or residential facility to pay 455
the award of punitive or exemplary damages based on the home's 456
or residential facility's assets, income, and net worth; 457

(2) Whether the amount of punitive or exemplary damages is 458
sufficient to deter future tortious conduct; 459

(3) The financial ability of the home or residential 460
facility, both currently and in the future, to provide 461
accommodations, personal care services, and skilled nursing 462
care. 463

Sec. 2323.43. (A) In a civil action upon a medical, 464
dental, optometric, or chiropractic claim to recover damages for 465
injury, death, or loss to person or property, all of the 466
following apply: 467

(1) There shall not be any limitation on compensatory 468
damages that represent the economic loss of the person who is 469
awarded the damages in the civil action. 470

(2) Except as otherwise provided in division (A) (3) of 471
this section, the amount of compensatory damages that represents 472
damages for noneconomic loss that is recoverable in a civil 473
action under this section to recover damages for injury, death, 474
or loss to person or property shall not exceed the greater of 475
~~two~~ three hundred ~~fifty~~ twenty-nine thousand dollars or an 476
amount that is equal to three times the plaintiff's economic 477
loss, as determined by the trier of fact, to a maximum of ~~three~~ 478
four hundred ~~fifty~~ sixty-one thousand dollars for each plaintiff 479
or a maximum of ~~five~~ six hundred ~~fifty~~ nine thousand dollars for 480
each occurrence. 481

(3) The amount recoverable for noneconomic loss in a civil 482
action under this section may exceed the amount described in 483
division (A) (2) of this section but shall not exceed ~~five~~ six 484
hundred ~~fifty~~ nine thousand dollars for each plaintiff or one 485
million three hundred seventeen thousand dollars for each 486

occurrence if the noneconomic losses of the plaintiff are for 487
either of the following: 488

(a) Permanent and substantial physical deformity, loss of 489
use of a limb, or loss of a bodily organ system; 490

(b) Permanent physical functional injury that permanently 491
prevents the injured person from being able to independently 492
care for self and perform life sustaining activities. 493

(B) If a trial is conducted in a civil action upon a 494
medical, dental, optometric, or chiropractic claim to recover 495
damages for injury, death, or loss to person or property and a 496
plaintiff prevails with respect to that claim, the court in a 497
nonjury trial shall make findings of fact, and the jury in a 498
jury trial shall return a general verdict accompanied by answers 499
to interrogatories, that shall specify all of the following: 500

(1) The total compensatory damages recoverable by the 501
plaintiff; 502

(2) The portion of the total compensatory damages that 503
represents damages for economic loss; 504

(3) The portion of the total compensatory damages that 505
represents damages for noneconomic loss. 506

(C) (1) After the trier of fact in a civil action upon a 507
medical, dental, optometric, or chiropractic claim to recover 508
damages for injury, death, or loss to person or property 509
complies with division (B) of this section, the court shall 510
enter a judgment in favor of the plaintiff for compensatory 511
damages for economic loss in the amount determined pursuant to 512
division (B) (2) of this section, and, subject to division (D) (1) 513
of this section, the court shall enter a judgment in favor of 514
the plaintiff for compensatory damages for noneconomic loss. In 515

no event shall a judgment for compensatory damages for 516
noneconomic loss exceed the maximum recoverable amount that 517
represents damages for noneconomic loss as provided in divisions 518
(A) (2) and (3) of this section. Division (A) of this section 519
shall be applied in a jury trial only after the jury has made 520
its factual findings and determination as to the damages. 521

(2) Prior to the trial in the civil action, any party may 522
seek summary judgment with respect to the nature of the alleged 523
injury or loss to person or property, seeking a determination of 524
the damages as described in division (A) (2) or (3) of this 525
section. 526

(D) (1) A court of common pleas has no jurisdiction to 527
enter judgment on an award of compensatory damages for 528
noneconomic loss in excess of the limits set forth in this 529
section. 530

(2) If the trier of fact is a jury, the court shall not 531
instruct the jury with respect to the limit on compensatory 532
damages for noneconomic loss described in divisions (A) (2) and 533
(3) of this section, and neither counsel for any party nor a 534
witness shall inform the jury or potential jurors of that limit. 535

(E) Any excess amount of compensatory damages for 536
noneconomic loss that is greater than the applicable amount 537
specified in division (A) (2) or (3) of this section shall not be 538
reallocated to any other tortfeasor beyond the amount of 539
compensatory damages that that tortfeasor would otherwise be 540
responsible for under the laws of this state. 541

(F) (1) If pursuant to a contingency fee agreement between 542
an attorney and a plaintiff in a civil action upon a medical 543
claim, dental claim, optometric claim, or chiropractic claim, 544

the amount of the attorney's fees exceed the applicable amount 545
of the limits on compensatory damages for noneconomic loss as 546
provided in division (A) (2) or (3) of this section, the attorney 547
shall make an application in the probate court of the county in 548
which the civil action was commenced or in which the settlement 549
was entered. The application shall contain a statement of facts, 550
including the amount to be allocated to the settlement of the 551
claim, the amount of the settlement or judgment that represents 552
the compensatory damages for economic loss and noneconomic loss, 553
the relevant provision in the contingency fee agreement, and the 554
dollar amount of the attorney's fees under the contingency fee 555
agreement. The application shall include the proposed 556
distribution of the amount of the judgment or settlement. 557

(2) The attorney shall give written notice of the hearing 558
and a copy of the application to all interested persons who have 559
not waived notice of the hearing. Notwithstanding the waivers 560
and consents of the interested persons, the probate court shall 561
retain jurisdiction over the settlement, allocation, and 562
distribution of the claim. 563

(3) The application shall state the arrangements, if any, 564
that have been made with respect to the attorney's fees. The 565
attorney's fees shall be subject to the approval of the probate 566
court. 567

(G) This section does not apply to any of the following: 568

(1) Civil actions upon a medical, dental, optometric, or 569
chiropractic claim that are brought against the state in the 570
court of claims, including, but not limited to, those actions in 571
which a state university or college is a defendant and to which 572
division (B) (3) of section 3345.40 of the Revised Code applies; 573

(2) Civil actions upon a medical, dental, optometric, or chiropractic claim 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;	574 575 576 577 578 579
(3) Wrongful death actions brought pursuant to Chapter 2125. of the Revised Code.	580 581
(H) As used in this section:	582
(1) "Economic loss" means any of the following types of pecuniary harm:	583 584
(a) 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 civil action upon a medical, dental, optometric, or chiropractic claim;	585 586 587 588
(b) All expenditures for medical care or treatment, rehabilitation services, or other care, treatment, services, products, or accommodations as a result of an injury, death, or loss to person or property that is a subject of a civil action upon a medical, dental, optometric, or chiropractic claim;	589 590 591 592 593
(c) Any other expenditures incurred as a result of an injury, death, or loss to person or property that is a subject of a civil action upon a medical, dental, optometric, or chiropractic claim, other than attorney's fees incurred in connection with that action.	594 595 596 597 598
(2) "Medical claim," "dental claim," "optometric claim," and "chiropractic claim" have the same meanings as in section 2305.113 of the Revised Code.	599 600 601

(3) "Noneconomic loss" means nonpecuniary harm that 602
results from an injury, death, or loss to person or property 603
that is a subject of a civil action upon a medical, dental, 604
optometric, or chiropractic claim, including, but not limited 605
to, pain and suffering, loss of society, consortium, 606
companionship, care, assistance, attention, protection, advice, 607
guidance, counsel, instruction, training, or education, 608
disfigurement, mental anguish, and any other intangible loss. 609

(4) "Trier of fact" means the jury or, in a nonjury 610
action, the court. 611

Sec. 3345.40. (A) As used in this section: 612

(1) "State university or college" has the same meaning as 613
in division (A) (1) of section 3345.12 of the Revised Code. 614

(2) (a) "The actual loss of the person who is awarded the 615
damages" includes all of the following: 616

(i) All wages, salaries, or other compensation lost by an 617
injured person as a result of the injury, including wages, 618
salaries, or other compensation lost as of the date of a 619
judgment and future expected lost earnings of the injured 620
person; 621

(ii) All expenditures of an injured person or of another 622
person on behalf of an injured person for medical care or 623
treatment, for rehabilitation services, or for other care, 624
treatment, services, products, or accommodations that were 625
necessary because of the injury; 626

(iii) All expenditures to be incurred in the future, as 627
determined by the court, by an injured person or by another 628
person on behalf of an injured person for medical care or 629
treatment, for rehabilitation services, or for other care, 630

treatment, services, products, or accommodations that will be 631
necessary because of the injury; 632

(iv) All expenditures of a person whose property was 633
injured or destroyed, or of another person on behalf of such a 634
person, in order to repair or replace the property that was 635
injured or destroyed; 636

(v) All expenditures of an injured person, of a person 637
whose property was injured or destroyed, or of another person on 638
behalf of an injured person or a person whose property was 639
injured or destroyed, in relation to the actual preparation or 640
presentation of the claim of the person; 641

(vi) Any other expenditures of an injured person, of a 642
person whose property was injured or destroyed, or of another 643
person on behalf of an injured person or a person whose property 644
was injured or destroyed, that the court determines represent an 645
actual loss experienced because of the personal or property 646
injury or property loss. 647

(b) "The actual loss of the person who is awarded the 648
damages" does not include either of the following: 649

(i) Any fees paid or owed to an attorney for any services 650
rendered in relation to a person or property injury or property 651
loss; 652

(ii) Any damages awarded for pain and suffering, for the 653
loss of society, consortium, companionship, care, assistance, 654
attention, protection, advice, guidance, counsel, instruction, 655
training, or education of an injured person, for mental anguish, 656
or for any other intangible loss. 657

(B) Notwithstanding any other provision of the Revised 658
Code or rules of a court to the contrary, in an action against a 659

state university or college to recover damages for injury, 660
death, or loss to persons or property caused by an act or 661
omission of the state university or college itself, by an act or 662
omission of any trustee, officer, or employee of the state 663
university or college while acting within the scope of ~~his~~ 664
employment or official responsibilities, or by an act or 665
omission of any other person authorized to act on behalf of the 666
state university or college that occurred while ~~he~~the person was 667
engaged in activities at the request or direction, or for the 668
benefit, of the state university or college, the following rules 669
shall apply: 670

(1) Punitive or exemplary damages shall not be awarded; 671

(2) If a plaintiff receives or is entitled to receive 672
benefits for injuries or loss allegedly incurred from a policy 673
or policies of insurance or any other source, the benefits shall 674
be disclosed to the court, and the amount of the benefits shall 675
be deducted from any award against the state university or 676
college recovered by the plaintiff. No insurer or other person 677
is entitled to bring a civil action under a subrogation 678
provision in an insurance or other contract against a state 679
university or college with respect to such benefits. 680

Nothing in this division affects or shall be construed to 681
limit the rights of a beneficiary under a life insurance policy 682
or the rights of sureties under fidelity or surety bonds. 683

(3) There shall not be any limitation on compensatory 684
damages that represent the actual loss of the person who is 685
awarded the damages. However, except in wrongful death actions 686
brought pursuant to Chapter 2125. of the Revised Code, damages 687
that arise from the same cause of action, transaction or 688
occurrence, or series of transactions or occurrences and that do 689

not represent the actual loss of the person who is awarded the 690
damages shall not exceed ~~two~~three hundred ~~fifty~~twenty-nine 691
thousand dollars in favor of any one person. The limitation on 692
damages that do not represent the actual loss of the person who 693
is awarded the damages provided in this division does not apply 694
to court costs that are awarded to a plaintiff, or to interest 695
on a judgment rendered in favor of a plaintiff, in an action 696
against a state university or college. 697

Section 2. That existing sections 2307.80, 2315.18, 698
2315.21, 2323.43, and 3345.40 of the Revised Code are hereby 699
repealed. 700