Nos. 2018-0213 & 2018-0189

In the Supreme Court of Ohio

NEW RIEGEL LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, et al.,

Plaintiffs-Appellees,

v.

THE BUEHRER GROUP ARCHITECTURE & ENGINEERING, INC., et al.,

Defendants-Appellants.

DISCRETIONARY APPEAL FROM THE THIRD APPELLATE DISTRICT,
SENECA COUNTY, APP. NO. 13-17-06
(CONSOLIDATED WITH 13-17-03, 13-17-04, 13-17-05)

MERIT BRIEF OF DEFENDANT-APPELLANT CHARLES CONSTRUCTION SERVICES, INC.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: **Page**

TABLE OF AUTHORITIES (Continued)

Cases: **Page**

Other Authorities

TABLE OF AUTHORITIES (Continued)

Page

STATEMENT OF FACTS

Under the facts presented, the sole issue presented for this Court's review is whether current version of R.C. 2305.131 means what it says, i.e., that it applies to all actions including contract actions. Indeed, even the Third Appellate District recognized that the "clear reading of the statute" of repose is that it applies to all actions, including those sounding in contract.[1] The Court of Appeals then lost its way, finding that *Kocisko v. Charles Shutrump & Sons Co*., 21 Ohio St. 3d 98 (1986), a thirty-year old decision interpreting a completely different version of the statute, required a holding contrary to the plain meaning of the current version of the statute. That resultant holding removed the protection intended to be afforded to all Ohioans by the General Assembly when it enacted the current ten-year statute of repose in 2004. Indeed, there are many reasons why the eight-year contractual statute of limitations might be tolled such as equitable tolling, absence from the state, or even the principle of divisible/severable contracts. See, e.g., R.C. 2305.15(A). However, the current version of the statute of repose applies to protect all businesses and individuals who contract in Ohio from the uncertainty of facing stale suits. As set forth in the facts below, the defendants here were erroneously denied that finality in an opinion which will long result in unanticipated repercussions state-wide if this Court does not now hold to the contrary.

Specifically, this matter arises from a public improvement project for the design and construction of a K-12 school facility for the Plaintiff-Appellee, New Riegel Local School

[1] *New Riegel Local School District, Board of Education v. The Buehrer Group Architecture & Engineering, Inc.*, 3rd Dist. Case Nos. 13-17-03 and 13-17-06, 2017-Ohio-8521, ¶ 11.

District ("New Riegel"). (June 10, 2016 Second Amended Complaint, T.d. 88, ¶ 12-15.)[2] On August 20, 2001, Defendant-Appellee Charles Construction Services, Inc., ("Charles"), was retained as the roofing contractor for the project. (*Id*. at ¶ 15-16, Ex. C.) The roofing materials were subject to a warranty provided by Defendant-Appellant American Buildings Company dba Architectural Metal Systems ("AMS"). (*Id*. at ¶17). That warrantee is not at issue in this appeal. Rather, it remains pending before the Trial Court. The project was substantially completed and approved for occupancy on December 19, 2002. (*Id*. at Ex. K.) The State issued a Certificate of Completion transferring all of the interest of the State in the Project to the School on March 3, 2004. (Involuntary Plaintiffs' June 5, 2015 Motion to Dismiss Themselves, T.d. 24.)

Nearly fourteen years after Charles was retained, on January 29, 2015, Charles was informed by New Riegel that there were alleged defects in the roof. (Second Amended Complaint, T.d. 88, at ¶ 22.) New Riegel claimed that defects in the roof system, wall flashing, and allegedly faulty installation of both resulted in condensation, moisture intrusion, and other unspecified deficiencies. (*Id*. at ¶ 18.) New Riegel filed the instant lawsuit on its own behalf (and purportedly on behalf of the State of Ohio) on or about April 30, 2015. (April 30, 2015 Complaint, T.d. 2.) As relevant here, New Riegel seeks to recover against Charles for the alleged roofing defects via claims for breach of contract and breach of warranty based on claimed resulting "physical damage to property." (*Id*. at Count IV, ¶ 57-66, and Count V, ¶67-72.) Only Count IV, breach of contract, is at issue in this appeal. As previously mentioned, the warranty issue remains before the Trial Court.

New Riegel also asserted claims for breach of contract and negligence against the

[2] "T.d." references are to the numbered Trial Court docket prepared by the clerk in *New Riegel Local School Dist. Bd. of Edn. v. Buehrer Group Architecture & Eng. Inc*., Seneca C.P. No. 15 CV 0115; not the numbered docket for the three appeals to the Third Appellate District.

architect, Defendant-Appellants Buehrer Group Architecture and Engineering, Inc., and the Estate of Huber H. Buehrer ("Buehrer Defendants"); a breach of contract claim against the general contractor, Defendant-Appellant Studer-Obringer, Inc.; a breach of warranty claim against the roof manufacturer, AMS; and claims against the surety for the project, Defendant-Appellant Ohio Farmers Insurance Co. (*Id*.) New Riegel brought the action in its own name as well as naming the State of Ohio and the Ohio School Facilities Commission ("OSFC") as involuntary plaintiffs. (Complaint, T.d. 2; Second Amended Complaint, T.d. 88.)

Charles answered asserting several affirmative defenses including the statute of repose. (July 31, 2015 Answer, T.d. 35.) New Riegel amended its pleadings, although, as relevant here, it still named the same parties and asserted the same claims. (Feb. 10, 2016 First Amended Complaint, T.d. 62.) Charles again answered and asserted the statute of repose as an affirmative defense. (Feb. 23, 2016 Answer, T.d., 68.)

Studer-Obringer filed a motion for judgment on the pleadings asserting that New Riegel's claims against it were time-barred by the statute of repose as set forth in R.C. 2305.131(A)(1). (Feb. 26, 2016 Civ.R. 12(C) Motion for Judgment on the Pleadings, T.d. 70.) New Riegel opposed, March 4, 2016 Opposition, T.d. 73, and Studer-Obringer replied in support, March 11, 2016 Reply in Support, T.d. 75.

New Riegel then filed a Second Amended Complaint on June 10, 2016. (T.d. 88.) New Riegel's Second Amended Complaint added Ohio Farmers Insurance as surety for Studer-Obringer but otherwise did not make any substantive changes relevant here. (*Id*.) Charles answered again asserting the statute of repose as one of its affirmative defenses. (June 28, 2016 Answer, T.d. 98.)

Studer-Obringer renewed its motion for judgment on the pleadings based on the ten-year

statute of repose. (June 23, 2016 Renewed Civ.R. 12(C) Motion for Judgment on the Pleadings, T.d. 95.) The matter was fully briefed. (July 13, 2016 Opposition, T.d. 102; July 20, 2016 Reply in Support, T.d. 107.) The Buehrer Defendants filed a similar motion for judgment on the pleadings based on the statute of repose. (July 25, 2016 Motion for Judgment on the Pleadings, T.d. 108.) That motion was also fully briefed. (July 29, 2016 Opposition, T.d. 109; Aug. 3, 2016 Reply in Support, T.d. 110.) On August 24, 2016, the Trial Court dismissed the Buehrer Defendants and Studer-Obringer as parties, finding that the breach of contract claims were time-barred by the statute of repose. (Aug. 24, 2016 Order dismissing Studer-Obringer, T.d. 116; Aug. 24, 2016 Order dismissing the Buehrer Defendants, T.d. 117.)

In the meantime, involuntary plaintiffs the State of Ohio and the OSFC had moved to dismiss themselves, asserting that they have no remaining interest in the school construction project at issue. (Involuntary Plaintiffs' June 5, 2015 Motion to Dismiss Themselves, T.d. 24.) New Riegel opposed, June 28, 2016 Opposition, T.d., 97, and the involuntary plaintiffs replied in support, July 1, 2016 Reply in Support, T.d. 101. On August 17, 2016, the Trial Court dismissed involuntary plaintiffs the State of Ohio and the OSFC on the basis that they are not real parties-in-interest. (Aug. 17, 2016 Order dismissing involuntary plaintiffs the State of Ohio and the OSFC, T.d. 114.)

Charles then filed its own motion for judgment on the pleadings also based upon the statute of repose. (Sept. 23, 2016 Motion for Judgment on the Pleadings, T.d. 124.) That matter was also fully briefed. (Sept. 28, 2016 Opposition, T.d. 126; Oct. 6, 2016 Motion for Leave to File Reply Instanter with Reply in Support Attached, T.d., 127.) On October 31, 2016, the Trial Court granted Charles' motion for judgment on the pleadings based on the ten-year statute of repose. (Oct. 31, 2016 Order dismissing Charles and Ohio Farmers Ins., T.d. 129; Appx. A-36 to

38.) The Trial Court also dismissed Ohio Farmers Insurance as a party in the same Order. (*Id*.) The Trial Court reasoned that, because Ohio Farmers Insurance was only alleged to be a surety for Studer-Obringer and Studer-Obringer had been dismissed, no claim remained against Ohio Farmers Insurance. (*Id*.)

On December 30, 2016, the Trial Court entered Civ.R. 54(B) no just reason to delay an appeal certification to all its dismissals nunc pro tunc. (Dec. 30, 2016 Nunc Pro Tunc Order, T.d. 133; Appx. A-34 to 35.) New Riegel filed the following appeals on January 25, 2017:

- Seneca County App. No. 13–17–03 from the judgment granting Studer-Obringer's motion to dismiss (Jan. 25, 2017 Notice of Appeal, T.d. 134);
- Seneca County App. No. 13–17–04 from the judgment granting the Buehrer Group's motion to dismiss, as well as other judgments in the case (Jan. 25, 2017 Notice of Appeal, T.d. 137);
- Seneca County App. No. 13–17–05 from the judgment dismissing involuntary plaintiffs the State of Ohio and the OSFC (Jan. 25, 2017 Notice of Appeal, T.d. 140); and
- Seneca County App. No. 13–17–06 from the judgment dismissing Charles and Ohio Farmers Insurance (Jan. 25, 2017 Notice of Appeal, T.d. 143).

The cases were consolidated on February 3, 2017, and the issues were fully brief on appeal.

Ultimately, as to Charles and Studer-Obringer, the Court of Appeals for the Third Appellate District reversed. *New Riegel Local School Dist. Bd. of Edn. v. Buehrer Group Architecture & Eng. Inc.*, 3rd Dist Seneca Nos. 13-17-03 & 13-17-06, 2017-Ohio-8521. (Appx. A-6 to 16.) The Court of Appeals first correctly found that "[a] clear reading of the [ten-year] statute [of repose] does not support th[e] conclusion [that the statue does not apply to contract claims]." *New Riegel*, 2017-Ohio-8521, at ¶ 11. (Appx. A-13 to 14.) The Court reasoned that

"[t]he statute specifies that NO cause of action for damages to real property, resulting from the improvement to that real property, can be brought after 10 years from the time the improvements were substantially completed. R.C. 2305.131." *Id*. The Court therefore correctly concluded that "[t]he statute does not limit [itself] to claims for torts only." *Id*. The Court further correctly reasoned that "[r]egardless of what the School labels this claim, the School is trying to collect damages resulting from an improvement, i.e. the Project, to real property." *Id*. "The statute specifically prohibits this." *Id*. "Thus, it would appear that the statute specifically denies the claims in this case." *Id*.

However, the Court of Appeals then incorrectly found itself required to reach a contrary and incorrect result in degradation of what it found to be the plain meaning of the language of the statute. *Id*. The Court of Appeals found itself obliged to do so by this Court's decades old holding in *Kocisko v. Charles Shutrump & Sons Co. et al*., 21 Ohio St.3d 98 (1986), which interpreted a prior version of the statute of repose. *Id*. The Court of Appeals specifically stated that to be the sole basis for its reversal of the Trial Court's correct application of the statute of repose to New Riegel's breach of contract claims:

> However, the Ohio Supreme Court has interpreted this language as applying to tort claims only. We are **required** to follow the ruling of the Supreme Court unless either the legislature or the Supreme Court chooses to modify it. Given the Supreme Court's holding in *Kocisko*, we find that the statute of repose does not apply to claims for breach of contract.

(Emphasis added.) *Id*. at ¶ 11-12. (Appx. A-13 to 14.)

In a separate opinion, the Court of Appeals also reversed as to the Buehrer Group on substantially the same grounds and reasoning as it had reversed the Trial Court's judgment as to Charles and Studer-Obringer. *New Riegel Local School Dist. Bd. of Edn. v. Buehrer Group Architecture & Eng. Inc.*, 3rd Dist Seneca Nos. 13-17-04, 2017-Ohio-8522. (Appx. A-17 to 26.)

However, the Court of Appeals affirmed the dismissal of involuntary plaintiffs the State of Ohio and the OSFC finding neither to be a real party-in-interest. *New Riegel Local School Dist. Bd. of Edn. v. Buehrer Group Architecture & Eng. Inc*., 3rd Dist Seneca Nos. 13-17-05, 2017-Ohio-8523, ¶7-8. (Appx. A-27 to 33.)

On February 8, 2018, Charles timely appealed to this Court. (Appx. A-1 to 5.) Studer-Obringer, the Buehrer Group, and Ohio Farmers Insurance also appealed. New Riegel did not appeal the affirmance of the dismissal of involuntary plaintiffs the State of Ohio and the OSFC; they are not parties to this appeal. Thus, no claim by the State of Ohio or the OSFC is at issue in this appeal.

This Court accepted jurisdiction on May 23, 2018. As to Charles, the only issue on appeal is New Riegel's breach of contract claim that is premised on the Contractor Contract dated August 20, 2001. (See Second Amended Complaint, T.d. 88, Ex. C.) New Riegel's breach of contract claim against Charles (Count IV of the Second Amended Complaint, T.d. 88) fails as a matter of law because it was filed beyond the applicable statute of repose set forth in R.C. 2305.131. Accordingly, the Trial Court properly dismissed Count IV of New Riegel's Second Amended Complaint, the Court of Appeals incorrectly reversed the Trial Court's decision, and the Trial Court's decision should be reinstated by this Court.

ARGUMENT OF LAW[3]

A. Summary of Argument

There is no dispute that, by its terms, Ohio's statute of repose applies to all actions arising out of improvements to real property, including those for breach of contract. In fact, the Third Appellate District's decision under review here specifically recognizes that fact: a "clear reading of the statute" is "not limit[ed" "to claims for torts only." *New Riegel Local School District, Board of Education v. The Buehrer Group Architecture & Engineering, Inc.*, 3rd Dist. Case Nos. 13-17-03 and 13-17-06, 2017-Ohio-8521, ¶11. The Court of Appeals felt compelled to disregard what it found to be the plain meaning of the statute solely based on its finding that the syllabus in *Kocisko v. Charles Shutrump & Sons Co*., 21 Ohio St.3d 98 (1986), mandated that it do so. However, a decision of this Court interpreting a prior statute with different language is not binding precedent requiring the same interpretation after the statutory language has changed.

The current version of R.C. 2305.131 states that it applies to all actions including contract actions. The statute expressly defines "substantial completion" as completion "in accordance with the contract." R.C. 2305.131(G). It includes a carve out for express warrantees which would be unnecessary surplusage if the statute does not apply to contract actions in the first place. R.C. 2305.131(D). It even specifically states that it applies "notwithstanding" the eight-year contractual limitation period. R.C. 2305.131(A)(1). Thus, New Riegel's breach of contract against Charles is barred by the plain language of R.C. 2305.131.

The only remaining issue is whether this Court's holding in *Kocisko v. Charles Shutrump*

[3] Charles agrees with and incorporates the arguments and briefing submitted by its co-Defendants/Appellants Studer-Obringer, the Buehrer Defendants, and Ohio Farmers Insurance as well as those submitted by amici curiae AIA of Ohio, Ohio Society of Professional Engineers, Ohio Insurance Institute, Ohio Manufactures' Association, Ohio Chamber of Commerce, Ohio Chapter of the National Federation of Independent Business, and The Surety & Fidelity Association of America.

& Sons Co., 21 Ohio St.3d 98, syllabus (1986), has any bearing on the interpretation of the current version of R.C. 2305.131. It does not. Where the new statute is "more than a rehashing" and is "sufficiently different" from a prior statute, res judicata does not apply to its interpretation. *Stetter v. R.J. Corman Derailment Servs.*, L.L.C., 125 Ohio St.3d 280, 2010-Ohio-1029, at ¶39. The version of R.C. 2305.131 interpreted by this Court in *Kocisko* is completely different from the version of R.C. 2305.131 in effect today. Specifically, the version of R.C. 2305.131 interpreted in *Kocisko*: (1) never mentioned contract actions; (2) never stated that is superseded all other applicable statues of limitations including that for breach of contract; and (3) was a statute of limitations rather than a statute of repose. In contrast, the current version of R.C. 2305.131: (1) expressly mentions contract actions in Subsection G; (2) expressly addresses contractual warrantees in Subsection D; (3) expressly states that it applies "notwithstanding" all other limitation periods including that for breach of contract; (4) expressly states that shall apply in "any civil action" "notwithstanding" prior legislative or decisional law; and (5) is a true statute of repose which cuts off the accrual of new causes of action after ten years. Thus, the new statute applies to bar New Riegel's breach of contract claim against Charles as a matter of law. This Court should accordingly reverse the Decision and Judgment of the Court of Appeals and reinstate the Decision and Judgment of the Trial Court.

B. <u>Standard of Review</u>

This Court reviews judgment on the pleadings *de novo*. *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 569-70, 1996-Ohio-459; *Spears v. Bush*, 3rd Dist. Marion No. 9-10-05, 2010-Ohio-3547, ¶ 27; Civ.R. 12(C). If the statute of repose applies, then there is no dispute that the pleadings in this matter demonstrate that New Riegel's breach of contract claim against Charles is time-barred. The only issue presented for review is whether, as a matter

of law, the statute of repose applies to breach of contract claims as well as tort claims.

C. Proposition of Law I: OHIO'S STATUTE OF REPOSE, R.C. 2305.131, APPLIES TO ACTIONS SOUNDING BOTH IN CONTRACT AND IN TORT. (*Kocisko v. Charles Shutrump & Sons Co*., 21 Ohio St.3d 98, syllabus (1986), distinguished.)

Statutes of repose are vital instruments that provide time limits, closure, and peace of mind to businesses and individuals. They firmly cut off liability after a certain—and lengthy—period of years. They represent a reasonable and certain limit on potential liability exposure. The Third Appellate District's decision in *New Riegel*, 2017-Ohio-8521, undermines the very purpose of Ohio's Statute of Repose, R.C. 2305.131. The Court of Appeals recognized that fact in its opinion where it held that a "clear reading of the statute" is that "NO cause of action for damages to real property, resulting from the improvement to that real property, can be brought after 10 years from the time the improvements were substantially completed" which is "not limit[ed" "to claims for torts only." *New Riegel*, 2017-Ohio-8521, at ¶ 11. The Court of Appeals then specifically stated that "[t]he statute specifically prohibits" New Riegel's claim. *Id.* Nonetheless, the Court of Appeals felt compelled to disregard what it found to be the plain meaning of the statute and hold the contrary based on this Court's holding in *Kocisko v. Charles Shutrump & Sons Co*., 21 Ohio St.3d 98, syllabus (1986).[4] *Id*. However, this Court's holding in *Kocisko* interpreted a much earlier version of R.C. 2305.131 which utilized substantially different language and has no application here. That issue will be discussed in the next proposition of law. Here, Charles will discuss why the current statute applies to New Riegel's breach of contract claims against it.

[4] See *Kocisko v. Charles Shutrump & Sons Co.*, 21 Ohio St.3d 98, syllabus (1986) ("R.C. 2305.131 applies only to actions which sound in tort. Actions in contract continue to be governed by the fifteen-year statute of limitations found in R.C. 2305.06.").

1. The plain language of R.C. 2305.131 leads to only one possible conclusion: the statute of repose applies to all actions arising out of an improvement to real property regardless of whether the action sounds in tort or contract.

A plain reading of the statute of repose shows that New Riegel's breach of contract claim against Charles is time-barred and dismissal of Count IV of the Second Amended Complaint was appropriately entered by the Trial Court under Rule 12(C). Ohio Revised Code section 2305.131(A)(1) provides, in part, as follows:

> ***Notwithstanding an otherwise applicable period of limitations*** specified in this chapter or in section 2125.02 of the Revised Code and except as otherwise provided in divisions (A)(2), (A)(3), (C), and (D) of this section, ***no cause of action*** to recover damages for bodily injury, an injury to real or personal property, or wrongful death that arises out of a defective and unsafe condition of an improvement to real property and ***no cause of action*** for contribution or indemnity for damages sustained as a result of bodily injury, an injury to real or personal property, or wrongful death that arises out of a defective and unsafe condition of an improvement to real property shall accrue against a person who performed services for the improvement to real property or a person who furnished the design, planning, supervision of construction, or construction of the improvement to real property later than ten years from the date of substantial completion of such improvement. (Emphasis added.)

The statute of repose specifically provides that it applies to all causes of action regardless of a conflicting statute of limitations. R.C. 2305.131(A). As stated by the Fifth Appellate District, "[i]t matters not whether the action is brought in tort or contract, if the resultant damages are injury to property of the type set forth in R.C. 2305.131, the statute applies." *State v. Karl R. Rohrer Assocs.*, 5th Dist. No. 2017AP030008, 2018-Ohio-65, ¶ 30.[5] The Third Appellate District's decision under review directly conflicts with the Fifth Appellate District's

[5] In *State v. Karl R. Rohrer Assocs.*, 5th Dist. No. 2017AP030008, 2018-Ohio-65, the Fifth Appellate District rejected the argument that *Kocisko's* holding prevents application of the current statute of repose to breach of contract actions. Rather, the Fifth Appellate District correctly held that changes to the statute since this Court's 1986 decision indicate the legislature's intent that it apply to all civil actions arising out of improvement to real property. *Id*. at ¶ 25, citing R.C. 2305.131(F). See also, R.C. 2305.131(G) (defining "substantial completion," in part, as "the improvement completed in accordance with the ***contract*** or agreement covering the improvement." (Emphasis added.))

recent decision in *Rohrer*. Further, as a practical matter, holding contract claims to be outside the statute of repose would render that statute meaningless as nearly every construction project is subject to a contract.

The Third Appellate District recognized that the "clear reading of the statute" is that "NO cause of action for damages to real property, resulting from the improvement to that real property, can be brought after 10 years from the time the improvements were substantially completed" which is "not limit[ed" "to claims for torts only." *New Riegel*, 2017-Ohio-8521, at ¶ 11. However, the Court of Appeals believed itself obligated to follow *Kocisko v. Charles Shutrump & Sons Co.*, 21 Ohio St.3d 98 (1986), which found that a prior version of R.C. 2305.131 does not apply to contract actions. As discussed next in Proposition of Law II, *Kocisko* interpreted a version of the statute of repose that has since been repealed and replaced. It has no application here. Former versions of Ohio's statutes of repose were declared unconstitutional in 1994 and 1999, and versions of the statute have been rewritten several times between the date of the *Kocisko* decision and the current version of the statute of repose that was enacted on April 7, 2005.[6]

The language used in the current and applicable version of the statute of repose expressly references breach of contract claims, whereas the version of R.C. 2305.131 interpreted by this Court in *Kocisko v. Charles Shutrump & Sons Co. et al.*, 21 Ohio St.3d 98 (1986) ("the old statute") never mentioned contract actions. In fact, that was the basis of this Court's decision holding that the old statute does not apply to contract actions: "The language selected by the General Assembly is uniformly used to describe tortious conduct." *Kocisko*, 21 Ohio St.3d at 99.

[6] Former versions of R.C. 2305.131 were declared unconstitutional in 1994 and 1999 for various reasons which are irrelevant here. See, e.g., *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 1999-Ohio-123, (1999); *Brennaman v. R.M.I. Co.*, 70 Ohio St.3d 460, 1994-Ohio-322 (1994), amended, 71 Ohio St.3d 1211 (1994).

The current version of R.C. 2305.131 expressly both brings contract actions within its operation and supersedes *Kocisko*:

- R.C. 2305.131(G) defines "substantial completion" as "when the real property is first available for use after having the improvement completed ***in accordance with the contract or agreement*** covering the improvement, including any agreed changes to the contract or agreement, whichever occurs first." (Emphasis added.) (Appx. A-61 to 63.) Thus, the current version of the statute of repose expressly encompasses an "improvement completed in accordance with the contract."
- R.C. 2305.131(D) includes a carve out for express warranties. (Appx. A-61 to 63.) That would be surplusage if the statute did not apply to contract claims in the first place as express warrantees are a creature of contract. Interpreting the statute to contain superfluous language is contrary to settled law. *State ex rel. Plain Dealer Publishing Co. v. Cleveland*, 106 Ohio St.3d 70, 2005-Ohio-3807, ¶ 40 (2005) ("no portion of a statute should be treated as superfluous unless it is manifestly necessary to do so."). Rather, the meaning is clear. Specifically, the statute applies to contract actions unless there is an express contractual warranty. That is the means by which parties can contract to avoid application of the statute of repose, if they so desire. Further, by excluding express warranty claims specifically but not contractual claims generally, the General Assembly indicated that contract claims fall within the operation of the statute.
- R.C. 2305.131(A)(1) states that the statute of repose applies "[n]otwithstanding an otherwise applicable period of limitations specified ***in this chapter*** or in section 2125.02 of the Revised Code." (Emphasis added.) (Appx. A-61 to 63.) The statute of limitations on contracts is in R.C. 2305.06. Thus, the statute of repose specifically states that it

applies "notwithstanding" the eight-year contractual limitation period.

- R.C. 2305.131(F) expressly states that the current statute of repose "***shall be applied in a remedial manner in any civil action commenced"*** on or after the effective date of this section." (Emphasis added.) R.C. 2305.131(F). (Appx. A-61 to 63.) "Remedial laws and all proceedings under them shall be liberally construed in order to promote their object and assist the parties in obtaining justice." R.C. 1.11. "The rule of the common law that statutes in derogation of the common law must be strictly construed has no application to remedial laws[.]" *Id*. It is beyond dispute that contract actions are "civil actions." Therefore, the current statute of repose expressly states that it applies to contract actions.
- R.C. 2305.131(F) further states that the current statute of repose shall apply "notwithstanding any other section of the Revised Code ***or prior rule of law of this state***." (Emphasis added.) R.C. 2305.131(F). (Appx. A-61 to 63.) "Rule of law" means "a legal ruling; a ruling on a point of law." *Black's Law Dictionary* 629 (3rd Pocket Ed. 2006). Thus, R.C. 2305.131 expressly states that it applies "notwithstanding," i.e., "in spite of [any] contrary preexisting law," announced in *Kocisko*. See *Hyle v. Porter*, 117 Ohio St.3d 165, 2008-Ohio-542, ¶ 1.

Accordingly, under the plain language of the statute of repose, any claims arising from a construction project must be asserted within ten years of substantial completion of the project. The statute defines "substantial completion" as "the date the improvement to real property is first used by the owner or tenant of the real property or when the real property is first available for use after having the improvement completed in accordance with the contract or agreement covering the improvement, including any agreed changes to the contract or agreement,

whichever occurs first." (Emphasis added.) R.C. 2305.131(G).

In the instant action, the facility was approved for occupancy on December 19, 2002. (June 10, 2016 Second Amended Complaint, T.d. 88, at Ex. K.) The facility was thus first available for use and the project was substantially completed on that date. Under the statute, New Riegel was required to assert any claims arising from services provided by Charles under the contract no later than December 19, 2012.

New Riegel did not assert any claims against Charles until April 30, 2015, well after the statute of repose expired on December 19, 2012, with respect to the breach of contract claims. (April 30, 2015 Complaint, T.d. 2.) As such, the breach of contract claim against Charles was untimely and is barred by R.C. 2305.131. Dismissal of Count IV of the Second Amended Complaint should have been affirmed by the Third Appellate District.

There is no need to address the legislative intent when a plain reading of the current version of the statute establishes that it is applicable. The statute speaks for itself and there is no reason for interpretation. See *Stolz v. J & B Steel Erectors, Inc*., 146 Ohio St. 3d 281, 288, 2016-Ohio-1567 ("Because our interpretation is based on the plain, unambiguous language of the statute, we do not delve into the legislative history of the pertinent provisions."), citing, *Sears v. Weimer*, 143 Ohio St. 312 (1944), paragraph five of the syllabus ("An unambiguous statute is to be applied, not interpreted"). Charles asks that, under the plain reading of the statute of repose, the decision of the Court of Appeals be reversed and the Judgment of the Trial Court dismissing New Riegel's breach of contract claim be reinstated.

2. The intent of the General Assembly in enacting the current version of R.C. 2305.131 supports its application to all actions arising out of improvements to real property including those for breach of contract.

A fair system of civil justice protects the rights of both plaintiffs to bring legitimate

claims and defendants to be notified of claims within a reasonable time period wherein they still possess the documents, records, and ability to present all legitimate defenses. Where the time period is too long, plaintiffs may benefit by being able to make unsupported claims which defendants no longer have the ability to defend against. If the time period is too short, defendants may benefit by having legitimate claims foreclosed. It is up to the General Assembly to analyze these issues and implement the appropriate public policy for the people of Ohio. It did so here in enacting R.C. 2305.131. "It is not the role of the courts 'to establish legislative policies or to second-guess the General Assembly's policy choices.'" (Citations omitted.) *Stetter v. R.J. Corman Derailment Servs., L.L.C.*, 125 Ohio St.3d 280, 2010-Ohio-1029, ¶ 35 (2010). "A fundamental principle of the constitutional separation of powers among the three branches of government is that the legislative branch of government is 'the ultimate arbiter of public policy.'" *Id*. at ¶ 34. This Court should implement the intent of the General Assembly in enacting the current version of R.C. 2305.131(A)(1). *Id*.; R.C. 1.49.

When enacting the current version of the statute of repose, the General Assembly "made its purpose behind the enactment of R.C. 2305.131 clear." *McClure v. Alexander*, 2nd Dist. Greene No. 2007 CA 98, 2008-Ohio-1313, ¶ 38. In uncodified Section 3 of 2004 Am. Sub. S.B. No. 80, the General Assembly set forth its intent:

> **SECTION 3.** The General Assembly makes the following statement of findings and intent:
>
> * * *
>
> (B) In enacting section 2305.131 of the Revised Code in this act, it is the intent of the General Assembly to do all of the following:
>
> (1) To declare that the ten-year statute of repose prescribed by section 2305.131 of the Revised Code, as enacted by this act, is a specific provision intended to promote a greater interest than the interest underlying the general four-year statute of limitations prescribed by section 2305.09 of the Revised Code, the general two-year statute of limitations prescribed by section 2305.10 of the Revised Code, ***and other general statutes of limitation prescribed by the***

Revised Code;

(2) To recognize that, subsequent to the completion of the construction of an improvement to real property, ***all of the following generally apply to the persons who provided services for the improvement or who furnished the design, planning, supervision of construction, or construction of the improvement***:

(a) They ***lack control*** over the improvement, the ability to make determinations with respect to the improvement, and the opportunity or responsibility to maintain or undertake the maintenance of the improvement.

(b) They ***lack control*** over other forces, uses, and intervening causes that may cause stress, strain, or wear and tear to the improvement.

(c) They have ***no right or opportunity*** to be made aware of, to evaluate the effect of, or to take action to overcome the effect of the forces, uses, and intervening causes described in division (E)(5)(b) of this section.

(3) To recognize that, more than ten years after the completion of the construction of an improvement to real property, the availability of relevant evidence pertaining to the improvement and the ***availability of witnesses*** knowledgeable with respect to the improvement is problematic;

(4) To recognize that ***maintaining records*** and other documentation pertaining to services provided for an improvement to real property or the design, planning, supervision of construction, or construction of an improvement to real property for a reasonable period of time is appropriate and to recognize that, because the useful life of an improvement to real property may be substantially longer than ten years after the completion of the construction of the improvement, ***it is an unacceptable burden to require the maintenance of those types of records and other documentation for a period in excess of ten years after that completion***;

(5) To declare that section 2305.131 of the Revised Code, as enacted by this act, ***strikes a rational balance between the rights of prospective claimants and the rights of design professionals, construction contractors, and construction subcontractors and to declare that the ten-year statute of repose prescribed in that section is a rational period of repose intended to preclude the pitfalls of stale litigation*** but not to affect civil actions against those in actual control and possession of an improvement to real property at the time that a defective and unsafe condition of that improvement causes an injury to real or personal property, bodily injury, or wrongful death.

(Emphasis added.) 2004 Am. Sub. S.B. No. 80, Section 3 (eff. 4-7-05). (Appx. A-152 to 153.)

The stated purpose of the statute of repose is to prevent stale actions against contractors who lack control over the property at issue and are unable to control or prevent outside forces which may result in alleged damage occurring a decade after the services are complete. *Id.* To permit otherwise would result in seemingly endless liability for buildings—a result that the Ohio legislature specifically sought to prevent under R.C. 2305.131. *Id.*

The ten-year statute of repose prescribed by R.C. 2305.131 of the Revised Code, recognizes that, subsequent to the completion of the construction of an improvement to real property, the persons or entities who provided services for the improvement or who furnished the design, planning, supervision of construction, or construction of the improvement, lack control to maintain or undertake the maintenance of the improvement. *Id.* Other forces, uses, and intervening causes that may cause stress, strain, or wear and tear to the improvement are out of the hands of these persons and entities. *Id.* The availability of evidence pertaining to the improvement and the availability of witnesses with knowledge of the improvement becomes increasingly problematic when litigation is instituted more than ten years after the completion of the construction of an improvement to real property. *Id.* These are problems that exist regardless of whether the litigation sounds in tort or contract. The ten-year statute of repose in R.C. 2305.131 is intended to preclude the pitfalls of stale litigation regardless of the theory of recovery. *Id.* Thus, the legislative intent as stated applies here: "the ten-year statute of repose . . . is a rational period of repose intended to preclude the pitfalls of stale litigation" such as New Riegel's breach of contract claim against Charles. *Id.*

In fact, this Court has itself recognized these very same problems as universally prejudicial in defending claims. In *Ormet Primary Aluminum Corp. v. Employers Ins. of*

Wausau, 88 Ohio St. 3d 292, 304, 2000-Ohio-330, this Court held that actual prejudice is shown by the passage of time because "memories fade." This Court further held that "[o]ther prejudice may result from documents or other evidence being lost or destroyed." *Id*. In *Ruby v. Midwestern Indemnity Co*., 40 Ohio St. 3d 159, 161 (1988), this Court noted that prejudice may also accrue to a defendant by being deprived of the ability to "determine the relative fault of the parties involved," i.e., determine whether others may have contributed (or caused) to the alleged loss.

The General Assembly's intent becomes even more apparent when one looks at the totality of 2004 Am. Sub. S.B. No. 80 (eff. 4-7-05), which enacted R.C. 2305.131. 2004 Am. Sub. S.B. No. 80 contains nine separate sections in which the term "tort action" is defined. R.C. 2305.234(A)(10); R.C. 2305.25(H); R.C. 2307.011(J); R.C. 2307.60(B)(1); R.C. 2315.01(B); R.C. 2315.18(A)(7); R.C. 2315.20(D)(1); R.C. 2315.21(A)(1); R.C. 4513.263(A)(6). (Appx. at A-65, 71, 74, 75 to 76, 88, 89, 92, 93, and 107.) The General Assembly certainly could have limited the statue of repose to "tort actions" if it had intended to do so. In fact, the General Assembly did do so in numerous other statutes enacted or amended by the same Bill. But the term "tort action" never appears in the statute of repose.

In total, the term "tort action" is used 94 times in 2004 Am. Sub. S.B. No. 80 (eff. 4-7-05). (Appx. A-39 to 161.) But it is never used to limit the ten-year statute of repose in R.C. 2305.131. Had the General Assembly intended to limit the application of the statute of repose to "tort actions," it could have done so as it did throughout 2004 Am. Sub. S.B. No. 80 (eff. 4-7-05) as to other statutes enacted by the same Bill. The General Assembly did not do so. The express limitation of certain selected statutory provisions to "tort actions" throughout the Bill means that, where they are not so limited, the statue was not intended to be limited to tort actions.

Allowing New Riegel's claim in Count IV of the Second Amended Complaint to survive against Charles when it is barred by the plain language of R.C. 2305.131 would render the statute of repose effectively meaningless. New Riegel's claims are for damage to real property that arise out of an alleged defective and unsafe condition of an improvement to real property. The construction project was substantially completed more ten years before suit was filed. Therefore, the intent of the General Assembly in enacting the statute of repose was to bar New Riegel's breach of contract claim against Charles. The Third Appellate District recognized that its decision was contrary to the intent and express language of the statute but felt compelled to follow *Kocisko* regardless. As discussed in further detail below, that was error and the decision of the Third Appellate District should be reversed and the Trial Court's decision dismissing Count IV of New Riegel's Second Amended Complaint should be reinstated.

D. Proposition of Law II:

> STARE DECISIS IS INAPPLICABLE TO LEGISLATION ENACTED BY THE GENERAL ASSEMBLY MERELY BECAUSE IT IS SIMILAR TO PREVIOUS ENACTMENTS, RATHER, TO BE COVERED BY THE BLANKET OF STARE DECISIS, THE LEGISLATION MUST BE PHRASED IN LANGUAGE THAT IS SUBSTANTIALLY THE SAME AS PREVIOUSLY ADDRESSED. (*Stetter v. R.J. Corman Derailment Servs., L.L.C.*, 125 Ohio St.3d 280, 2010-Ohio-1029, ¶ 34-39 (2010); *Groch v. Gen. Motors Corp.*, 117 Ohio St.3d 192, 2008-Ohio-546, ¶ 104 (2008); and *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, ¶ 24, applied and followed.)

In short, the current version of R.C. 2305.131 is significantly different than the old statute and specifically contemplates its application to contract actions. Therefore, res judicata does not apply.

This Court has repeatedly held that stare decisis does not apply to "legislation enacted by the General Assembly ***merely because it is similar*** to previous enactments," but rather, "[t]o be covered by the blanket of stare decisis, the legislation must be phrased in language that is substantially the same as that which we have previously invalidated." (Emphasis added.) *Groch*

v. Gen. Motors Corp., 117 Ohio St.3d 192, 2008-Ohio-546, ¶ 104; *Stetter v. R.J. Corman Derailment Servs.*, L.L.C., 125 Ohio St.3d 280, 2010-Ohio-1029, ¶ 37 ("To be covered by the blanket of stare decisis, the legislation must be phrased in language that is substantially the same as that which we have previously invalidated.").

Where the new statute is "more than a rehashing" and is "sufficiently different" "in significant and important ways" from a prior statute res judicata does not apply to its interpretation and "a fresh review of the statute in light of its specific terms" is required. *Stetter*, 2010-Ohio-1029, at ¶39. Such fresh review rather than the mechanical application of stare decisis is required because "'[a] fundamental principle of the constitutional separation of powers among the three branches of government is that the legislative branch of government is 'the ultimate arbiter of public policy.'" (Citations omitted.) *Stetter*, 2010-Ohio-1029, at ¶ 34-39. "In fulfilling that role, the legislature is entrusted with the power to continually refine Ohio's laws to meet the needs of our citizens." (Citations omitted.) *Id*. "Included within this authority is the power to 'alter, revise, modify, or abolish the common law' as the General Assembly deems necessary to further the common good." (Citations omitted.) *Id*. "It is not the role of the courts 'to establish legislative policies or to second-guess the General Assembly's policy choices.'" (Citations omitted.) *Id*.

Thus, in order to be covered by res judicata, the version of R.C. 2305.131 interpreted by this Court in *Kocisko v. Charles Shutrump & Sons Co. et al*., 21 Ohio St.3d 98 (1986), must be "substantially the same" as the version of R.C. 2305.131 in effect today. Accord *Groch*, 2008-Ohio-546, ¶ 104; *Stetter*, 2010-Ohio-1029, ¶ 37; *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, ¶ 24 ("A careful review of the statutes at issue here reveals that they are more than a rehashing of unconstitutional statutes. . . . The statutes before us here are

sufficiently different from the previous enactments to avoid the blanket application of stare decisis and to warrant a fresh review of their individual merits."); *Kaminski v. Metal & Wire Prods. Co.*, 125 Ohio St.3d 250, 2010-Ohio-1027, ¶ 97 (2010) ("Because we review here a statute with provisions differing in key aspects from the statute struck down in *Johnson*, we need not overrule *Johnson* to limit its precedential value."); *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, ¶ 32-33 ("Thus, as a threshold question, we must determine whether the statute and facts presented today are the same as those presented in precedent. We are persuaded that the AWA [Adam Walsh Child Protection and Safety Act] is substantially different from Megan's Law."); *City of Rocky River v. State Emp. Relations Bd.*, 43 Ohio St.3d 1, 5 (1989); *McClure v. Alexander*, 2nd Dist. Greene No. 2007 CA 98, 2008-Ohio-1313, ¶ 32.

However, the version of R.C. 2305.131 interpreted by this Court in *Kocisko* is completely different than the version of R.C. 2305.131 which was enacted over a decade after *Kocisko* and is in effect today. In fact, even the Court of Appeals stated "that the case [*Kocisko*] was based upon a prior version of R.C. 2305.131 that is no longer in effect, but that the language is ***similar*** to the current version." (Emphasis added.) *New Riegel*, 2017-Ohio-8521, ¶ 10, fn. 1. But as this Court has repeatedly held, stare decisis does not apply to "legislation enacted by the General Assembly merely because it is ***similar*** to previous enactments," rather the two enactments must be "substantially the same." (Emphasis added.) *Groch v. Gen. Motors Corp.*, 117 Ohio St.3d 192, 2008-Ohio-546, ¶ 104; *Stetter v. R.J. Corman Derailment Servs.*, L.L.C., 125 Ohio St.3d 280, 2010-Ohio-1029, ¶ 37. As the Court of Appeals itself held, the new and old versions of R.C. 2305.131 are, at most, similar in terms of topic and certain limited language; they are not anywhere near "substantially the same."

One can easily see the differences when the two version of R.C. 2305.131 are laid side by side:

R.C. 2305.131 as enacted by 2004 Am. Sub. S.B. No. 80 (eff. 4-7-05) (Appx. pp. A-39 to A-161)	R.C. 2305.131 as enacted by 1971 S 307 (eff. 11-18-71) (Appx. p. A-162)
(A)(1) ***Notwithstanding an otherwise applicable period of limitations specified in this chapter or in section 2125.02 of the Revised Code*** and except as otherwise provided in divisions (A)(2), (A)(3), (C), and (D) of this section, ***no cause of action*** to recover damages for bodily injury, an injury to real or personal property, or wrongful death that arises out of a defective and unsafe condition of an improvement to real property and no cause of action for contribution or indemnity for damages sustained as a result of bodily injury, an injury to real or personal property, or wrongful death that arises out of a defective and unsafe condition of an improvement to real property ***shall accrue*** against a person who performed services for the improvement to real property or a person who furnished the design, planning, supervision of construction, or construction of the improvement to real property later than ten years from the date of substantial completion of such improvement. (2) Notwithstanding an otherwise applicable period of limitations specified in this chapter or in section 2125.02 of the Revised Code, a claimant who discovers a defective and unsafe condition of an improvement to real property during the ten-year period specified in division (A)(1) of this section but less than two years prior to the expiration of that period may commence a civil action to recover damages as described in that division within two years from the date of the discovery of that defective and unsafe condition. (3) Notwithstanding an otherwise applicable period of limitations specified in this chapter or in section 2125.02 of the Revised Code, if a cause of action that arises out of a defective	***No action*** to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages sustained as a result of said injury, ***shall be brought*** against any person performing services for or furnishing the design, planning, supervision of construction, or construction of such improvement to real property, more than ten years after the performance or furnishing of such services and construction. This limitation does not apply to actions against any person in actual possession and control as owner, tenant, or otherwise of the improvement at the time the defective and unsafe condition of such improvement constitutes the proximate cause of the injury or damage for which the action is brought. (Emphasis added.) (Appx. A-162.)

and unsafe condition of an improvement to real property accrues during the ten-year period specified in division (A)(1) of this section and the plaintiff cannot commence an action during that period due to a disability described in section 2305.16 of the Revised Code, the plaintiff may commence a civil action to recover damages as described in that division within two years from the removal of that disability. (B) Division (A) of this section does not apply to a civil action commenced against a person who is an owner of, tenant of, landlord of, or other person in possession and control of an improvement to real property and who is in actual possession and control of the improvement to real property at the time that the defective and unsafe condition of the improvement to real property constitutes the proximate cause of the bodily injury, injury to real or personal property, or wrongful death that is the subject matter of the civil action. (C) Division (A)(1) of this section is not available as an affirmative defense to a defendant in a civil action described in that division if the defendant engages in fraud in regard to furnishing the design, planning, supervision of construction, or construction of an improvement to real property or in regard to any relevant fact or other information that pertains to the act or omission constituting the alleged basis of the bodily injury, injury to real or personal property, or wrongful death or to the defective and unsafe condition of the improvement to real property. (D) Division (A)(1) of this section does not prohibit the commencement of a civil action for damages against a person who has ***expressly warranted or guaranteed an improvement to real property for a period longer than the period described in division (A)(1) of this section and whose warranty or guarantee has not expired as of the time of the alleged bodily injury, injury to real or personal property, or wrongful death in accordance with the terms of that warranty or***	

guarantee. (E) This section does not create a new cause of action or substantive legal right against any person resulting from the design, planning, supervision of construction, or construction of an improvement to real property. (F) 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 section, 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 the effective date of this section. (G) As used in this section, ***"substantial completion"*** means the date the improvement to real property is first used by the owner or tenant of the real property or when the real property is first available for use ***after having the improvement completed in accordance with the contract or agreement covering the improvement, including any agreed changes to the contract or agreement, whichever occurs first***. (Emphasis added.) Appx. A-61 to 63; A-152 to 153.	

As is demonstrated by a facial comparison of the version of R.C. 2305.131 interpreted by this Court in *Kocisko*, and the version enacted by the General Assembly as part of 2004 Am. Sub. S.B. No. 80 (eff. 4-7-05), there were substantial changes to the language of the statute. Aside from the obvious difference in length, a brief synopsis of the differences most pertinent to the issue presented here follows.

First, the version of R.C. 2305.131 interpreted by this Court in *Kocisko v. Charles Shutrump & Sons Co. et al*., 21 Ohio St.3d 98 (1986) ("the old statute") never mentioned contract actions. In fact, that was the basis of this Court's decision holding that the old statute

does not apply to contract actions: "The language selected by the General Assembly is uniformly used to describe tortious conduct." *Kocisko*, 21 Ohio St.3d at 99. The current version of R.C. 2305.131 repeatedly expressly mentions contract actions:

- In Subsection D, the current version of R.C. 2305.131 addresses express warranties and creates an exception to the general ten-year statute of repose where there is an express warranty. (Appx. A-61 to 63.) The old version of the statute has no such provision. (Appx. A-162.) There would be no need for such a carve out in the current version of R.C. 2305.131 if the statute was not intended to apply to contract actions because an express warranty is a creature of contract, not tort.
- In Subsection G, the current version of R.C. 2305.131 defines "substantial completion" as "when the real property is first available for use after having the improvement completed ***in accordance with the contract or agreement*** covering the improvement, including any agreed changes to the contract or agreement, whichever occurs first." (Emphasis added.) (Appx. A-61 to 63.) There would be no reason to define "substantial completion" as completion "in accordance with the contract" if the statute does not apply to contract actions in the first instance. *Compare Elizabeth Gamble Deaconess Home Ass'n v. Turner Const. Co*., 14 Ohio App. 3d 281, 284 (1st Dist. 1984) (noting that under the old statute "[t]he absence of any specific reference to contract actions adds strength to our conclusion that the Ohio statute [or repose] applies only to actions in tort.").

Second, the first sentence of the current version of R.C. 2305.131 is entirely new and states that it applies "[n]otwithstanding an otherwise applicable period of limitations specified in this chapter or in section 2125.02 of the Revised Code." R.C. 2305.131(A)(1). (Appx. A-61 to 63.) The eight-year statute of limitations on actions on "an agreement, contract, or promise in

writing" is in Chapter 2305 of the Revised Code. R.C. 2305.06. Thus, the current version of R.C. 2305.131 specifically states that it applies "notwithstanding" the eight-year contractual limitation period. *Compare Elizabeth Gamble Deaconess Home Ass'n*, 14 Ohio App. 3d at 284 (noting that under the old statute "the Ohio Legislature did not use language that would have expressly brought actions in contract within the ambit of the statute."). This additional language was not in the old statute and expressly contradicts any argument that the ten-year statute of repose does not apply to all actions, including those sounding in contract. (Appx. A-162.) Indeed, there are many reasons why the eight-year statute of limitations might be tolled and the ten-year statute of repose could come into play. See, e.g., R.C. 2305.15(A) ("When a cause of action accrues against a person, if the person is out of the state, has absconded, or conceals self, the period of limitation for the commencement of the action as provided in sections 2305.04 to 2305.14, 1302.98, and 1304.35 of the Revised Code does not begin to run until the person comes into the state or while the person is so absconded or concealed."); Accord *Commonwealth Loan Co. v. Firestone*, 148 Ohio St. 133, syllabus (1947); *Cleveland Tr. Co. v. Kolar*, 102 Ohio App. 367, 371 (8th Dist. 1955).

Third, Subsection F of the current version of R.C. 2305.131 is completely new and expressly states that the current statute of repose "***shall be applied in a remedial manner in any civil action commenced,"*** "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 section." (Emphasis added.) R.C. 2305.131(F). (Appx. A-61 to 63.) Thus, unlike the old statute, the current version of R.C. 2305.131 expressly states that it "shall be applied in a remedial manner in any civil action." (Appx. A-61 to 63.) There can be no dispute that a breach of contract action is

a "civil action" to which R.C. 2305.131 "shall be applied."

Fourth, the current version of R.C. 2305.131 also expressly states that it applies "notwithstanding" "prior rule of law of this state." (Appx. A-61 to 63.) "Rule of law" is a legal term of art meaning: "[a] substantive legal principle," "[t]he doctrine that every person is subject to the ordinary law within the jurisdiction," and "a legal ruling; a ruling on a point of law." *Black's Law Dictionary* 629 (3rd Pocket Ed. 2006). Thus, this Court's prior decision in *Kocisko v. Charles Shutrump & Sons Co. et al*., 21 Ohio St.3d 98 (1986), is "prior rule of law of this state." The current version of R.C. 2305.131 specifically states that it applies "notwithstanding," i.e., "in spite of contrary preexisting law," announced in *Kocisko*. See *Hyle v. Porter*, 117 Ohio St.3d 165, 2008-Ohio-542, ¶ 1. The current version of R.C. 2305.131 is thus expressly intended by the General Assembly to supersede *Kocisko*.

Finally, the current version of R.C. 2305.131 is a statute of repose as it states that ten years after "substantial completion" (defined to mean when the construction is "first used" or "first available for use") no action "shall accrue." R.C. 2305.131(A)(1). (Appx. A-61 to 63.) Thus, it acts to cut off the accrual of any new causes of action after ten years. The old statute states that no action "shall be brought" ten years after "performance or furnishing of such services and construction." R.C. 2305.131. (Appx. A-162.) The old statute was a statute of limitations, not of repose.

Because the current version of R.C. 2305.131 is not "substantially the same" as the old statute, res judicata does not apply and the Court of Appeals erred in finding itself obligated to blindly apply *Kocisko* despite finding that the clear language of the current version of R.C. 2305.131 applies to all actions, including actions sounding in contract. This Court should reverse the Decision and Judgment of the Court of Appeals and reinstate that Decision and

Judgment of the Trial Court.

CONCLUSION

For all the forgoing reasons, as well as those argued by co-appellants Studer-Obringer, the Buehrer Defendants, and Ohio Farmers Insurance as well as those submitted by amici curiae AIA of Ohio, Ohio Society of Professional Engineers, Ohio Insurance Institute, Ohio Manufactures' Association, Ohio Chamber of Commerce, Ohio Chapter of the National Federation of Independent Business, and The Surety & Fidelity Association of America, the law in Ohio should be that Ohio's Statute of Repose, R.C. 2305.131, applies to actions sounding both in contract and tort. Thus, Count IV of New Riegel's Second Amended Complaint against Defendant-Appellant, Charles Construction Services, Inc. is barred by R.C. 2305.131. Charles Construction Services, Inc. therefore respectfully asks that this Court reverse the Judgment of the Court of Appeals and reinstate the Judgment of the Trial Court.

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APPENDIX

No.

IN THE SUPREME COURT OF OHIO

NEW RIEGEL LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, ET AL.

Plaintiff-Appellee,

v.

THE BUEHRER GROUP ARCHITECTURE & ENGINEERING, INC., ET AL.,

Defendant-Appellant.

Discretionary Appeal From The
Court Of Appeals, Third Appellate District
Seneca County, Ohio Case No. 13-17-06
(Consolidated with 13-17-03, 13-17-04, 13-17-05)

NOTICE OF APPEAL OF DEFENDANT-APPELLANT CHARLES CONSTRUCTION SERVICES, INC.

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Defendant-Appellant Charles Construction Services, Inc. hereby gives notice of its appeal to the Supreme Court of Ohio from the Judgment of the Seneca County Court of Appeals, Third Appellate District, entered in *New Riegel Local School District, Board of Education v. The Buehrer Group Architecture & Engineering, Inc.*, 3rd Dist. Case Nos. 13-17-03 and 13-17-06, 2017-Ohio-8521. The decision and judgment entry of the Third Appellate District, Seneca County, Ohio, was journalized on November 13, 2017. The decision and judgment entry of the Third Appellate District, Seneca County, Ohio, denying Charles Construction, Inc.'s Application for Reconsideration, was journalized on December 26, 2017.

This is a case of public and great general interest.

Respectfully submitted,

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PROOF OF SERVICE

A copy of the foregoing Notice of Appeal of Defendant-Appellant, Charles Construction Services, Inc. was served upon the following by regular U.S. mail or email on the 7th day of February, 2018:

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[Cite as *New Riegel Local School Dist. Bd. of Edn. v. Buehrer Group Architecture & Eng. Inc.*, 2017-Ohio-8521.]

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
SENECA COUNTY

NEW RIEGEL LOCAL SCHOOL DISTRICT, BOARD OF EDUCATION,

CASE NO. 13-17-03

PLAINTIFF-APPELLANT,
-and-

STATE OF OHIO,

PLAINTIFF-APPELLEE,

v.

O P I N I O N

THE BUEHRER GROUP ARCHITECTURE & ENGINEERING, INC., ET AL.,

DEFENDANTS-APPELLEES.

NEW RIEGEL LOCAL SCHOOL DISTRICT, BOARD OF EDUCATION,

CASE NO. 13-17-06

PLAINTIFF-APPELLANT,
-and-

STATE OF OHIO,

PLAINTIFF-APPELLEE,

v.

O P I N I O N

THE BUEHRER GROUP ARCHITECTURE & ENGINEERING, INC., ET AL.,

DEFENDANTS-APPELLEES.

Appeal from Seneca County Common Pleas Court
Trial Court No. 15 CV 0115

Judgment Reversed, Cause Remanded

Date of Decision: November 13, 2017

APPEARANCES:

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Marc A. Sanchez and Michael J. Frantz, Jr. **for Appellee Ohio Farmer's Insurance Company**

WILLAMOWSKI, J.

{¶1} Plaintiff-appellant New Riegel Local School District Board of Education ("the School") brings this appeal from the judgment of the Court of Common Pleas of Seneca County granting the judgment on the pleadings filed by defendants-appellees Studer-Obringer, Inc. ("SOI"), Charles Construction Services, Inc. ("CCS"), and Ohio Farmers Insurance Company ("OFIC"). For the reasons set forth below, the judgment is reversed.

{¶2} This case arises from the construction of a new Kindergarten through 12th Grade School Facility Project ("the Project") built as part of the Ohio Classroom Facilities Assistance Program. Doc. 2. As a result of the Project, the School entered into contracts with multiple contractors starting in February of 2000. *Id.* SOI contracted with the school to serve as the general trades contractor for the Project. *Id.* CCS contracted with the school to serve as the roofing contractor for the Project. The School began occupying the school building on December 19, 2002, Doc. 88, Ex. K. The State issued a Certificate of Completion transferring all of the interest of the State in the Project to the School on March 3, 2004. Doc. 24.

{¶3} Over time, the School had issues with the facilities, including but not limited to condensation and moisture intrusion allegedly caused by design and construction errors. Doc. 2. A complaint was filed by the School on April 30, 2015. *Id.* The complaint was brought in the name of the School with the State of Ohio and OSFC as involuntary plaintiffs. *Id.* The complaint named the Buehrer Group Architecture & Engineering, Inc., the Estate of Huber H. Buehrer (collectively known as "the Buehrer Group"), SOI, CCS, and American Buildings Company as defendants. *Id.* The complaint alleged that both SOI and CCS had breached its contract by failing to conform to the requisite standard of care to perform in a workmanlike manner. *Id.* SOI filed its answer to the complaint on July 13, 2015, denying the allegations in the complaint and listing several affirmative defenses, including the statute of repose. Doc. 34. CCS filed its answer to the complaint on

July 31, 2015, also denying the allegations in the complaint and listing several affirmative defenses including the statute of repose. Doc. 35.

{¶4} On February 10, 2016, the School filed an amended complaint in its own name and that of the State. Doc. 62. The amended complaint raised the same alleged breach of contract claims against SOI and CCS as the first complaint did. Doc. 62. SOI filed its answer to the amended complaint on February 16, 2016. Doc. 65. CCS filed its answer to the amended complaint on February 23, 2016. Doc. 68. Both answers denied the allegations of the amended complaint and raised the same affirmative defenses. Doc. 62 and 65. On February 26, 2016, SOI filed a motion for judgment on the pleadings pursuant to Civil Rule 12(C). Doc. 70. SOI claimed that the claims raised by the School were time-barred by the statute of repose as set forth in R.C. 2305.131(A)(1). *Id.* The School filed its memorandum in opposition to this motion on March 4, 2016. Doc. 73. SOI then filed its reply to the memorandum of the School. Doc. 75

{¶5} The School then filed a second amended complaint on June 10, 2016. Doc. 88. This complaint added OFIC as a defendant as the surety for SOI, but did not make any changes to the claims against SOI. *Id.* SOI filed its answer to the second amended complaint on June 20, 2016. Doc. 93. On June 23, 2016, SOI renewed its motion for judgment on the pleadings pursuant to Civil Rule 12(C). Doc. 95. The School filed its memorandum in opposition to the motion on July 13, 2016. Doc. 102. A reply was filed by SOI on July 20, 2016. Doc. 107. On August

24, 2016, the trial court granted SOI's motion for judgment on the pleadings. Doc. 116. This judgment was based upon the statute of repose as set forth in R.C. 2305.131. *Id.*

{¶6} CCS filed its answer to the second amended complaint on June 28, 2016. Doc. 102. After the trial court had granted both SOI's and The Buehrer Group's motions for judgment on the pleadings based upon the statute of repose, CCS filed its own motion for judgment on the pleadings also based upon the statute of repose. Doc. 124. The School filed a response to CCS's motion on September 28, 2016. Doc. 126. On October 31, 2017, the trial court granted CCS's motion for judgment on the pleadings. Doc. 129.

{¶7} OFIC filed its answer to the second amended complaint on August 15, 2016. Doc. 113. Following the dismissal of SOI as a party, OFIC filed a motion for judgment on the pleadings on September 6, 2016. Doc. 119. OFIC argued that since SOI was dismissed, OFIC was no longer liable as the surety for SOI and must also be dismissed. *Id.* The School filed its response to OFIC's motion on September 9, 2016. Doc. 120. In the same entry that granted CCS' motion for judgment on the pleadings, the trial court also granted OFIC's motion for judgment on the pleadings and both parties were dismissed. Doc. 129.

{¶8} On January 25, 2017, the School filed its notice of appeal from the judgment dismissing SOI as a party. Doc. 134. This judgment was assigned appellate case number 13-17-03. The School also filed its notice of appeal from the

judgment dismissing CCS and OFIC. Doc. 143. This judgment was assigned appellate case number 13-17-06. The other judgments were assigned case numbers 13-17-04 (dismissal of case against the Buehrer Group) and 13-17-05 (dismissal of the State as a party). On appeal, the School raises the following assignments of error.

First Assignment of Error

> **The trial court erred in dismissing [the School's] breach of contract claims against [SOI], [CCS], and [The Buehrer Group], by finding that the Ohio Statute of Repose, R.C. 2305.131, barred [the School's] claims for breach of contract.**

Second Assignment of Error

> **The trial court erred in dismissing the claims against [SOI] and [CCS] as those contracts were entered with [the State] and general limitations periods do not apply to the State of Ohio.**

Third Assignment of Error

> **The trial court erred in finding that [the School] does not have authority to bring its action in the name of [the State].**

Fourth Assignment of Error

> **The trial court erred in dismissing [the School's] claims against [OFIC], as surety for [SOI], on the basis that [the School's] surety bond claim against [OFIC] was barred by the virtue of the dismissal of the claims against [SOI].**

As the third assignment of error applies only to the State, we need not address that assignment of error in this opinion. It will be addressed in Appellate Case No. 13-17-05.

{¶9} In the first assignment of error, as it applies to SOI, the School claims that the trial court erred in dismissing with prejudice the claims against SOI. The dismissal was granted by the trial court pursuant to the statute of repose which limits actions for damages based upon defective and unsafe conditions in improvements to real property.

> **(A)(1) Notwithstanding an otherwise applicable period of limitations specified in this chapter or in section 2125.02 of the Revised Code and except as otherwise provided in divisions (A)(2), (A)(3), (C), and (D) of this section, no cause of action to recover damages for bodily injury, an injury to real or personal property, or wrongful death that arises out of a defective and unsafe condition of an improvement to real property and no cause of action for contribution or indemnity for damages sustained as a result of bodily injury, an injury to real or personal property, or wrongful death that arises out of a defective and unsafe condition of an improvement to real property shall accrue against a person who performed services for the improvement to real property or a person who furnished the design, planning, supervision of construction, or construction of the improvement to real property later than ten years from the date of substantial completion of such improvement.**
>
> * * *
>
> **(G) As used in this section, "substantial completion" means the date the improvement to real property is first used by the owner or tenant of the real property or when the real property is first available for use after having the improvement completed in accordance with the contract or agreement covering the improvement, including any agreed changes to the contract or agreement, whichever occurs first.**

R.C. 2305.131.

{¶10} The School argues that the statute of repose does not apply because they are bringing suit for breach of contract, not for a tort and the statute of repose does not apply to breach of contract claims. In support of this argument the School cites to *Kocisko v. Charles Shutrump & Sons Co. et al.*, 21 Ohio St.3d 98, 488 N.E.2d 171 (1986), which held that the statute of repose did not apply in that case because it was a breach of contract case, not a tort case and the statute of repose does not apply to a contract case.[1] In *Kocisko*, the church took occupancy of the building on October 25, 1970. The roof of the building leaked from the date of its installation. The church then filed suit on November 6, 1981. The church brought suit for breach of contract alleging that the defendants failed to install the roof in a workmanlike manner. The Supreme Court of Ohio affirmed the judgment of the appellate court reversing summary judgment on the grounds that the statute of repose did not apply to cases based upon a breach of contract. *Id.* at 99. The School argues that since the current statute contains similar language to the one addressed by *Kocisko*, the same rule should be applied.

{¶11} A clear reading of the statute does not support this conclusion. The statute specifies that NO cause of action for damages to real property, resulting from the improvement to that real property, can be brought after 10 years from the time

[1] This court notes that the case was based upon a prior version of R.C. 2305.131 that is no longer in effect, but that the language is similar to the current version.

the improvements were substantially completed. R.C. 2305.131. The statute does not limit it to claims for torts only. Regardless of what the School labels this claim, the School is trying to collect damages resulting from an improvement, i.e. the Project, to real property. The statute specifically prohibits this. Thus, it would appear that the statute specifically denies the claims in this case. However, the Ohio Supreme Court has interpreted this language as applying to tort claims only. We are required to follow the ruling of the Supreme Court unless either the legislature or the Supreme Court chooses to modify it. Given the Supreme Court's holding in *Kocisko*, we find that the statute of repose does not apply to claims for breach of contract.

{¶12} The School premised its claims as breach of the terms in the contract. "In reviewing whether a motion to dismiss should be granted, we accept as true all factual allegations in the complaint." *Perrysburg Twp. v. Rossford,* 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5. "Under de novo analysis, we are required to 'accept all factual allegations of the complaint as true and draw all reasonable inferences in favor of the nonmoving party.'" *Pearsall v. Guernsey*, 3d Dist. Hancock No. 5-16-25, 2017-Ohio-681, ¶ 9 (citations omitted). Viewing the allegations in a light most favorable to the School, we must find that the trial court erred in granting the motion to dismiss on the pleadings pursuant to the statute of repose. As the Supreme Court stated in *Kocisko*, "this court expresses no opinion as to the merit of any of the plaintiff's claims." *Kocisko, supra* at 99. This court

merely holds that judgment on the pleadings in this case, as pled, is inappropriate.[2] For that reason, the first assignment of error is sustained as it applies to SOI and CCS.

{¶13} The School argues in its fourth assignment of error that the trial court erred in dismissing OFIC as surety for SOI. The decision to dismiss OFIC was based upon the fact that SOI had been dismissed from the case. The reasoning of the trial court that a surety cannot be liable if there is no valid claim against the principal is correct. However, as we have determined that the trial court erred in granting judgment on the pleadings based upon the statute of repose, SOI is once again a party against whom a valid claim may lie. The result of this is that OFIC is once again the surety for a party and should not have been dismissed from the case. For this reason, the fourth assignment of error is sustained.

{¶14} In the second assignment of error, the School says that the trial court erred in dismissing the claims pursuant to the statute of repose because the contracts were entered with the State and the limitation does not apply to the State. Since this court has determined that the statute of repose does not apply to the alleged breaches of contract, this assignment of error is moot and need not be addressed by this court.

[2] This court does not make any determination as to whether or not this case actually is based upon a breach of contract. The only issue before this court is whether viewing the pleadings in a light most favorable to the plaintiff, a viable cause of action could exist. Since it is arguable that this is a breach of contract case, the granting of judgment on the pleadings was not appropriate.

App.R. 12(A)(1)(c). Additionally, for the reason set forth above, the third assignment of error will not be addressed in this opinion.

{¶15} Having found error prejudicial to the Appellant in the particulars assigned and argued, the judgment of the Court of Common Pleas of Seneca County is reversed and the matter is remanded for further proceedings in accord with this opinion.

Judgment Reversed
And Cause Remanded

ZIMMERMAN and SHAW, J.J., concur.

/hls

[Cite as *New Riegel Local School Dist. Bd. of Edn. v. Buehrer Group Architecture & Eng. Inc.*, 2017-Ohio-8522.]

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
SENECA COUNTY

NEW RIEGEL LOCAL SCHOOL DISTRICT, BOARD OF EDUCATION,

CASE NO. 13-17-04

PLAINTIFF-APPELLANT,
-and-

STATE OF OHIO,

PLAINTIFF-APPELLEE,

v.

O P I N I O N

THE BUEHRER GROUP ARCHITECTURE & ENGINEERING, INC., ET AL.,

DEFENDANTS-APPELLEES.

Appeal from Seneca County Common Pleas Court
Trial Court No. 15 CV 0115

Judgment Affirmed in Part, Reversed in Part

Date of Decision: November 13, 2017

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WILLAMOWKSI, J.

{¶1} Plaintiff-appellant New Riegel Local School District Board of Education ("the School") brings this appeal from the judgment of the Court of Common Pleas of Seneca County granting the judgment on the pleadings filed by defendants-appellants the Buehrer Group Architecture & Engineering, Inc. ("the Group"), the Estate of Huber H. Buehrer ("the Estate") (collectively known as "the Buehrer Group"). For the reasons set forth below, the judgment is affirmed in part and reversed in part.

{¶2} This case arises from the construction of a new Kindergarten through 12th Grade School Facility Project ("the Project") built as part of the Ohio Classroom Facilities Assistance Program. Doc. 2. As a result of the Project, the School entered into contracts with multiple contractors starting in February of 2000. *Id.* One of these contractors was the Buehrer Group. *Id.* The Group contracted with the school to provide professional design services for the Project. *Id.* at Ex. A. The School began occupying the school building on December 19, 2002, Doc. 88, Ex. K. The State issued a Certificate of Completion transferring all of the interest of the State in the project to the School on March 3, 2004. Doc. 24.

{¶3} Over time, the School had issues with the facilities, including but not limited to condensation and moisture intrusion allegedly caused by design and construction errors. Doc. 2. A complaint was filed by the School on April 30, 2015. *Id.* The complaint was brought in the name of the School with the State of Ohio

and OSFC as involuntary plaintiffs. *Id.* The complaint named the Buehrer Group, Studer-Obringer Inc. ("SOI"), Charles Construction Services ("CCS"), and American Buildings Company as defendants. *Id.* The complaint alleged in Count One that the Group breached its contract by failing to perform in accord with professional standards by failing "to properly design the roofing system and through-wall flashing system for the Project in a manner which prevented moisture intrusion, heat loss, and condensation related issues, [failing] to properly observe and report its findings related to defective work, [failing] to make appropriate recommendations for repair and improvement, and [failing] to comply with all state and local statutory requirements." *Id.* at 7. The complaint also claimed that the Estate was liable for the debts of the Group because Hubert H. Buehrer acted as a promoter of an unincorporated entity. *Id.* at 8. The Buehrer Group filed its answer to the complaint on June 3, 2015, denying the allegations in the complaint and listing several affirmative defenses. Doc. 21 and 22. The Estate specifically claimed that the claim was barred by R.C. 2117.06. Doc. 22 at 10. On September 8, 2015, the Buehrer Group filed a motion for judgment on the pleadings. Doc. 36. The School filed its response on September 25, 2015. Doc. 45.

{¶4} On February 10, 2016, the School filed an amended complaint in its own name and that of the State. Doc. 62. The amended complaint raised the same alleged breach of contract claims against the Buehrer Group as the first complaint did. Doc. 62. The Buehrer Group filed its answer to the amended complaint on

February 23, 2016. Doc. 67. The answer denied the allegations of the amended complaint and raised the same affirmative defenses. *Id.* On February 29, 2016, The Buehrer Group filed a motion for judgment on the pleadings pursuant to Civil Rule 12(C). Doc. 71. The Buehrer Group claimed that the claims raised by the School were time-barred by the statute of repose as set forth in R.C. 2305.131(A)(1), by the statute of limitations for professional negligence, and by R.C. 2117.06. *Id.* The School filed its memorandum in opposition to this motion on March 29, 2016. Doc. 79. The Buehrer Group then filed its reply to the memorandum of the School. Doc. 80.

{¶5} The School then filed a second amended complaint on June 10, 2016. Doc. 88. This complaint added Ohio Farmers Insurance Co. ("OFIC") as a defendant as the surety for SOI, but did not make any changes to the claims against the Buehrer Group. *Id.* The Buehrer Group filed its answer to the second amended complaint on June 29, 2016. Doc. 99. On July 25, 2016, The Buehrer Group renewed its motion for judgment on the pleadings pursuant to Civil Rule 12(C). Doc. 108. The School filed its memorandum in opposition to the motion on July 29, 2016. Doc. 109. A reply was filed by the Buehrer Group on August 3, 2016. Doc. 110. On August 24, 2016, the trial court granted the Buehrer Group's motion for judgment on the pleadings. Doc. 117. This judgment was based upon the statute of repose as set forth in R.C. 2305.131. *Id.* On January 25, 2017, the School filed its notice of appeal from this judgment granting the Buehrer Group's motion to

dismiss, as well as other judgments in the case. Doc. 137. This judgment was assigned appellate case number 13-17-04. The other judgments were assigned case numbers 13-17-03 (dismissal of case against SOI), 13-17-05 (dismissal of the State as a party), and 13-17-06 (dismissal of case against CCS and OFIC). On appeal, the School raises the following assignments of error.

First Assignment of Error

> **The trial court erred in dismissing [the School's] breach of contract claims against [SOI], [CCS], and [The Buehrer Group], by finding that the Ohio Statute of Repose, R.C. 2305.131, barred [the School's] claims for breach of contract.**

Second Assignment of Error

> **The trial court erred in dismissing the claims against [SOI] and [CCS] as those contracts were entered with [the State] and general limitations periods do not apply to the State of Ohio.**

Third Assignment of Error

> **The trial court erred in finding that [the School] does not have authority to bring its action in the name of [the State].**

Fourth Assignment of Error

> **The trial court erred in dismissing [the School's] claims against [OFIC], as surety for [SOI], on the basis that [the School's] surety bond claim against [OFIC] was barred by the virtue of the dismissal of the claims against [SOI].**

As only the first assignment of error applies to the Buehrer Group, that is the only assignment of error that will be addressed in this opinion. The remaining

assignments of error will be addressed in Appellate Case Numbers 13-17-03, 13-17-05, and 13-17-06 respectively.

{¶6} In the first assignment of error, as it applies to the Buehrer Group, the School claims that the trial court erred in dismissing with prejudice the claims against the Group and the Estate. The dismissal was granted by the trial court pursuant to the statute of repose which limits actions for damages based upon defective and unsafe conditions in improvements to real property.

> **(A)(1) Notwithstanding an otherwise applicable period of limitations specified in this chapter or in section 2125.02 of the Revised Code and except as otherwise provided in divisions (A)(2), (A)(3), (C), and (D) of this section, no cause of action to recover damages for bodily injury, an injury to real or personal property, or wrongful death that arises out of a defective and unsafe condition of an improvement to real property and no cause of action for contribution or indemnity for damages sustained as a result of bodily injury, an injury to real or personal property, or wrongful death that arises out of a defective and unsafe condition of an improvement to real property shall accrue against a person who performed services for the improvement to real property or a person who furnished the design, planning, supervision of construction, or construction of the improvement to real property later than ten years from the date of substantial completion of such improvement.**
>
> * * *
>
> **(G) As used in this section, "substantial completion" means the date the improvement to real property is first used by the owner or tenant of the real property or when the real property is first available for use after having the improvement completed in accordance with the contract or agreement covering the improvement, including any agreed changes to the contract or agreement, whichever occurs first.**

R.C. 2305.131.

{¶7} The School argues that the statute of repose does not apply because they are bringing suit for breach of contract, not for a tort and the Statute of Repose does not apply to breach of contract claims. In support of this argument the School cites to *Kocisko v. Charles Shutrump & Sons Co. et al.*, 21 Ohio St.3d 98, 488 N.E.2d 171 (1986), which held that the Statute of Repose did not apply in that case because it was a breach of contract case, not a tort case and the Statute of Repose does not apply to a contract case.[1] In *Kocisko*, the church took occupancy of the building on October 25, 1970. The roof of the building leaked from the date of its installation. The church then filed suit on November 6, 1981. The church brought suit for breach of contract alleging that the defendants failed to install the roof in a workmanlike manner. The Supreme Court of Ohio affirmed the judgment of the appellate court reversing summary judgment on the grounds that the statute of repose did not apply to cases based upon a breach of contract. *Id.* at 99. The School argues that since the current statute contains similar language to the one addressed by *Kocisko*, the same rule should be applied.

{¶8} A clear reading of the statute does not support this conclusion. The statute specifies that NO cause of action for damages to real property, resulting from the improvement to that real property, can be brought after 10 years from the time

[1] This court notes that the case was based upon a prior version of R.C. 2305.131 that is no longer in effect, but that the language is similar to the current version.

the improvements were substantially completed. R.C. 2305.131. The statute does not limit it to claims for torts only. Regardless of what the School labels this claim, the School is trying to collect damages resulting from an improvement, i.e. the Project, to real property. The statute specifically prohibits this. Thus, it would appear that the statute specifically denies the claims in this case. However, the Ohio Supreme Court has interpreted this language as applying to tort claims only. We are required to follow the ruling of the Supreme Court unless either the legislature or the Supreme Court chooses to modify it. Given the Supreme Court's holding in *Kocisko*, we find that the statute of repose does not apply to claims for breach of contract. The School premised its claims as breach of the terms in the contract. "In reviewing whether a motion to dismiss should be granted, we accept as true all factual allegations in the complaint." *Perrysburg Twp. v. Rossford,* 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5. "Under de novo analysis, we are required to 'accept all factual allegations of the complaint as true and draw all reasonable inferences in favor of the nonmoving party.' " *Pearsall v. Guernsey*, 3d Dist. Hancock No. 5-16-25, 2017-Ohio-681, ¶ 9 (citations omitted). Viewing the allegations in a light most favorable to the School, we must find that the trial court erred in granting the motions to dismiss on the pleadings pursuant to the statute of repose. As the Supreme Court stated in *Kocisko*, "this court expresses no opinion as to the merit of any of the plaintiff's claims." *Kocisko, supra* at 99. This court merely holds that judgment on the pleadings in this case, as pled, is inappropriate.

{¶9} Although the statute of repose does not appear from the pleadings to apply in this case, making judgment on the pleadings improper, that is not the end of the analysis as it applies to the Estate. The motion for judgment on the pleadings also stated that the case against the estate should be dismissed pursuant to R.C. 2117.06(C). All claims made against an estate must be presented within six months of the death of the decedent. R.C. 2117.06(B). "[A] claim that is not presented within six months after the death of the decedent shall be forever barred as to all parties, including, but not limited to, devisees, legatees, and distributees. No payment shall be made on the claim and no action shall be maintained on the claim * * *." R.C. 2117.06(C). In this case, the decedent's date of death was August 10, 2014. Doc. 88. Six months from the date of death is February 10, 2015. The School served notice of the claims on the executor on February 11, 2015. Doc. 88. This is past the six-month limit imposed by statute. The School argues that the time did not start to run until August 11, 2014, pursuant to Civil Rule 6(A). However, that day is included in the calculation making the last day notice could be given February 10, 2015. Since the School did not give notice by February 10, 2015, it is barred from pursuing a claim against the Estate. Thus, as to the Estate, the dismissal based upon the pleadings was ultimately correct. The first assignment of error is sustained as to the Group and the effect of the statute of repose, but is overruled as to the Estate and the effect of R.C. 2117.06(C).

{¶10} Having found error prejudicial to the Appellant in the particulars assigned and argued as it applies to the Group, the judgment of the Court of Common Pleas of Seneca County is reversed and the matter is remanded for further proceedings in accord with this opinion. Having found no error prejudicial to the Appellant in the particulars assigned and argued as it applies to the Estate, the judgment of the Court of Common Pleas of Seneca County is affirmed.

Judgment Affirmed in Part,
Reversed in Part

ZIMMERMAN and SHAW, J.J., concur.

/hls

[Cite as *New Riegel Local School Dist. Bd. of Edn. v. Buehrer Group Architecture & Eng. Inc.*, 2017-Ohio-8523.]

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
SENECA COUNTY

NEW RIEGEL LOCAL SCHOOL DISTRICT, BOARD OF EDUCATION,

CASE NO. 13-17-05

PLAINTIFF-APPELLANT,
-and-

STATE OF OHIO,

PLAINTIFF-APPELLEE,

v.

O P I N I O N

THE BUEHRER GROUP ARCHITECTURE & ENGINEERING, INC., ET AL.,

DEFENDANTS-APPELLEES.

Appeal from Seneca County Common Pleas Court
Trial Court No. 15 CV 0115

Judgment Affirmed

Date of Decision: November 13, 2017

APPEARANCES:

Christopher L. McCloskey and Tarik Kershah for Appellant

Lee Ann Rabe and James Rook for Appellee, The State of Ohio

WILLAMOWKSI, J.

{¶1} Plaintiff-appellant New Riegel Local School District Board of Education ("the School") brings this appeal from the judgment of the Court of Common Pleas of Seneca County dismissing the State of Ohio ("the State") as an involuntary plaintiff in this lawsuit. For the reasons set forth below, the judgment is affirmed.

{¶2} This case arises from the construction of a new Kindergarten through 12th Grade School Facility Project ("the Project") built as part of the Ohio Classroom Facilities Assistance Program. Doc. 2. As a result of the Project, the School entered into contracts with multiple contractors starting in February of 2000. *Id.* The contracts were all entered between the individual contractor, the School, the State, through the president and treasurer of the School, and the Ohio School Facilities Commission ("OSFC") as parties. *Id.* The general trade and roofing contracts were standard form contracts prepared by OSFC. *Id.* The date of occupancy of the Project was December 19, 2002. Doc. 88, Ex. K. A Certificate of Completion of the Project Agreement was issued by OSFC on March 3, 2004. Doc. 24. This certificate stated that OSFC's interest "is considered transferred to the School District, * * *." *Id.* at Ex. A. The certificate also provided that the School had sole responsibility for all facilities management, including the enforcement of warranties and guarantees. *Id.*

{¶3} Over time, the School had issues with the facilities, including but not limited to condensation and moisture intrusion allegedly caused by design and construction errors. Doc. 2. A complaint was filed by the School on April 30, 2015. *Id.* The complaint was brought in the name of the School with the State of Ohio and OSFC as involuntary plaintiffs. *Id.* The complaint named the Buehrer Group Architecture & Engineering, Inc., the Estate of Huber H. Buehrer (collectively known as "the Buehrer Group"), Studer-Obringer, Inc. ("SOI"), Charles Construction Services ("CCS"), and American Buildings Company as defendants. *Id.* On June 5, 2015, the State and OSFC filed a motion to dismiss them as involuntary plaintiffs to the action. Doc. 24. The School filed a response to this motion on June 15, 2015. Doc. 27. The State and OSFC responded to that response on June 26, 2015. Doc. 30.

{¶4} On February 10, 2016, the School filed an amended complaint in its own name and that of the State. Doc. 62. The amended complaint indicated that OSFC had been voluntarily dismissed as an involuntary plaintiff that was not necessary. *Id.* On March 1, 2016, the State filed a motion to be dismissed from the amended complaint as an involuntary plaintiff. Doc. 72. The School filed its memorandum in opposition to the motion on March 10, 2016. Doc. 74. The School then filed a second amended complaint on June 10, 2016. Doc. 88. This complaint added Ohio Farmers Insurance Co. ("OFIC") as a defendant. The State then filed a motion to be dismissed as an involuntary plaintiff from the second amended

complaint. Doc. 91. The School again filed a memorandum in opposition. Doc. 97. On July 1, 2016, the State filed its reply to the school's memorandum. On August 17, 2016, the State's motion to be dismissed was granted. Doc. 114. On January 25, 2017, the School filed its notice of appeal from the judgment granting the State's motion to dismiss as well as other judgments in the case. Doc. 140. This judgment was assigned appellate case number 13-17-05. The other judgments were assigned case numbers 13-17-03 (dismissal of case against SOI), 13-17-04 (dismissal of case against the Buehrer Group), and 13-17-06 (dismissal of case against CCS and OFIC). On appeal, the School raises the following assignments of error.

First Assignment of Error

The trial court erred in dismissing [the School's] breach of contract claims against [SOI], [CCS], and [The Buehrer Group], by finding that the Ohio Statute of Repose, R.C. 2305.131, barred [the School's] claims for breach of contract.

Second Assignment of Error

The trial court erred in dismissing the claims against [SOI] and [CCS] as those contracts were entered with [the State] and general limitations periods do not apply to the State of Ohio.

Third Assignment of Error

The trial court erred in finding that [the School] does not have authority to bring its action in the name of [the State].

Fourth Assignment of Error

> **The trial court erred in dismissing [the School's] claims against [OFIC], as surety for [SOI], on the basis that [the School's] surety bond claim against [OFIC] was barred by the virtue of the dismissal of the claims against [SOI].**

As only the third assignment of error deals with the State, which is the only party in the judgment appealed from in appellate case number 13-17-05, we need not address the other assignments of error in this opinion. They will be addressed in their respective cases.

{¶5} In the third assignment of error, the School claims that it had the authority to bring the case in the name of the State. The School argues that the State is a real party in interest and thus is a necessary party to the case.

> **Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his name as such representative without joining with him the party for whose benefit the action is brought. When a statute of this state so provides, an action for the use or benefit of another shall be brought in the name of this state. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest. Such ratification, joinder, or substation shall have the same effect as if the action had been commenced in the name of the real party in interest.**

Civ.R. 17(A). In this case there is no question that the School is a real party in interest and has the authority to bring the suit in its own name. The Certificate of

Completion issued by OSFC specifically transferred the interest of OSFC, a state entity, to the School. The Certificate specified that the School was solely responsible for the ownership and management of the property, specifically any enforcement of warranties and guarantees associated with the project. The State does not claim that it has a continuing interest in the facilities once the project was completed.

{¶6} The School claims that it can require the State to be an involuntary plaintiff because one clause in the General Conditions form stated that the School could "maintain an action in the name of the State for violations of any law relating to the Project or for any injury to persons or property pertaining to the Work, or for any other cause which is necessary in the performance of the School District Board's and Commission's duties." This contract was entered between the School and the OSFC and basically granted the School the temporary right to act as a limited agent of the State, through the OSFC, and bind the State to the necessary contracts to build the new facility. As stated above, the involvement of the OSFC, and thus the State, terminated upon the issuance of the Certificate of Completion which transferred all rights and responsibilities to the School. The Certificate of Completion was issued after the General Conditions form and essentially terminated the School's ability to act as a limited agent of the State. Additionally, the only party which can represent the State in a court of law is the Office of the Attorney General. R.C. 109.02. "Except as provided in division (E) of section 120.06 and in sections 3517.152 to

3517.157 of the Revised Code, no state officer or board, or head of a department or institution of the state shall employ, or be represented by, other counsel or attorneys at law [other than the attorney general]." *Id.* None of the exceptions listed in the statute apply in this situation.[1]

{¶7} As the Certificate of Completion ended the interest of OSFC, and thus the State, in the Project, the State was no longer a real party in interest. The trial court correctly dismissed the State as a party to the case. Thus, the third assignment of error is overruled.

{¶8} Having found no error in the particulars assigned and argued that are relevant to this appeal, the judgment of the Court of Common Pleas of Seneca County is affirmed.

Judgment Affirmed

ZIMMERMAN and SHAW, J.J., concur.

/hls

[1] This court also notes that the School filed a mandamus action against OSFC based upon the same facts raised in this case. See Doc. 91 and *State ex rel. New Riegel Local School Dist. Bd. of Edn. v. Ohio School Facilities Comm.*, 3d Dist. Seneca No. 13-16-22, 2017-Ohio-875. In that case, the School brought suit to compel OSFC to provide funding to repair the alleged construction defects in the Project. *Id.* at ¶ 4. This court held that upon the issuance of the Certificate of Completion, the interest of OSFC in the Project terminated. *Id.* at ¶29. The basis of the claims in this case are also to get damages for the alleged construction defects in the Project. This court notes that the attorney representing the School in the mandamus action which brought suit against an entity of the State has also now filed suit in the name of the State.

IN THE COURT OF COMMON PLEAS
SENECA COUNTY, OHIO

NEW RIEGEL LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, et al.,	:	
Plaintiffs,	:	
v.	:	Case No. 15 CV 0115
THE BUEHRER GROUP ARCHITECTURE & ENGINEERING, INC., et al.,	:	Judge: Steve C. Shuff
Defendants.	:	

ORDER GRANTING PLAINTIFF'S MOTION TO AMEND JUDGMENT ENTRIES *NUNC PRO TUNC* TO INCLUDE CIV.R. 54(B) LANGUAGE

For good cause shown, the Court hereby GRANTS Plaintiff New Riegel Local School District Board of Education's Motion to Amend Judgment Entries *Nunc Pro Tunc* to Include Civ.R. 54(B) Language. The judgment entries are amended as follows

1. JUDGMENT ENTRY - Dismissal of the State of Ohio as a party – August 17, 2016;
    a. Amended to state: "To the Parties: This is a final appealable order pursuant to Rule 54(B) of the Ohio Rules of Civil Procedure. There is no just reason for delay."
2. JUDGMENT ENTRY - Dismissal of Buehrer as a party – August 24, 2016;
    a. Amended to state: "To the Parties: This is a final appealable order pursuant to Rule 54(B) of the Ohio Rules of Civil Procedure. There is no just reason for delay."
3. JUDGMENT ENTRY - Dismissal of Studer as a party – August 24, 2016;
    a. Amended to state: "To the Parties: This is a final appealable order pursuant to Rule 54(B) of the Ohio Rules of Civil Procedure. There is no just reason for delay."
4. JUDGMENT ENTRY - Dismissal of OFIC (as surety to Studer) as a party – October 31, 2016;

a. Amended to state: "To the Parties: This is a final appealable order pursuant to Rule 54(B) of the Ohio Rules of Civil Procedure. There is no just reason for delay."

5. JUDGMENT ENTRY - Dismissal of Charles as to Count IV of the Complaint – October 31, 2016.

   a. Amended to state: "To the Parties: This is a final appealable order pursuant to Rule 54(B) of the Ohio Rules of Civil Procedure. There is no just reason for delay."

IT IS SO ORDERED.

JUDGE SHUFF

Copies to: All counsel of record

IN THE COURT OF COMMON PLEAS OF SENECA COUNTY, OHIO

New Riegel Local School District,
Board of Education, *et al.*
Plaintiffs

vs.

The Buehrer Group
Architecture &
Engineering, Inc. *et al.*,
Defendants.

Case No. 15CV0115

Judge Steve C. Shuff

JUDGMENT ENTRY

This case comes before the Court upon the Motion for Judgment on the Pleadings as to Count VI of the Second Amended Complaint, filed by Ohio Farmers Insurance Company ("OFIC") on September 6, 2016, Plaintiffs Opposition, filed on September 9, 2016, and OFCI's Reply, filed on September 19, 2016, as well as Defendant Charles Construction Services, Inc.'s ("Charles Construction") Motion for Judgment on the Pleadings as to Plaintiff's Breach of Contract Claim, filed on September 23, 2016, Plaintiffs Opposition, filed on September 28, 2016, and Charles Constructions Reply, filed on October 6, 2016.

The Court has reviewed the motions, memoranda, pleadings, exhibits, applicable law, and all other matters of record herein.

OFIC'S MOTION FOR JUDGMENT ON THE PLEADINGS

OFIC asks the Court for Judgment on the Pleadings as to Count VI of the Second Amended Complaint of Plaintiff. Count VI of the Second Amended Complaint includes a claim against OFIC as the surety on behalf of Studer-Obringer. On August 24, 2016, this Court dismissed all claims against Studer-Obringer with prejudice, as being barred by the applicable statute of repose, contained in Section 2305.131 of the

Ohio Revised Code. OFIC argues that because no claim can be sustained against Studer-Obringer, then OFIC, as the surety for Studer-Obringer, must also be free of liability.

Plaintiff argues in its opposition that the claim against OFIC can stand independently of any claim by Studer-Obringer, as the state of repose does not apply to sureties, that the statute of repose only applies to claims in tort (not to claims in contract), and that Plaintiff has an independent cause of action again OFIC based upon the language of the bond.

This Court does not find Plaintiff's arguments persuasive. It is well-settled law that "a surety is not obligated unless there is a valid claim against its principal." Woodward Steel, Inc., et al. v. Industrial First, Inc., et al, 1983 WL 3338, at *2, citing Russell v. Failor (1851), 1 Ohio St. 327, 330.

The Court finds that Plaintiff cannot prove any set of facts in support of its claim that would entitle it to relief against OFIC. The claim by Plaintiff and against OFIC contained in Count VI of the Second Amended Complaint is therefore **DISMISSED WITH PREJUDICE.**

CHARLES CONSTRUCTION'S MOTION FOR JUDGMENT ON THE PLEADINGS

The Court notes that the issues contained in this motion have already been determined as to another named Defendant. The Court finds that Plaintiff cannot prove any set of facts in support of its claim that would entitle it to relief against Charles Construction and no material factual issues exist. Charles Construction is entitled to judgment as a matter of law.

Plaintiffs claim against Charles Construction contained in Count IV of the Second Amended Complaint of Plaintiff is barred by the statute of repose articulated in

Section 2305.131 of the Ohio Revised Code, and is therefore **DISMISSED WITH PREJUDICE.**

IT IS SO ORDERED.

JUDGE STEVE C. SHUFF

TO THE CLERK: Please send copies of this Judgment Entry to Attorneys Christopher L. McCloskey and Tarik Kershah, Bricker & Eckler, LLP, 100 South Third Street, Columbus, OH 43215-4291, Attorneys Gregory Brunton and Allison Thomas, 200 Civic Center Drive, Suite 800, Columbus, OH 43215, Attorneys P. Kohl Schneider, Sheila A. McKeon and Robert D. Boroff, Gallagher Sharp, 1501 Euclid Avenue, 6th Floor, Cleveland, OH 44115, Attorneys Shannon J. George and Matthew Davis, Ritter, Robinson, McCready & James, Ltd., 405 Madison Avenue, Suite 1850, Toledo, OH 43604, Attorneys Frederick T. Bills and David Patterson, Weston Hurd, LLP, 10 West Broad Street, Suite 2400, Columbus, OH 43215, and Attorneys Marc Sanchez and Michael Frantz, Jr., 200 Public Square, Ste. 3000, Cleveland, Ohio 44114 by regular Untied States mail.

(125th General Assembly)
(Amended Substitute Senate Bill Number 80)

AN ACT

To amend sections 1533.18, 1701.76, 1701.82, 1775.14, 2117.06, 2125.02, 2125.04, 2305.01, 2305.03, 2305.10, 2305.113, 2305.234, 2305.25, 2307.011, 2307.23, 2307.29, 2307.60, 2307.71, 2307.75, 2307.80, 2315.01, 2315.21, 2315.32, 2315.33, 2315.34, 2315.36, 2323.51, 2505.02, 3719.81, 4507.07 4513.263, 4713.02, 4715.42, 4723.01, 4723.03, 4723.28, 4723.43, 4723.44, 4723.48, 4723.482, 4729.01, and 4731.22; to enact sections 901.52, 1519.07, 2305.131, 2305.36, 2307.711, 2307.97, 2315.18, 2315.19, 2315.20, and 2323.44; and to repeal sections 2315.41, 2315.42, 2315.43, 2315.44, 2315.45, and 2315.46 of the Revised Code to make changes related to the award of certain damages, collateral benefits evidence, and contributory fault in tort actions; to establish a statute of repose for certain product liability claims and claims based on unsafe conditions of real property improvements and to make other changes related to product liability claims; to provide that the product liability statutes are intended to abrogate common law product liability causes of action; to enact a conflicts of law provision for statutes of limitation in civil actions; to modify the provisions on frivolous conduct in filing civil actions; to make other changes related to civil actions; to provide qualified immunity from civil damages for food manufacturers, sellers, and trade associations for claims resulting from a person's cumulative consumption, obesity, or weight gain or any health condition related to cumulative consumption, obesity, or weight gain; to

prohibit imputing any assurances or assumption of liability regarding public access to premises used for growing agricultural produce; to preclude assumption of liability regarding the use of recreational trails; to modify the civil immunity for health care professionals and health care workers; to specify the nurses who may refer to themselves as advanced practice nurses; to eliminate obsolete references to pilot programs for advanced practice nurses; to establish limitations on successor asbestos-related liabilities relating to corporations; and to require the State Dental Board to issue volunteer certificates to retired dental practitioners upon submission of a complete application.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1533.18, 1701.76, 1701.82, 1775.14, 2117.06, 2125.02, 2125.04, 2305.01, 2305.03, 2305.10, 2305.113, 2305.234, 2305.25, 2307.011, 2307.23, 2307.29, 2307.60, 2307.71, 2307.75, 2307.80, 2315.01, 2315.21, 2315.32, 2315.33, 2315.34, 2315.36, 2323.51, 2505.02, 3719.81, 4507.07, 4513.263, 4713.02, 4715.42, 4723.01, 4723.03, 4723.28, 4723.43, 4723.44, 4723.48, 4723.482, 4729.01, and 4731.22 be amended and sections 901.52, 1519.07, 2305.131, 2305.36, 2307.711, 2307.97, 2315.18, 2315.19, 2315.20, and 2323.44 of the Revised Code be enacted to read as follows:

Sec. 901.52. (A) As used in this section, "tort action" has the same meaning as in section 2305.35 of the Revised Code.

(B) In a tort action, in the absence of willful or wanton misconduct or intentionally tortious conduct, no owner, lessee, renter, or operator of premises that are open to the public for direct access to growing agricultural produce shall be imputed to do either of the following:

(1) Extend any assurance to a person that the premises are safe from naturally occurring hazards merely by the act of giving permission to the person to enter the premises or by receiving consideration for the produce picked by the person;

(2) Assume responsibility or liability for injury, death, or loss to person or property allegedly resulting from the natural condition of the terrain of

the premises or from the condition of the terrain resulting from cultivation of soil.

Sec. 1519.07. (A) As used in this section:

(1) "Intentional tort" means an injury to person or property that the tortfeasor intentionally caused, to which the tortfeasor intentionally contributed, or that the tortfeasor knew or believed was substantially certain to result from the tortfeasor's conduct.

(2) "Premises" means a parcel of land together with any waters, buildings, or structures on it that is privately owned and that is directly adjacent to a recreational trail.

(3) "Recreational trail" means a public trail that is used for hiking, bicycling, horseback riding, ski touring, canoeing, or other nonmotorized forms of recreational travel and that interconnects state parks, forests, wildlife areas, nature preserves, scenic rivers, or other places of scenic or historic interest.

(4) "User of a recreational trail" means a person who, in the course of using a recreational trail, enters on premises without first obtaining express permission to be there from the owner, lessee, or occupant of the premises.

(B)(1) An owner, lessee, or occupant of premises does not owe any duty to a user of a recreational trail to keep the premises safe for entry or use by a user of a recreational trail.

(2) An owner, lessee, or occupant of premises does not assume, has no responsibility for, does not incur liability for, and is not liable for any injury to person or property caused by any act of a user of a recreational trail.

(C) This section does not apply to intentional torts.

Sec. 1533.18. As used in sections 1533.18 and 1533.181 of the Revised Code:

(A) "Premises" means all privately-owned lands, ways, and waters, and any buildings and structures thereon, and all privately owned and state-owned lands, ways, and waters leased to a private person, firm, or organization, including any buildings and structures thereon.

(B) "Recreational user" means a person to whom permission has been granted, without the payment of a fee or consideration to the owner, lessee, or occupant of premises, other than a fee or consideration paid to the state or any agency of the state, or a lease payment or fee paid to the owner of privately owned lands, to enter upon premises to hunt, fish, trap, camp, hike, swim, operate a snowmobile or all-purpose vehicle, or engage in other recreational pursuits.

(C) "All-purpose vehicle" has the same meaning as in section 4519.01 of the Revised Code.

Sec. 1701.76. (A)(1) Provided the provisions of Chapter 1704. of the Revised Code do not prevent the transaction from being effected, a lease, sale, exchange, transfer, or other disposition of all, or substantially all, of the assets, with or without the good will, of a corporation, if not made in the usual and regular course of its business, may be made upon ~~such~~ the terms and conditions and for ~~such~~ the consideration, ~~which~~ that may consist, in whole or in part, of money or other property of any description, including shares or other securities or promissory obligations of any other corporation, domestic or foreign, ~~as~~ that may be authorized as follows:

(a) By the directors, either before or after authorization by the shareholders as required in this section; and

(b) At a meeting of the shareholders held for ~~such~~ that purpose, by the affirmative vote of the holders of shares entitling them to exercise two-thirds of the voting power of the corporation on ~~such~~ the proposal, or, if the articles so provide or permit, by the affirmative vote of a greater or lesser proportion, but not less than a majority, of ~~such~~ the voting power, and by ~~such~~ the affirmative vote of the holders of shares of any particular class ~~as~~ that is required by the articles.

(2) At the shareholder meeting described in division (A)(1)(b) of this section or at any subsequent shareholder meeting, shareholders, by the same vote that is required to authorize the lease, sale, exchange, transfer, or other disposition of all, or substantially all, of the assets, with or without the good will, of the corporation, may grant authority to the directors to establish or amend any of the terms and conditions of the transaction, except that the shareholders shall not authorize the directors to do any of the following:

(a) Alter or change the amount or kind of shares, securities, money, property, or rights to be received in exchange for the assets;

(b) Alter or change to any material extent the amount or kind of liabilities to be assumed in exchange for the assets;

(c) Alter or change any other terms and conditions of the transaction if any of the alterations or changes, alone or in the aggregate, would materially adversely affect the shareholders or the corporation.

(3) Notice of the meeting of the shareholders described in division (A)(1)(b) of this section shall be given to all shareholders whether or not entitled to vote at the meeting and shall be accompanied by a copy or summary of the terms of the transaction.

(B) The corporation by its directors may abandon ~~such~~ the transaction under this section, subject to the contract rights of other persons, if the power of abandonment is conferred upon the directors either by the terms of the transaction or by the same vote of shareholders and at the same meeting

of shareholders as that referred to in division (A)(1)(b) of this section or at any subsequent meeting.

(C) Dissenting holders of shares of any class, whether or not entitled to vote, shall be entitled to relief under section 1701.85 of the Revised Code.

(D) An action to set aside a conveyance by a corporation, on the ground that any section of the Revised Code applicable to the lease, sale, exchange, transfer, or other disposition of all, or substantially all, of the assets of ~~such~~ that corporation has not been complied with, shall be brought within ninety days after ~~such~~ that transaction, or ~~such~~ the action shall be forever barred.

(E) If a resolution of dissolution is adopted pursuant to section 1701.86 of the Revised Code, the directors may dispose of all, or substantially all, of the corporation's assets without the necessity of a shareholders' authorization under this section.

(F) The terms and conditions of any transaction under this section shall be subject to the limitations specified in section 2307.97 of the Revised Code.

Sec. 1701.82. (A) When a merger or consolidation becomes effective, all of the following apply:

(1) The separate existence of each constituent entity other than the surviving entity in a merger shall cease, except that whenever a conveyance, assignment, transfer, deed, or other instrument or act is necessary to vest property or rights in the surviving or new entity, the officers, general partners, or other authorized representatives of the respective constituent entities shall execute, acknowledge, and deliver ~~such~~ those instruments and do ~~such~~ those acts. For these purposes, the existence of the constituent entities and the authority of their respective officers, directors, general partners, or other authorized representatives is continued notwithstanding the merger or consolidation.

(2) In the case of a consolidation, the new entity exists when the consolidation becomes effective and, if it is a domestic corporation, the articles contained in or provided for in the agreement of consolidation shall be its original articles. In the case of a merger in which the surviving entity is a domestic corporation, the articles of the domestic surviving corporation in effect immediately prior to the time the merger becomes effective shall continue as its articles after the merger except as otherwise provided in the agreement of merger.

(3) The surviving or new entity possesses all assets and property of every description, and every interest in the assets and property, wherever located, and the rights, privileges, immunities, powers, franchises, and authority, of a public as well as of a private nature, of each constituent

entity, and, subject to the limitations specified in section 2307.97 of the Revised Code, all obligations belonging to or due to each constituent entity, all of which are vested in the surviving or new entity without further act or deed. Title to any real estate or any interest in the real estate vested in any constituent entity shall not revert or in any way be impaired by reason of such merger or consolidation.

(4) ~~The~~ Subject to the limitations specified in section 2307.97 of the Revised Code, the surviving or new entity is liable for all the obligations of each constituent entity, including liability to dissenting shareholders. Any claim existing or any action or proceeding pending by or against any constituent entity may be prosecuted to judgment, with right of appeal, as if the merger or consolidation had not taken place, or the surviving or new entity may be substituted in its place.

(5) ~~All~~ Subject to the limitations specified in section 2307.97 of the Revised Code, all the rights of creditors of each constituent entity are preserved unimpaired, and all liens upon the property of any constituent entity are preserved unimpaired, on only the property affected by ~~such~~ those liens immediately prior to the effective date of the merger or consolidation. If a general partner of a constituent partnership is not a general partner of the entity surviving or the new entity resulting from the merger or consolidation, then the former general partner shall have no liability for any obligation incurred after the merger or consolidation except to the extent that a former creditor of the constituent partnership in which the former general partner was a partner extends credit to the surviving or new entity reasonably believing that the former general partner continued as a general partner of the surviving or new entity.

(B) If a general partner of a constituent partnership is not a general partner of the entity surviving or the new entity resulting from the merger or consolidation, the provisions of division (B) of section 1782.434 of the Revised Code shall apply.

(C) In the case of a merger of a domestic constituent corporation into a foreign surviving corporation, limited liability company, or limited partnership that is not licensed or registered to transact business in this state or in the case of a consolidation of a domestic constituent corporation into a new foreign corporation, limited liability company, or limited partnership, if the surviving or new entity intends to transact business in this state and the certificate of merger or consolidation is accompanied by the information described in division (B)(4) of section 1701.81 of the Revised Code, then, on the effective date of the merger or consolidation, the surviving or new entity shall be considered to have complied with the requirements for

procuring a license or for registering to transact business in this state as a foreign corporation, limited liability company, or limited partnership, as the case may be. In such a case, a copy of the certificate of merger or consolidation certified by the secretary of state constitutes the license certificate prescribed by the laws of this state for a foreign corporation transacting business in this state or the application for registration prescribed for a foreign limited partnership or limited liability company.

(D) Any action to set aside any merger or consolidation on the ground that any section of the Revised Code applicable to the merger or consolidation has not been complied with shall be brought within ninety days after the effective date of ~~such~~ that merger or consolidation or be forever barred.

(E) As used in this section, "corporation" or "entity" applies to both domestic and foreign corporations and entities where the context so permits. In the case of a foreign constituent entity or a foreign new entity, this section is subject to the laws of the state under the laws of which the entity exists or in which it has property.

Sec. 1775.14. (A) Subject to section 1339.65 of the Revised Code and except as provided in division (B) of this section, all partners are liable as follows:

(1) Jointly and severally for everything chargeable to the partnership under sections 1775.12 and 1775.13 of the Revised Code. This joint and several liability is not subject to section 2307.22~~,~~ or 2315.36~~, or 2315.46~~ of the Revised Code with respect to a ~~negligence or other~~ tort claim that otherwise is subject to ~~any~~ either of those sections.

(2) Jointly for all other debts and obligations of the partnership, but any partner may enter into a separate obligation to perform a partnership contract.

(B) Subject to divisions (C)(1) and (2) of this section or as otherwise provided in a written agreement between the partners of a registered limited liability partnership, a partner in a registered limited liability partnership is not liable, directly or indirectly, by way of indemnification, contribution, assessment, or otherwise, for debts, obligations, or other liabilities of any kind of, or chargeable to, the partnership or another partner or partners arising from negligence or from wrongful acts, errors, omissions, or misconduct, whether or not intentional or characterized as tort, contract, or otherwise, committed or occurring while the partnership is a registered limited liability partnership and committed or occurring in the course of the partnership business by another partner or an employee, agent, or representative of the partnership.

(C)(1) Division (B) of this section does not affect the liability of a partner in a registered limited liability partnership for that partner's own negligence, wrongful acts, errors, omissions, or misconduct, including that partner's own negligence, wrongful acts, errors, omissions, or misconduct in directly supervising any other partner or any employee, agent, or representative of the partnership.

(2) Division (B) of this section shall not affect the liability of a partner for liabilities imposed by Chapters 5735., 5739., 5743., and 5747. and section 3734.908 of the Revised Code.

(D) A partner in a registered limited liability partnership is not a proper party to an action or proceeding by or against a registered limited liability partnership with respect to any debt, obligation, or other liability of any kind described in division (B) of this section, unless the partner is liable under divisions (C)(1) and (2) of this section.

Sec. 2117.06. (A) All creditors having claims against an estate, including claims arising out of contract, out of tort, on cognovit notes, or on judgments, whether due or not due, secured or unsecured, liquidated or unliquidated, shall present their claims in one of the following manners:

(1) After the appointment of an executor or administrator and prior to the filing of a final account or a certificate of termination, in one of the following manners:

(a) To the executor or administrator in a writing;

(b) To the executor or administrator in a writing, and to the probate court by filing a copy of the writing with it;

(c) In a writing that is sent by ordinary mail addressed to the decedent and that is actually received by the executor or administrator within the appropriate time specified in division (B) of this section. For purposes of this division, if an executor or administrator is not a natural person, the writing shall be considered as being actually received by the executor or administrator only if the person charged with the primary responsibility of administering the estate of the decedent actually receives the writing within the appropriate time specified in division (B) of this section.

(2) If the final account or certificate of termination has been filed, in a writing to those distributees of the decedent's estate who may share liability for the payment of the claim.

(B) Except as provided in section 2117.061 of the Revised Code, all claims shall be presented within six months after the death of the decedent, whether or not the estate is released from administration or an executor or administrator is appointed during that six-month period. Every claim presented shall set forth the claimant's address.

(C) Except as provided in section 2117.061 of the Revised Code, a claim that is not presented within six months after the death of the decedent shall be forever barred as to all parties, including, but not limited to, devisees, legatees, and distributees. No payment shall be made on the claim and no action shall be maintained on the claim, except as otherwise provided in sections 2117.37 to 2117.42 of the Revised Code with reference to contingent claims.

(D) In the absence of any prior demand for allowance, the executor or administrator shall allow or reject all claims, except tax assessment claims, within thirty days after their presentation, provided that failure of the executor or administrator to allow or reject within that time shall not prevent the executor or administrator from doing so after that time and shall not prejudice the rights of any claimant. Upon the allowance of a claim, the executor or the administrator, on demand of the creditor, shall furnish the creditor with a written statement or memorandum of the fact and date of the allowance.

(E) If the executor or administrator has actual knowledge of a pending action commenced against the decedent prior to the decedent's death in a court of record in this state, the executor or administrator shall file a notice of the appointment of the executor or administrator in the pending action within ten days after acquiring that knowledge. If the administrator or executor is not a natural person, actual knowledge of a pending suit against the decedent shall be limited to the actual knowledge of the person charged with the primary responsibility of administering the estate of the decedent. Failure to file the notice within the ten-day period does not extend the claim period established by this section.

(F) This section applies to any person who is required to give written notice to the executor or administrator of a motion or application to revive an action pending against the decedent at the date of the death of the decedent.

(G) Nothing in this section or in section 2117.07 of the Revised Code shall be construed to reduce the ~~time mentioned~~ periods of limitation or periods prior to repose in section 2125.02~~, 2305.09, 2305.10, 2305.11, 2305.113,~~ or ~~2305.12~~ Chapter 2305. of the Revised Code, provided that no portion of any recovery on a claim brought pursuant to that section or any ~~of those sections~~ section in that chapter shall come from the assets of an estate unless the claim has been presented against the estate in accordance with Chapter 2117. of the Revised Code.

(H) Any person whose claim has been presented and has not been rejected after presentment is a creditor as that term is used in Chapters 2113.

to 2125. of the Revised Code. Claims that are contingent need not be presented except as provided in sections 2117.37 to 2117.42 of the Revised Code, but, whether presented pursuant to those sections or this section, contingent claims may be presented in any of the manners described in division (A) of this section.

(I) If a creditor presents a claim against an estate in accordance with division (A)(1)(b) of this section, the probate court shall not close the administration of the estate until that claim is allowed or rejected.

(J) The probate court shall not require an executor or administrator to make and return into the court a schedule of claims against the estate.

(K) If the executor or administrator makes a distribution of the assets of the estate pursuant to section 2113.53 of the Revised Code and prior to the expiration of the time for the presentation of claims as set forth in this section, the executor or administrator shall provide notice on the account delivered to each distributee that the distributee may be liable to the estate if a claim is presented prior to the filing of the final account and may be liable to the claimant if the claim is presented after the filing of the final account up to the value of the distribution and may be required to return all or any part of the value of the distribution if a valid claim is subsequently made against the estate within the time permitted under this section.

Sec. 2125.02. (A)(1) Except as provided in this division, ~~an~~ 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 ~~any~~ a benefit in a ~~wrongful death~~ 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, ~~any~~ a party to ~~an~~ a civil action for wrongful death may present evidence of the cost of an annuity in connection with ~~any~~ an issue of recoverable future damages. If ~~such~~ 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 ~~such~~ that evidence is presented, the present value in dollars of ~~any~~ an annuity is its cost.

(iii) Consistent with the Rules of Evidence, ~~any~~ a party to ~~an~~ a civil action for wrongful death may present evidence that the surviving spouse of the decedent is remarried. If ~~such~~ 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 ~~an~~ 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, ~~minor~~ 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, ~~minor~~ 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 ~~an~~ a civil action for wrongful death, may settle with the defendant the amount to be paid.

(D) ~~An~~ (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 ~~the~~ a civil action for wrongful death ~~action~~ or if any person listed in division (A)(1) of this section who is permitted to benefit ~~in~~ from a civil action for wrongful death ~~action filed~~ 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 ~~wrongful death~~ action, the personal representative or the person may file a motion in the court in which the ~~wrongful death~~ action is ~~filed~~ commenced requesting the court to issue an order finding that the parent abandoned the ~~child~~ minor and is not entitled to recover damages in the ~~wrongful death~~ action based on the death of the ~~deceased~~ minor ~~child~~.

(2) The movant who files a motion described in division (E)(1) of this section shall name the parent who abandoned the ~~child~~ 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 ~~deceased~~ minor ~~child~~. 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 ~~finding~~ findings that the parent abandoned the ~~deceased~~ minor ~~child~~ 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 ~~wrongful death~~ action based on the death of the ~~deceased~~ minor ~~child~~.

(3) A motion requesting a court to issue an order finding that ~~the~~ a specified parent abandoned ~~the~~ a minor child and is not entitled to recover damages in ~~the~~ a civil action for wrongful death ~~action~~ based on the death of the ~~deceased~~ minor ~~child~~ may be filed at any time during the pendency of the ~~wrongful death~~ 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 ~~(F)~~(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 ~~(F)~~(G)(1)(b)(i) of this section, the superintendent shall be guided by the principle that the jury or court in ~~an~~ 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 ~~such an~~ the action who are awarded compensatory damages under this section. In making ~~such~~ 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 ~~any~~ a particular insurance company ~~in question~~ 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 ~~such~~ 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.

Sec. 2125.04. In every civil action for wrongful death commenced or attempted to be commenced within the time specified by division (D)(1) or (D)(2)(c), (d), (e), (f), or (g) of section 2125.02 of the Revised Code, if a judgment for the plaintiff is reversed or ~~if~~ the plaintiff fails otherwise than upon the merits~~,~~ and if the time limited by ~~such section~~ any of those divisions for the commencement of ~~such~~ the action has expired at the date of ~~such~~ the reversal or failure, the plaintiff or, if the plaintiff dies and the cause of action survives, the personal representative of the plaintiff may commence a new civil action for wrongful death within one year after ~~such~~ that date.

Sec. 2305.01. ~~The~~ Except as otherwise provided by this section or section 2305.03 of the Revised Code, the court of common pleas has original jurisdiction in all civil cases in which the sum or matter in dispute exceeds the exclusive original jurisdiction of county courts and appellate jurisdiction from the decisions of boards of county commissioners. The court of common pleas shall not have jurisdiction, in any tort action to which the amounts apply, to award punitive or exemplary damages that exceed the amounts set forth in section 2315.21 of the Revised Code. The court of common pleas shall not have jurisdiction in any tort action to which

the limits apply to enter judgment on an award of compensatory damages for noneconomic loss in excess of the limits set forth in section 2315.18 of the Revised Code.

The court of common pleas may on its own motion transfer for trial any action in the court to any municipal court in the county having concurrent jurisdiction of the subject matter of, and the parties to, the action, if the amount sought by the plaintiff does not exceed one thousand dollars and if the judge or presiding judge of the municipal court concurs in the proposed transfer. Upon the issuance of an order of transfer, the clerk of courts shall remove to the designated municipal court the entire case file. Any untaxed portion of the common pleas deposit for court costs shall be remitted to the municipal court by the clerk of courts to be applied in accordance with section 1901.26 of the Revised Code, and the costs taxed by the municipal court shall be added to any costs taxed in the common pleas court.

The court of common pleas has jurisdiction in any action brought pursuant to division (I) of section 3733.11 of the Revised Code if the residential premises that are the subject of the action are located within the territorial jurisdiction of the court.

The courts of common pleas of Adams, Athens, Belmont, Brown, Clermont, Columbiana, Gallia, Hamilton, Jefferson, Lawrence, Meigs, Monroe, Scioto, and Washington counties have jurisdiction beyond the north or northwest shore of the Ohio river extending to the opposite shore line, between the extended boundary lines of any adjacent counties or adjacent state. Each of those courts of common pleas has concurrent jurisdiction on the Ohio river with any adjacent court of common pleas that borders on that river and with any court of Kentucky or of West Virginia that borders on the Ohio river and that has jurisdiction on the Ohio river under the law of Kentucky or the law of West Virginia, whichever is applicable, or under federal law.

Sec. 2305.03. ~~A civil action,~~ (A) Except as provided in division (B) of this section and unless a different limitation is prescribed by statute, ~~can~~ a civil action may be commenced only within the period prescribed in sections ~~2305.03~~ 2305.04 to 2305.22~~, inclusive,~~ of the Revised Code. ~~When~~ If interposed by proper plea by a party to an action mentioned in ~~such~~ any of those sections, lapse of time shall be a bar ~~thereto~~ to the action.

(B) No civil action that is based upon a cause of action that accrued in any other state, territory, district, or foreign jurisdiction may be commenced and maintained in this state if the period of limitation that applies to that action under the laws of that other state, territory, district, or foreign jurisdiction has expired or the period of limitation that applies to that action

under the laws of this state has expired.

Sec. 2305.10. ~~An~~ (A) Except as provided in division (C) 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 ~~thereof arose~~ 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.

(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 ~~asbestos or to~~ chromium in any of its chemical forms ~~arises~~ accrues upon the date on which the plaintiff is informed by competent medical authority that the plaintiff has ~~been injured by such~~ an injury that is related to the exposure, or upon the date on which~~,~~ by the exercise of reasonable diligence~~,~~ the plaintiff should have ~~become aware~~ known that the plaintiff ~~had been injured by~~ 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, ~~arises~~ accrues upon the date on which the plaintiff is informed by competent medical authority that the plaintiff has ~~been injured by such~~ 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.

~~As used in this section, "agent orange," "causative agent," and "veteran" have the same meanings as in section 5903.21 of the Revised Code.~~

(4) For purposes of division (A) of this section, a cause of action for bodily injury ~~which may be~~ caused by exposure to diethylstilbestrol or other nonsteroidal synthetic estrogens, including exposure before birth, accrues upon the date on which the plaintiff ~~learns from a licensed physician~~ is informed by competent medical authority that the plaintiff has an injury ~~which may be~~ that is related to ~~such~~ the exposure, or upon the date on which

by the exercise of reasonable diligence the plaintiff should have ~~become aware~~ known that the plaintiff has an injury ~~which may be~~ that is related to ~~such~~ the exposure, whichever date occurs first.

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

(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.

(7)(a) 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.

(b) 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.

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

(E) 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.

(F) 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 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 the effective date of this amendment.

Sec. 2305.113. (A) Except as otherwise provided in this section, an

action upon a medical, dental, optometric, or chiropractic claim shall be commenced within one year after the cause of action accrued.

(B)(1) If prior to the expiration of the one-year period specified in division (A) of this section, a claimant who allegedly possesses a medical, dental, optometric, or chiropractic claim gives to the person who is the subject of that claim written notice that the claimant is considering bringing an action upon that claim, that action may be commenced against the person notified at any time within one hundred eighty days after the notice is so given.

(2) An insurance company shall not consider the existence or nonexistence of a written notice described in division (B)(1) of this section in setting the liability insurance premium rates that the company may charge the company's insured person who is notified by that written notice.

(C) Except as to persons within the age of minority or of unsound mind as provided by section 2305.16 of the Revised Code, and except as provided in division (D) of this section, both of the following apply:

(1) No action upon a medical, dental, optometric, or chiropractic claim shall be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the medical, dental, optometric, or chiropractic claim.

(2) If an action upon a medical, dental, optometric, or chiropractic claim is not commenced within four years after the occurrence of the act or omission constituting the alleged basis of the medical, dental, optometric, or chiropractic claim, then, any action upon that claim is barred.

(D)(1) If a person making a medical claim, dental claim, optometric claim, or chiropractic claim, in the exercise of reasonable care and diligence, could not have discovered the injury resulting from the act or omission constituting the alleged basis of the claim within three years after the occurrence of the act or omission, but, in the exercise of reasonable care and diligence, discovers the injury resulting from that act or omission before the expiration of the four-year period specified in division (C)(1) of this section, the person may commence an action upon the claim not later than one year after the person discovers the injury resulting from that act or omission.

(2) If the alleged basis of a medical claim, dental claim, optometric claim, or chiropractic claim is the occurrence of an act or omission that involves a foreign object that is left in the body of the person making the claim, the person may commence an action upon the claim not later than one year after the person discovered the foreign object or not later than one year after the person, with reasonable care and diligence, should have discovered the foreign object.

(3) A person who commences an action upon a medical claim, dental claim, optometric claim, or chiropractic claim under the circumstances described in division (D)(1) or (2) of this section has the affirmative burden of proving, by clear and convincing evidence, that the person, with reasonable care and diligence, could not have discovered the injury resulting from the act or omission constituting the alleged basis of the claim within the three-year period described in division (D)(1) of this section or within the one-year period described in division (D)(2) of this section, whichever is applicable.

(E) As used in this section:

(1) "Hospital" includes any person, corporation, association, board, or authority that is responsible for the operation of any hospital licensed or registered in the state, including, but not limited to, those that are owned or operated by the state, political subdivisions, any person, any corporation, or any combination of the state, political subdivisions, persons, and corporations. "Hospital" also includes any person, corporation, association, board, entity, or authority that is responsible for the operation of any clinic that employs a full-time staff of physicians practicing in more than one recognized medical specialty and rendering advice, diagnosis, care, and treatment to individuals. "Hospital" does not include any hospital operated by the government of the United States or any of its branches.

(2) "Physician" means a person who is licensed to practice medicine and surgery or osteopathic medicine and surgery by the state medical board or a person who otherwise is authorized to practice medicine and surgery or osteopathic medicine and surgery in this state.

(3) "Medical claim" means any claim that is asserted in any civil action against a physician, podiatrist, hospital, home, or residential facility, against any employee or agent of a physician, podiatrist, hospital, home, or residential facility, or against a licensed practical nurse, registered nurse, advanced practice nurse, physical therapist, physician assistant, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, and that arises out of the medical diagnosis, care, or treatment of any person. "Medical claim" includes the following:

(a) Derivative claims for relief that arise from the medical diagnosis, care, or treatment of a person;

(b) Claims that arise out of the medical diagnosis, care, or treatment of any person and to which either of the following applies:

(i) The claim results from acts or omissions in providing medical care.

(ii) The claim results from the hiring, training, supervision, retention, or

termination of caregivers providing medical diagnosis, care, or treatment.

(c) Claims that arise out of the medical diagnosis, care, or treatment of any person and that are brought under section 3721.17 of the Revised Code.

(4) "Podiatrist" means any person who is licensed to practice podiatric medicine and surgery by the state medical board.

(5) "Dentist" means any person who is licensed to practice dentistry by the state dental board.

(6) "Dental claim" means any claim that is asserted in any civil action against a dentist, or against any employee or agent of a dentist, and that arises out of a dental operation or the dental diagnosis, care, or treatment of any person. "Dental claim" includes derivative claims for relief that arise from a dental operation or the dental diagnosis, care, or treatment of a person.

(7) "Derivative claims for relief" include, but are not limited to, claims of a parent, guardian, custodian, or spouse of an individual who was the subject of any medical diagnosis, care, or treatment, dental diagnosis, care, or treatment, dental operation, optometric diagnosis, care, or treatment, or chiropractic diagnosis, care, or treatment, that arise from that diagnosis, care, treatment, or operation, and that seek the recovery of damages for any of the following:

(a) Loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education, or any other intangible loss that was sustained by the parent, guardian, custodian, or spouse;

(b) Expenditures of the parent, guardian, custodian, or spouse for medical, dental, optometric, or chiropractic care or treatment, for rehabilitation services, or for other care, treatment, services, products, or accommodations provided to the individual who was the subject of the medical diagnosis, care, or treatment, the dental diagnosis, care, or treatment, the dental operation, the optometric diagnosis, care, or treatment, or the chiropractic diagnosis, care, or treatment.

(8) "Registered nurse" means any person who is licensed to practice nursing as a registered nurse by the ~~state~~ board of nursing.

(9) "Chiropractic claim" means any claim that is asserted in any civil action against a chiropractor, or against any employee or agent of a chiropractor, and that arises out of the chiropractic diagnosis, care, or treatment of any person. "Chiropractic claim" includes derivative claims for relief that arise from the chiropractic diagnosis, care, or treatment of a person.

(10) "Chiropractor" means any person who is licensed to practice

chiropractic by the state chiropractic ~~examining~~ board.

(11) "Optometric claim" means any claim that is asserted in any civil action against an optometrist, or against any employee or agent of an optometrist, and that arises out of the optometric diagnosis, care, or treatment of any person. "Optometric claim" includes derivative claims for relief that arise from the optometric diagnosis, care, or treatment of a person.

(12) "Optometrist" means any person licensed to practice optometry by the state board of optometry.

(13) "Physical therapist" means any person who is licensed to practice physical therapy under Chapter 4755. of the Revised Code.

(14) "Home" has the same meaning as in section 3721.10 of the Revised Code.

(15) "Residential facility" means a facility licensed under section 5123.19 of the Revised Code.

(16) "Advanced practice nurse" means any certified nurse practitioner, clinical nurse specialist, ~~or~~ certified registered nurse anesthetist, or ~~a~~ certified nurse-midwife ~~certified~~ who holds a certificate of authority issued by the board of nursing under ~~section 4723.41~~ Chapter 4723. of the Revised Code.

(17) "Licensed practical nurse" means any person who is licensed to practice nursing as a licensed practical nurse by the ~~state~~ board of nursing pursuant to Chapter 4723. of the Revised Code.

(18) "Physician assistant" means any person who holds a valid certificate of registration or temporary certificate of registration issued pursuant to Chapter 4730. of the Revised Code.

(19) "Emergency medical technician-basic," "emergency medical technician-intermediate," and "emergency medical technician-paramedic" means any person who is certified under Chapter 4765. of the Revised Code as an emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, whichever is applicable.

Sec. 2305.131. (A)(1) Notwithstanding an otherwise applicable period of limitations specified in this chapter or in section 2125.02 of the Revised Code and except as otherwise provided in divisions (A)(2), (A)(3), (C), and (D) of this section, no cause of action to recover damages for bodily injury, an injury to real or personal property, or wrongful death that arises out of a defective and unsafe condition of an improvement to real property and no cause of action for contribution or indemnity for damages sustained as a result of bodily injury, an injury to real or personal property, or wrongful death that arises out of a defective and unsafe condition of an improvement

to real property shall accrue against a person who performed services for the improvement to real property or a person who furnished the design, planning, supervision of construction, or construction of the improvement to real property later than ten years from the date of substantial completion of such improvement.

(2) Notwithstanding an otherwise applicable period of limitations specified in this chapter or in section 2125.02 of the Revised Code, a claimant who discovers a defective and unsafe condition of an improvement to real property during the ten-year period specified in division (A)(1) of this section but less than two years prior to the expiration of that period may commence a civil action to recover damages as described in that division within two years from the date of the discovery of that defective and unsafe condition.

(3) Notwithstanding an otherwise applicable period of limitations specified in this chapter or in section 2125.02 of the Revised Code, if a cause of action that arises out of a defective and unsafe condition of an improvement to real property accrues during the ten-year period specified in division (A)(1) of this section and the plaintiff cannot commence an action during that period due to a disability described in section 2305.16 of the Revised Code, the plaintiff may commence a civil action to recover damages as described in that division within two years from the removal of that disability.

(B) Division (A) of this section does not apply to a civil action commenced against a person who is an owner of, tenant of, landlord of, or other person in possession and control of an improvement to real property and who is in actual possession and control of the improvement to real property at the time that the defective and unsafe condition of the improvement to real property constitutes the proximate cause of the bodily injury, injury to real or personal property, or wrongful death that is the subject matter of the civil action.

(C) Division (A)(1) of this section is not available as an affirmative defense to a defendant in a civil action described in that division if the defendant engages in fraud in regard to furnishing the design, planning, supervision of construction, or construction of an improvement to real property or in regard to any relevant fact or other information that pertains to the act or omission constituting the alleged basis of the bodily injury, injury to real or personal property, or wrongful death or to the defective and unsafe condition of the improvement to real property.

(D) Division (A)(1) of this section does not prohibit the commencement of a civil action for damages against a person who has expressly warranted

or guaranteed an improvement to real property for a period longer than the period described in division (A)(1) of this section and whose warranty or guarantee has not expired as of the time of the alleged bodily injury, injury to real or personal property, or wrongful death in accordance with the terms of that warranty or guarantee.

(E) This section does not create a new cause of action or substantive legal right against any person resulting from the design, planning, supervision of construction, or construction of an improvement to real property.

(F) 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 section, 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 the effective date of this section.

(G) As used in this section, "substantial completion" means the date the improvement to real property is first used by the owner or tenant of the real property or when the real property is first available for use after having the improvement completed in accordance with the contract or agreement covering the improvement, including any agreed changes to the contract or agreement, whichever occurs first.

Sec. 2305.234. (A) As used in this section:

(1) "Chiropractic claim," "medical claim," and "optometric claim" have the same meanings as in section 2305.113 of the Revised Code.

(2) "Dental claim" has the same meaning as in section 2305.113 of the Revised Code, except that it does not include any claim arising out of a dental operation or any derivative claim for relief that arises out of a dental operation.

(3) "Governmental health care program" has the same meaning as in section 4731.65 of the Revised Code.

(4) "Health care facility or location" means a hospital, clinic, ambulatory surgical facility, office of a health care professional or associated group of health care professionals, training institution for health care professionals, or any other place where medical, dental, or other health-related diagnosis, care, or treatment is provided to a person.

(5) "Health care professional" means any of the following who provide medical, dental, or other health-related diagnosis, care, or treatment:

(a) Physicians authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery;

(b) Registered nurses and licensed practical nurses licensed under Chapter 4723. of the Revised Code and individuals who hold a certificate of authority issued under that chapter that authorizes the practice of nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner;

(c) Physician assistants authorized to practice under Chapter 4730. of the Revised Code;

(d) Dentists and dental hygienists licensed under Chapter 4715. of the Revised Code;

(e) Physical therapists, physical therapist assistants, occupational therapists, and occupational therapy assistants licensed under Chapter 4755. of the Revised Code;

(f) Chiropractors licensed under Chapter 4734. of the Revised Code;

(g) Optometrists licensed under Chapter 4725. of the Revised Code;

(h) Podiatrists authorized under Chapter 4731. of the Revised Code to practice podiatry;

(i) Dietitians licensed under Chapter 4759. of the Revised Code;

(j) Pharmacists licensed under Chapter 4729. of the Revised Code;

(k) Emergency medical technicians-basic, emergency medical technicians-intermediate, and emergency medical technicians-paramedic, certified under Chapter 4765. of the Revised Code;

(l) Respiratory care professionals licensed under Chapter 4761. of the Revised Code;

(m) Speech-language pathologists and audiologists licensed under Chapter 4753. of the Revised Code.

(6) "Health care worker" means a person other than a health care professional who provides medical, dental, or other health-related care or treatment under the direction of a health care professional with the authority to direct that individual's activities, including medical technicians, medical assistants, dental assistants, orderlies, aides, and individuals acting in similar capacities.

(7) "Indigent and uninsured person" means a person who meets all of the following requirements:

(a) The person's income is not greater than two hundred per cent of the current poverty line as defined by the United States office of management and budget and revised in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, as amended.

(b) The person is not eligible to receive medical assistance under Chapter 5111., disability medical assistance under Chapter 5115. of the

Revised Code, or assistance under any other governmental health care program.

(c) Either of the following applies:

(i) The person is not a policyholder, certificate holder, insured, contract holder, subscriber, enrollee, member, beneficiary, or other covered individual under a health insurance or health care policy, contract, or plan.

(ii) The person is a policyholder, certificate holder, insured, contract holder, subscriber, enrollee, member, beneficiary, or other covered individual under a health insurance or health care policy, contract, or plan, but the insurer, policy, contract, or plan denies coverage or is the subject of insolvency or bankruptcy proceedings in any jurisdiction.

(8) "Nonprofit health care referral organization" means an entity that is not operated for profit and refers patients to, or arranges for the provision of, health-related diagnosis, care, or treatment by a health care professional or health care worker.

(9) "Operation" means any procedure that involves cutting or otherwise infiltrating human tissue by mechanical means, including surgery, laser surgery, ionizing radiation, therapeutic ultrasound, or the removal of intraocular foreign bodies. "Operation" does not include the administration of medication by injection, unless the injection is administered in conjunction with a procedure infiltrating human tissue by mechanical means other than the administration of medicine by injection. "Operation" does not include routine dental restorative procedures, the scaling of teeth, or extractions of teeth that are not impacted.

(10) "Tort action" means a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or another agreement between persons or government entities.

(11) "Volunteer" means an individual who provides any medical, dental, or other health-care related diagnosis, care, or treatment without the expectation of receiving and without receipt of any compensation or other form of remuneration from an indigent and uninsured person, another person on behalf of an indigent and uninsured person, any health care facility or location, any nonprofit health care referral organization, or any other person or government entity.

(12) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(13) "Deep sedation" means a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation, a patient's ability to independently maintain ventilatory function may be impaired, a patient may require

assistance in maintaining a patent airway and spontaneous ventilation may be inadequate, and cardiovascular function is usually maintained.

(14) "General anesthesia" means a drug-induced loss of consciousness during which a patient is not arousable, even by painful stimulation, the ability to independently maintain ventilatory function is often impaired, a patient often requires assistance in maintaining a patent airway, positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function, and cardiovascular function may be impaired.

(B)(1) Subject to divisions (F) and (G)(3) of this section, a health care professional who is a volunteer and complies with division (B)(2) of this section is not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the volunteer in the provision to an indigent and uninsured person of medical, dental, or other health-related diagnosis, care, or treatment, including the provision of samples of medicine and other medical products, unless the action or omission constitutes willful or wanton misconduct.

(2) To qualify for the immunity described in division (B)(1) of this section, a health care professional shall do all of the following prior to providing diagnosis, care, or treatment:

(a) Determine, in good faith, that the indigent and uninsured person is mentally capable of giving informed consent to the provision of the diagnosis, care, or treatment and is not subject to duress or under undue influence;

(b) Inform the person of the provisions of this section, including notifying the person that, by giving informed consent to the provision of the diagnosis, care, or treatment, the person cannot hold the health care professional liable for damages in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, unless the action or omission of the health care professional constitutes willful or wanton misconduct;

(c) Obtain the informed consent of the person and a written waiver, signed by the person or by another individual on behalf of and in the presence of the person, that states that the person is mentally competent to give informed consent and, without being subject to duress or under undue influence, gives informed consent to the provision of the diagnosis, care, or treatment subject to the provisions of this section. A written waiver under division (B)(2)(c) of this section shall state clearly and in conspicuous type

that the person or other individual who signs the waiver is signing it with full knowledge that, by giving informed consent to the provision of the diagnosis, care, or treatment, the person cannot bring a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, against the health care professional unless the action or omission of the health care professional constitutes willful or wanton misconduct.

(3) A physician or podiatrist who is not covered by medical malpractice insurance, but complies with division (B)(2) of this section, is not required to comply with division (A) of section 4731.143 of the Revised Code.

(C) Subject to divisions (F) and (G)(3) of this section, health care workers who are volunteers are not liable in damages to any person or government entity in a tort or other civil action, including an action upon a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the health care worker in the provision to an indigent and uninsured person of medical, dental, or other health-related diagnosis, care, or treatment, unless the action or omission constitutes willful or wanton misconduct.

(D) Subject to divisions (F) and (G)(3) of this section, a nonprofit health care referral organization is not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the nonprofit health care referral organization in referring indigent and uninsured persons to, or arranging for the provision of, medical, dental, or other health-related diagnosis, care, or treatment by a health care professional described in division (B)(1) of this section or a health care worker described in division (C) of this section, unless the action or omission constitutes willful or wanton misconduct.

(E) Subject to divisions (F) and (G)(3) of this section and to the extent that the registration requirements of section 3701.071 of the Revised Code apply, a health care facility or location associated with a health care professional described in division (B)(1) of this section, a health care worker described in division (C) of this section, or a nonprofit health care referral organization described in division (D) of this section is not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the health care professional or

worker or nonprofit health care referral organization relative to the medical, dental, or other health-related diagnosis, care, or treatment provided to an indigent and uninsured person on behalf of or at the health care facility or location, unless the action or omission constitutes willful or wanton misconduct.

(F)(1) Except as provided in division (F)(2) of this section, the immunities provided by divisions (B), (C), (D), and (E) of this section are not available to a health care professional, health care worker, nonprofit health care referral organization, or health care facility or location if, at the time of an alleged injury, death, or loss to person or property, the health care professionals or health care workers involved are providing one of the following:

(a) Any medical, dental, or other health-related diagnosis, care, or treatment pursuant to a community service work order entered by a court under division (B) of section 2951.02 of the Revised Code or imposed by a court as a community control sanction;

(b) Performance of an operation~~;~~ to which any one of the following applies:

(i) The operation requires the administration of deep sedation or general anesthesia.

(ii) The operation is a procedure that is not typically performed in an office.

(iii) The individual involved is a health care professional, and the operation is beyond the scope of practice or the education, training, and competence, as applicable, of the health care professional.

(c) Delivery of a baby or any other purposeful termination of a human pregnancy.

(2) Division (F)(1) of this section does not apply when a health care professional or health care worker provides medical, dental, or other health-related diagnosis, care, or treatment that is necessary to preserve the life of a person in a medical emergency.

(G)(1) This section does not create a new cause of action or substantive legal right against a health care professional, health care worker, nonprofit health care referral organization, or health care facility or location.

(2) This section does not affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to which a health care professional, health care worker, nonprofit health care referral organization, or health care facility or location may be entitled in connection with the provision of emergency or other medical, dental, or other health-related diagnosis, care, or treatment.

(3) This section does not grant an immunity from tort or other civil liability to a health care professional, health care worker, nonprofit health care referral organization, or health care facility or location for actions that are outside the scope of authority of health care professionals or health care workers.

(4) This section does not affect any legal responsibility of a health care professional, health care worker, or nonprofit health care referral organization to comply with any applicable law of this state or rule of an agency of this state.

(5) This section does not affect any legal responsibility of a health care facility or location to comply with any applicable law of this state, rule of an agency of this state, or local code, ordinance, or regulation that pertains to or regulates building, housing, air pollution, water pollution, sanitation, health, fire, zoning, or safety.

Sec. 2305.25. As used in this section and sections 2305.251 to 2305.253 of the Revised Code:

(A)(1) "Health care entity" means an entity, whether acting on its own behalf or on behalf of or in affiliation with other health care entities, that conducts as part of its regular business activities professional credentialing or quality review activities involving the competence of, professional conduct of, or quality of care provided by health care providers, including both individuals who provide health care and entities that provide health care.

(2) "Health care entity" includes any entity described in division (A)(1) of this section, regardless of whether it is a government entity; for-profit or nonprofit corporation; limited liability company; partnership; professional corporation; state or local society composed of physicians, dentists, optometrists, psychologists, or pharmacists; or other health care organization.

(B) "Health insuring corporation" means an entity that holds a certificate of authority under Chapter 1751. of the Revised Code. "Health insuring corporation" includes wholly owned subsidiaries of a health insuring corporation.

(C) "Hospital" means either of the following:

(1) An institution that has been registered or licensed by the department of health as a hospital;

(2) An entity, other than an insurance company authorized to do business in this state, that owns, controls, or is affiliated with an institution that has been registered or licensed by the department of health as a hospital.

(D) "Incident report or risk management report" means a report of an

incident involving injury or potential injury to a patient as a result of patient care provided by health care providers, including both individuals who provide health care and entities that provide health care, that is prepared by or for the use of a peer review committee of a health care entity and is within the scope of the functions of that committee.

(E)(1) "Peer review committee" means a utilization review committee, quality assessment committee, performance improvement committee, tissue committee, credentialing committee, or other committee that does either of the following:

(a) Conducts professional credentialing or quality review activities involving the competence of, professional conduct of, or quality of care provided by health care providers, including both individuals who provide health care and entities that provide health care;

(b) Conducts any other attendant hearing process initiated as a result of a peer review committee's recommendations or actions.

(2) "Peer review committee" includes all of the following:

(a) A peer review committee of a hospital or long-term care facility or a peer review committee of a nonprofit health care corporation that is a member of the hospital or long-term care facility or of which the hospital or facility is a member;

(b) A peer review committee of a community mental health center;

(c) A board or committee of a hospital, a long-term care facility, or other health care entity when reviewing professional qualifications or activities of health care providers, including both individuals who provide health care and entities that provide health care;

(d) A peer review committee, professional standards review committee, or arbitration committee of a state or local society composed of members who are in active practice as physicians, dentists, optometrists, psychologists, or pharmacists;

(e) A peer review committee of a health insuring corporation that has at least a two-thirds majority of member physicians in active practice and that conducts professional credentialing and quality review activities involving the competence or professional conduct of health care providers that adversely affects or could adversely affect the health or welfare of any patient;

(f) A peer review committee of a health insuring corporation that has at least a two-thirds majority of member physicians in active practice and that conducts professional credentialing and quality review activities involving the competence or professional conduct of a health care facility that has contracted with the health insuring corporation to provide health care

services to enrollees, which conduct adversely affects, or could adversely affect, the health or welfare of any patient;

(g) A peer review committee of a sickness and accident insurer that has at least a two-thirds majority of physicians in active practice and that conducts professional credentialing and quality review activities involving the competence or professional conduct of health care providers that adversely affects or could adversely affect the health or welfare of any patient;

(h) A peer review committee of a sickness and accident insurer that has at least a two-thirds majority of physicians in active practice and that conducts professional credentialing and quality review activities involving the competence or professional conduct of a health care facility that has contracted with the insurer to provide health care services to insureds, which conduct adversely affects, or could adversely affect, the health or welfare of any patient;

(i) A peer review committee of any insurer authorized under Title XXXIX of the Revised Code to do the business of medical professional liability insurance in this state that conducts professional quality review activities involving the competence or professional conduct of health care providers that adversely affects or could affect the health or welfare of any patient;

(j) A peer review committee of the bureau of workers' compensation responsible for reviewing the professional qualifications and the performance of providers conducting medical examinations or file reviews for the bureau;

(k) Any other peer review committee of a health care entity.

(F) "Physician" means an individual authorized to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.

(G) "Sickness and accident insurer" means an entity authorized under Title XXXIX of the Revised Code to do the business of sickness and accident insurance in this state.

(H) "Tort action" means a civil action for damages for injury, death, or loss to a patient of a health care entity. "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 a breach of contract or another agreement between persons.

Sec. 2305.36. (A) As used in this section:

(1) "Cumulative consumption" means, with respect to a health

condition, any health condition, including, but not limited to, increased cholesterol, heart disease, or high blood pressure, that is caused by successive consumption of a qualified product.

(2) "Person engaged in the business" means a person who manufactures, markets, distributes, advertises, or sells a qualified product in the regular course of the person's trade or business.

(3) "Manufacturer" and "supplier" have the same meanings as in section 2307.71 of the Revised Code.

(4) "Qualified product" means all of the following:

(a) Articles used for food or drink for a human being or other animal;

(b) Chewing gum;

(c) Articles used for components of any article listed in division (A)(4)(a) or (b) of this section.

(5) "Seller" means, with respect to a qualified product, a person lawfully engaged in the business of marketing, distributing, advertising, or selling the product.

(6) "Trade association" means any association or business organization that is not operated for profit and in which two or more members of the trade association are manufacturers, marketers, distributors, advertisers, or sellers of a qualified product.

(B) Except as provided in division (D) of this section, no manufacturer, seller, or supplier of a qualified product and no trade association is liable for injury, death, or loss to person or property for damages, is subject to an action for declaratory judgment, injunctive relief, or declaratory relief, or is responsible for restitution, damages, or other relief arising out of, resulting from, or related to cumulative consumption, weight gain, obesity, or any health condition that is related to cumulative consumption, weight gain, or obesity.

(C) A party that prevails on a motion to dismiss an action under division (B) of this section may recover reasonable attorney's fees and costs that the party incurred in connection with the motion to dismiss.

(D) The immunity from liability provided in division (B) of this section does not apply to any of the following if it, alone or in combination with any of the following, was the predominate proximate cause of the claim of injury, death, or loss resulting from cumulative consumption, weight gain, obesity, or any health condition that is related to cumulative consumption, weight gain, or obesity:

(1) The misbranding of the qualified product involved;

(2) Any knowing and willful violation of state or federal law that applies to the qualified product involved;

(3) Any breach of express contract or breach of express warranty in connection with the purchase of the qualified product involved.

(E) Nothing in this section shall be construed as creating any new cause of action for a claim of injury, death, or loss resulting from a person's cumulative consumption, weight gain, obesity, or any health condition that is related to cumulative consumption, weight gain, or obesity.

Sec. 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, ~~comparative negligence,~~ 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~~, and 2315.42~~ 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) ~~"Negligence claim" means a civil action for damages for injury, death, or loss to person or property to the extent that the damages are sought or recovered based on allegation or proof of negligence.~~

~~(F)~~ "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.

~~(G)~~(F) "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.

~~(H)~~(G) "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.

~~(I)~~(H) "Plaintiff" includes the person for whom the plaintiff is legal representative.

~~(J)~~(I) "Political subdivision" and "state" have the same meanings as in section 2744.01 of the Revised Code.

~~(K)~~(J) "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.

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

Sec. 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~~, or sections 2315.41 to 2315.46~~ 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.

Sec. 2307.29. No provision of sections 2307.25 to 2307.28 of the Revised Code applies to a ~~negligence or other~~ tort claim to the extent that sections 2307.22 to 2307.24~~,~~ or sections 2315.32 to 2315.36~~, or sections 2315.41 to 2315.46~~ of the Revised Code make a party against whom a judgment is entered liable to the plaintiff only for the proportionate share of that party as described in those sections.

Sec. 2307.60. (A) Anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law, may recover the costs of maintaining the civil action and attorney's fees if authorized by any provision of the Rules of Civil Procedure or another section of the Revised Code or under the common law of this state, and may recover punitive or exemplary damages if authorized by section 2315.21 or another section of the Revised Code. No record of a conviction, unless obtained by confession in open court, shall be used as evidence in a civil action brought pursuant to division (A) of this section.

(B)(1) As used in division (B) of this section, "tort action" means a civil action for damages for injury, death, or loss to person or property other than

a civil action for damages for a breach of contract or another agreement between persons. "Tort action" includes, but is not limited to, 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, an action for wrongful death under Chapter 2125. of the Revised Code, and an action based on derivative claims for relief.

(2) Recovery on a claim for relief in a tort action is barred to any person or the person's legal representative if the person has been convicted of or has pleaded guilty to a felony, or to a misdemeanor that is an offense of violence, arising out of criminal conduct that was a proximate cause of the injury or loss for which relief is claimed in the action.

(3) Division (B) of this section does not apply to civil claims based upon alleged intentionally tortious conduct, alleged violations of the United States Constitution, or alleged violations of statutes of the United States pertaining to civil rights.

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

~~(A)~~(1) "Claimant" means either of the following:

~~(1)~~(a) A person who asserts a product liability claim or on whose behalf such a claim is asserted;

~~(2)~~(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:

~~(a)~~(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;

~~(b)~~(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.

~~(B)~~(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."

~~(C)~~(3) "Environment" means navigable waters, surface water, ground water, drinking water supplies, land surface, subsurface strata, and air.

~~(D)~~(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.

~~(E)~~(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.

~~(F)~~(6) "Foreseeable risk" means a risk of harm that satisfies both of the following:

~~(1)~~(a) It is associated with an intended or reasonably foreseeable use, modification, or alteration of a product in question~~;~~.

~~(2)~~(b) It is a risk that the manufacturer in question should recognize while exercising both of the following:

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

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

~~(G)~~(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."

~~(H)~~(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.

~~(I)~~(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.

~~(J)~~(10) "Person" has the same meaning as in division (C) of section 1.59 of the Revised Code and also includes governmental entities.

~~(K)~~(11) "Physician" means a person who is licensed to practice medicine and surgery or osteopathic medicine and surgery by the state medical board.

~~(L)(1)~~(12)(a) "Product" means, subject to division ~~(L)(2)~~(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:

~~(a)~~(i) It is capable of delivery itself, or as an assembled whole in a

mixed or combined state, or as a component or ingredient~~;~~.

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

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

~~(2)~~(b) "Product" does not include human tissue, blood, or organs.

~~(M)~~(13) "Product liability claim" means a claim that is asserted in a civil action pursuant to sections 2307.71 to 2307.80 of the Revised Code and 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:

~~(1)~~(a) The design, formulation, production, construction, creation, assembly, rebuilding, testing, or marketing of that product;

~~(2)~~(b) Any warning or instruction, or lack of warning or instruction, associated with that product;

~~(3)~~(c) Any failure of that product to conform to any relevant representation or warranty.

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

~~(O)(1)~~(15)(a) "Supplier" means, subject to division ~~(O)(2)~~(A)(15)(b) of this section, either of the following:

~~(a)~~(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;

~~(b)~~(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.

~~(2)~~(b) "Supplier" does not include any of the following:

~~(a)~~(i) A manufacturer;

~~(b)~~(ii) A seller of real property;

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

~~(d)~~(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.

~~(P)~~(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.

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

Sec. 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 claim 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.

(2) Subject to division (B)(3) of this section, if express 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 claimant expressly or impliedly assumed a risk and 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 the 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.

Sec. 2307.75. (A) Subject to divisions (D), (E), and (F) of this section, a product is defective in design or formulation if ~~either of the following applies:~~

~~(1) When~~, 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~~;~~

~~(2) It is more dangerous than an ordinary consumer would expect when used in an intended or reasonably foreseeable manner~~.

(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 resonably 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 ~~such~~ an alternative design or formulation.

(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.

(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.

(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~~, unless the manufacturer acted unreasonably in introducing the product into trade or commerce~~.

Sec. 2307.80. (A) Subject to ~~division~~ 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) ~~If~~ (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~~, unless it is established~~.

(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. ~~For~~

(3) For purposes of ~~this division, "drug~~ divisions (C) and (D) of this section:

(a) "Drug" has the same meaning ~~given to that term~~ as in the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040, 1041 (1938), 21 U.S.C. 321(g)(1), as amended.

(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.

(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.

Sec. 2307.97. (A) As used in this section:

(1) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated or altered.

(2) "Asbestos claim" means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos. "Asbestos claim" includes any of the following:

(a) A claim made by or on behalf of any person who has been exposed to asbestos, or any representative, spouse, parent, child, or other relative of that person, for injury, including mental or emotional injury, death, or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to asbestos;

(b) A claim for damage or loss to property that is caused by the installation, presence, or removal of asbestos.

(3) "Corporation" means a corporation for profit, including the following:

(a) A domestic corporation that is organized under the laws of this state;

(b) A foreign corporation that is organized under laws other than the laws of this state and that has had a certificate of authority to transact business in this state or has done business in this state.

(4) "Successor" means a corporation or a subsidiary of a corporation that assumes or incurs, or had assumed or incurred, successor asbestos-related liabilities or had successor asbestos-related liabilities

imposed on it by court order.

(5)(a) "Successor asbestos-related liabilities" means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, if the liabilities are related in any way to asbestos claims and either of the following applies:

(i) The liabilities are assumed or incurred by a successor as a result of or in connection with an asset purchase, stock purchase, merger, consolidation, or agreement providing for an asset purchase, stock purchase, merger, or consolidation, including a plan of merger.

(ii) The liabilities were imposed by court order on a successor.

(b) "Successor asbestos-related liabilities" includes any liabilities described in division (A)(5)(a)(i) of this section that, after the effective date of the asset purchase, stock purchase, merger, or consolidation, are paid, otherwise discharged, committed to be paid, or committed to be otherwise discharged by or on behalf of the successor, or by or on behalf of a transferor, in connection with any judgment, settlement, or other discharge of those liabilities in this state or another jurisdiction.

(6) "Transferor" means a corporation or its shareholders from which successor asbestos-related liabilities are or were assumed or incurred by a successor or were imposed by court order on a successor.

(B) The limitations set forth in division (C) of this section apply to a corporation that is either of the following:

(1) A successor that became a successor prior to January 1, 1972, if either of the following applies:

(a) In the case of a successor in a stock purchase or an asset purchase, the successor paid less then fifteen million dollars for the stock or assets of the transferor.

(b) In the case of a successor in a merger or consolidation, the fair market value of the total gross assets of the transferor, at the time of the merger or consolidation, excluding any insurance of the transferor, was less than fifty million dollars.

(2) Any successor to a prior successor if the prior successor met the requirements of division (B)(1)(a) or (b) of this section, whichever is applicable.

(C)(1) Except as otherwise provided in division (C)(2) of this section, the cumulative successor asbestos-related liabilities of a corporation shall be limited to either of the following:

(a) In the case of a corporation that is a successor in a stock purchase or an asset purchase, the fair market value of the acquired stock or assets of the

transferor, as determined on the effective date of the stock or asset purchase;

(b) In the case of a corporation that is a successor in a merger or consolidation, the fair market value of the total gross assets of the transferor, as determined on the effective date of the merger or consolidation.

(2)(a) If a transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior purchase of assets or stock involving a prior transferor, the fair market value of the assets or stock purchased from the prior transferor, determined as of the effective date of the prior purchase of the assets or stock, shall be substituted for the limitation set forth in division (C)(1)(a) of this section for the purpose of determining the limitation of the liability of a corporation.

(b) If a transferor had assumed or incurred successor asbestos-related liabilities in connection with a merger or consolidation involving a prior transferor, the fair market value of the total gross assets of the prior transferor, determined as of the effective date of the prior merger or consolidation, shall be substituted for the limitation set forth in division (C)(1)(b) of this section for the purpose of determining the limitation of the liability of a corporation.

(3) A corporation described in division (C)(1) or (2) of this section shall have no responsibility for any successor asbestos-related liabilities in excess of the limitation of those liabilities as described in the applicable division.

(D)(1) A corporation may establish the fair market value of assets, stock, or total gross assets under division (C) of this section by means of any method that is reasonable under the circumstances, including by reference to their going-concern value, to the purchase price attributable to or paid for them in an arm's length transaction, or, in the absence of other readily available information from which fair market value can be determined, to their value recorded on a balance sheet. Assets and total gross assets shall include intangible assets. A showing by the successor of a reasonable determination of the fair market value of assets, stock, or total gross assets is prima-facie evidence of their fair market value.

(2) For purposes of establishing the fair market value of total gross assets under division (D)(1) of this section, the total gross assets include the aggregate coverage under any applicable liability insurance that was issued to the transferor the assets of which are being valued for purposes of the limitations set forth in division (C) of this section, if the insurance has been collected or is collectable to cover the successor asbestos-related liabilities involved. Those successor asbestos-related liabilities do not include any compensation for any liabilities arising from the exposure of workers to asbestos solely during the course of their employment by the transferor. Any

settlement of a dispute concerning the insurance coverage described in this division that is entered into by a transferor or successor with the insurer of the transferor before the effective date of this section is determinative of the aggregate coverage of the liability insurance that is included in the determination of the transferor's total gross assets.

(3) After a successor has established a reasonable determination of the fair market value of assets, stock, or total gross assets under divisions (D)(1) and (2) of this section, a claimant that disputes that determination of the fair market value has the burden of establishing a different fair market value.

(4)(a) Subject to divisions (D)(4)(b), (c), and (d) of this section, the fair market value of assets, stock, or total gross assets at the time of the asset purchase, stock purchase, merger, or consolidation increases annually, at a rate equal to the sum of the following:

(i) The prime rate as listed in the first edition of the wall street journal published for each calendar year since the effective date of the asset purchase, stock purchase, merger, or consolidation, or, if the prime rate is not published in that edition of the wall street journal, the prime rate as reasonably determined on the first business day of the year;

(ii) One per cent.

(b) The rate that is determined pursuant to division (D)(4)(a) of this section shall not be compounded.

(c) The adjustment of the fair market value of assets, stock, or total gross assets shall continue in the manner described in division (D)(4)(a) of this section until the adjusted fair market value is first exceeded by the cumulative amounts of successor asbestos-related liabilities that are paid or committed to be paid by or on behalf of a successor or prior transferor, or by or on behalf of a transferor, after the time of the asset purchase, stock purchase, merger, or consolidation for which the fair market value of assets, stock, or total gross assets is determined.

(d) No adjustment of the fair market value of total gross assets as provided in division (D)(4)(a) of this section shall be applied to any liability insurance that is otherwise included in total gross assets as provided in division (D)(2) of this section.

(E)(1) The limitations set forth in division (C) of this section shall apply to the following:

(a) All asbestos claims, including asbestos claims that are pending on the effective date of this section, and all litigation involving asbestos claims, including litigation that is pending on the effective date of this section;

(b) Successors of a corporation to which this section applies.

(2) The limitations set forth in division (C) of this section do not apply

to any of the following:

(a) Workers' compensation benefits that are paid by or on behalf of an employer to an employee pursuant to any provision of Chapter 4121., 4123., 4127., or 4131. of the Revised Code or comparable workers' compensation law of another jurisdiction;

(b) Any claim against a successor that does not constitute a claim for a successor asbestos-related liability;

(c) Any obligations arising under the "National Labor Relations Act," 49 Stat. 449, 29 U.S.C. 151 et seq., as amended, or under any collective bargaining agreement;

(d) Any contractual rights to indemnification.

(F) The courts in this state shall apply, to the fullest extent permissible under the Constitution of the United States, this state's substantive law, including the provisions of this section, to the issue of successor asbestos-related liabilities.

Sec. 2315.01. (A) When the jury is sworn, unless for special reasons the court otherwise directs, the trial shall proceed in the following order except as provided in section 2315.02 of the Revised Code:

~~(A)~~(1) The plaintiff concisely ~~must~~ shall state the plaintiff's claim, and briefly may state the plaintiff's evidence to sustain it.

~~(B)~~(2) The defendant ~~must then~~ briefly shall state the defendant's defense, and briefly may state the defendant's evidence in support of it.

~~(C)~~(3) The party who would be defeated if no evidence were offered on either side, first, ~~must~~ shall produce that party's evidence, and the adverse party ~~must~~ shall then produce the adverse party's evidence.

~~(D)~~(4) The parties then shall be confined to rebutting evidence, unless the court for good reasons~~,~~ and in the furtherance of justice, permits them to offer evidence in their original cases.

~~(E)~~(5) When the evidence is concluded, either party may present written instructions to the court on matters of law and request them to be given to the jury~~, which instructions shall be given or refused by the~~. The court shall give or refuse to give the written instructions to the jury before the argument to the jury is commenced.

~~(F)~~(6) The parties then may submit or argue the case to the jury. The party required first to produce that party's evidence shall have the opening and closing arguments. If several defendants~~, having~~ have separate defenses~~,~~and appear by different counsel, the court shall arrange their relative order.

~~(G)~~(7) The court, after the argument is concluded~~,~~ and before proceeding with other business, shall charge the jury. ~~Any charge shall be~~

~~reduced to writing by the~~ The court shall reduce a charge to writing if either party, before the argument to the jury is commenced, requests it. ~~Such charge may be examined by the~~ The parties may examine that charge before any closing argument is made by any of the parties. ~~A~~ If a charge or instruction~~, when so~~ is written and given~~,~~ as prescribed in this division, the court shall not ~~be~~ orally ~~qualified, modified~~ qualify, modify, or in any manner ~~explained~~ explain the charge or instruction to the jury ~~by the court~~. All written charges and instructions shall be taken by the jurors in their retirement, shall be returned with their verdict into court, and shall remain on file with the papers of the case.

(B) In all tort actions, the court shall instruct the jury regarding the extent to which an award of compensatory damages or punitive or exemplary damages is or is not subject to taxation under federal or state income tax laws.

As used in this division, "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 breach of contract or another agreement between persons.

Division (B) 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 division (B) of 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 the effective date of this amendment.

Sec. 2315.18. (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:

(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.

(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.

(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.

(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.

(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.

(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.

Sec. 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.

Sec. 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.

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.

(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.

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

(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.

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

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

(C) Subject to division ~~(D)~~(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, ~~oppression, or insult,~~ 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 ~~in question has adduced proof of actual damages that resulted from actions or omissions as described in division (B)(1) of this section~~ from that defendant.

~~(C)~~(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:

(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.

~~(D)~~(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~~, oppression, or insult,~~ 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.

~~(E)~~(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.

Sec. 2315.32. (A) Sections 2315.32 to 2315.36 of the Revised Code do not apply to ~~tort~~ actions ~~based on a product liability claim~~ 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 ~~negligence claim or to a~~ tort claim ~~other than a negligence claim~~, except that the contributory fault of the plaintiff may not be asserted as an affirmative defense to an intentional tort claim.

Sec. 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. ~~This section does not apply to actions described in section 4113.03 of the Revised Code.~~

Sec. 2315.34. If contributory fault is asserted and established as an affirmative defense to a ~~negligence~~ 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 ~~negligence~~ 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;

(D) The percentage of tortious conduct attributable to all persons as determined pursuant to section 2307.23 of the Revised Code.

Sec. 2315.36. If contributory fault is asserted as an affirmative defense to a ~~negligence~~ 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.

Sec. 2323.44. (A) There is hereby created the Ohio subrogation rights commission consisting of six voting members and seven nonvoting members. To be eligible for appointment as a voting member, a person shall be a current member of the general assembly. The president of the senate and the speaker of the house of representatives shall jointly appoint six members. The chairman of the senate committee to which bills pertaining to insurance are referred shall be a member of the commission. The chairman of the house committee to which bills pertaining to insurance are referred shall be a member of the commission. The chairman and the ranking minority member of the senate committee to which bills pertaining to civil justice are referred shall each be a member of the commission. The chairman and the ranking minority member of the house committee to which

bills pertaining to civil justice are referred shall each be a member of the commission. Of the six members jointly appointed by the president of the senate and the speaker of the house of representative, one shall represent a health insuring company doing business in the state of Ohio, one shall represent a public employees union in Ohio, one shall represent the Ohio academy of trial lawyers, one shall represent a property and casualty insurance company doing business in Ohio, one shall represent the Ohio state bar association, and one shall represent a sickness and accident insurer doing business in Ohio, and all shall have expertise in insurance law, including subrogation rights. A member of the Ohio judicial conference who is an elected or appointed judge shall be a member of the commission.

(B) The commission shall do all of the following:

(1) Investigate the problems posed by, and the issues surrounding, the N. Buckeye Educ. Council Group Health Benefits Plan v. Lawson (2004), 103 Ohio St. 3d 188 decision regarding subrogation;

(2) Prepare a report of recommended legislative solutions to the court decision referred to in division (B)(1) of this section;

(3) Submit a report of its findings to the members of the general assembly not later then September 1, 2005.

(C) Any vacancy in the membership of the commission shall be filled in the same manner in which the original appointment was made.

(D) The chairpersons of the house and senate committees to which bills pertaining to insurance are referred shall jointly call the first meeting of the commission not later than May 1, 2005. The first meeting shall be organizational, and the members of the commission shall determine the chairperson from among commission members by a majority vote.

(E) The legislative service commission shall provide any technical, professional, and clerical employees that are necessary for the commission to perform its duties.

Sec. 2323.51. (A) As used in this section:

(1) "Conduct" means any of the following:

(a) The filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action;

(b) The filing by an inmate of a civil action or appeal against a government entity or employee, the assertion of a claim, defense or other position in connection with a civil action of that nature or the assertion of issues of law in an appeal of that nature, or the taking of any other action in

connection with a civil action or appeal of that nature.

(2) "Frivolous conduct" means either of the following:

(a) Conduct of an inmate or other party to a civil action, of an inmate who has filed an appeal of the type described in division (A)(1)(b) of this section, or of the inmate's or other party's counsel of record that satisfies ~~either~~ any of the following:

(i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.

(ii) It is not warranted under existing law ~~and~~, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.

(iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(iv) The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief.

(b) An inmate's commencement of a civil action or appeal against a government entity or employee when any of the following applies:

(i) The claim that is the basis of the civil action fails to state a claim or the issues of law that are the basis of the appeal fail to state any issues of law.

(ii) It is clear that the inmate cannot prove material facts in support of the claim that is the basis of the civil action or in support of the issues of law that are the basis of the appeal.

(iii) The claim that is the basis of the civil action is substantially similar to a claim in a previous civil action commenced by the inmate or the issues of law that are the basis of the appeal are substantially similar to issues of law raised in a previous appeal commenced by the inmate, in that the claim that is the basis of the current civil action or the issues of law that are the basis of the current appeal involve the same parties or arise from the same operative facts as the claim or issues of law in the previous civil action or appeal.

(3) "Civil action or appeal against a government entity or employee," "inmate," "political subdivision," and "employee" have the same meanings as in section 2969.21 of the Revised Code.

(4) "Reasonable attorney's fees" or "attorney's fees," when used in relation to a civil action or appeal against a government entity or employee, includes both of the following, as applicable:

(a) The approximate amount of the compensation, and the fringe benefits, if any, of the attorney general, an assistant attorney general, or special counsel appointed by the attorney general that has been or will be paid by the state in connection with the legal services that were rendered by the attorney general, assistant attorney general, or special counsel in the civil action or appeal against the government entity or employee, including, but not limited to, a civil action or appeal commenced pro se by an inmate, and that were necessitated by frivolous conduct of an inmate represented by counsel of record, the counsel of record of an inmate, or a pro se inmate.

(b) The approximate amount of the compensation, and the fringe benefits, if any, of a prosecuting attorney or other chief legal officer of a political subdivision, or an assistant to a chief legal officer of those natures, who has been or will be paid by a political subdivision in connection with the legal services that were rendered by the chief legal officer or assistant in the civil action or appeal against the government entity or employee, including, but not limited to, a civil action or appeal commenced pro se by an inmate, and that were necessitated by frivolous conduct of an inmate represented by counsel of record, the counsel of record of an inmate, or a pro se inmate.

(5) "State" has the same meaning as in section 2743.01 of the Revised Code.

(6) "State correctional institution" has the same meaning as in section 2967.01 of the Revised Code.

(B)(1) Subject to divisions (B)(2) and (3), (C), and (D) of this section and except as otherwise provided in division (E)(2)(b) of section 101.15 or division (I)(2)(b) of section 121.22 of the Revised Code, at any time ~~prior to the commencement of the trial in a civil action or within twenty-one days after the entry of judgment in a civil action or at any time prior to the hearing in an appeal of the type described in division (A)(1)(b) of this section that is filed by an inmate or within twenty-one days after the entry of judgment in an appeal of that nature, the court~~ not more than thirty days after the entry of final judgment in a civil action or appeal, any party adversely affected by frivolous conduct may file a motion for an award of court costs, reasonable attorney's fees, and other reasonable expenses incurred in connection with the civil action or appeal ~~to any party to the civil action or appeal who was adversely affected by frivolous conduct~~. The court may assess and make an award ~~may be assessed~~ to any party to the civil

action or appeal who was adversely affected by frivolous conduct, as provided in division (B)(4) of this section.

(2) An award may be made pursuant to division (B)(1) of this section upon the motion of a party to a civil action or an appeal of the type described in that division or on the court's own initiative, but only after the court does all of the following:

(a) Sets a date for a hearing to be conducted in accordance with division (B)(2)(c) of this section, to determine whether particular conduct was frivolous, to determine, if the conduct was frivolous, whether any party was adversely affected by it, and to determine, if an award is to be made, the amount of that award;

(b) Gives notice of the date of the hearing described in division (B)(2)(a) of this section to each party or counsel of record who allegedly engaged in frivolous conduct and to each party who allegedly was adversely affected by frivolous conduct;

(c) Conducts the hearing described in division (B)(2)(a) of this section in accordance with this division, allows the parties and counsel of record involved to present any relevant evidence at the hearing, including evidence of the type described in division (B)(5) of this section, determines that the conduct involved was frivolous and that a party was adversely affected by it, and then determines the amount of the award to be made. If any party or counsel of record who allegedly engaged in or allegedly was adversely affected by frivolous conduct is confined in a state correctional institution or in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, the court, if practicable, may hold the hearing by telephone or, in the alternative, at the institution, jail, or workhouse in which the party or counsel is confined.

(3) The amount of an award made pursuant to division (B)(1) of this section that represents reasonable attorney's fees shall not exceed, and may be equal to or less than, whichever of the following is applicable:

(a) If the party is being represented on a contingent fee basis, an amount that corresponds to reasonable fees that would have been charged for legal services had the party been represented on an hourly fee basis or another basis other than a contingent fee basis;

(b) In all situations other than that described in division (B)(3)(a) of this section, the attorney's fees that were reasonably incurred by a party.

(4) An award made pursuant to division (B)(1) of this section may be made against a party, the party's counsel of record, or both.

(5)(a) In connection with the hearing described in division (B)(2)(a) of this section, each party who may be awarded reasonable attorney's fees and

the party's counsel of record may submit to the court or be ordered by the court to submit to it, for consideration in determining the amount of the reasonable attorney's fees, an itemized list or other evidence of the legal services rendered, the time expended in rendering the services, and whichever of the following is applicable:

(i) If the party is being represented by that counsel on a contingent fee basis, the reasonable attorney's fees that would have been associated with those services had the party been represented by that counsel on an hourly fee basis or another basis other than a contingent fee basis;

(ii) In all situations other than those described in division (B)(5)(a)(i) of this section, the attorney's fees associated with those services.

(b) In connection with the hearing described in division (B)(2)(a) of this section, each party who may be awarded court costs and other reasonable expenses incurred in connection with the civil action or appeal may submit to the court or be ordered by the court to submit to it, for consideration in determining the amount of the costs and expenses, an itemized list or other evidence of the costs and expenses <u>that were</u> incurred in connection with that action or appeal <u>and that were necessitated by the frivolous conduct</u>, including, but not limited to, expert witness fees and expenses associated with discovery.

(C) An award of reasonable attorney's fees under this section does not affect or determine the amount of or the manner of computation of attorney's fees as between an attorney and the attorney's client.

(D) This section does not affect or limit the application of any provision of the Rules of Civil Procedure, the Rules of Appellate Procedure, or another court rule or section of the Revised Code to the extent that the provision prohibits an award of court costs, attorney's fees, or other expenses incurred in connection with a particular civil action or appeal or authorizes an award of court costs, attorney's fees, or other expenses incurred in connection with a particular civil action or appeal in a specified manner, generally, or subject to limitations.

Sec. 2505.02. (A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction,

attachment, discovery of privileged matter, suppression of evidence, ~~or~~ a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A)(3) of section 2307.93 of the Revised Code.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 3929.71, 4705.15, and 5111.018, and the enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code <u>or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the Revised Code</u>.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

Sec. 3719.81. (A) A person may furnish another a sample of any drug of

abuse, or of any drug or pharmaceutical preparation that would be hazardous to health or safety if used without the supervision of a licensed health professional authorized to prescribe drugs, if all of the following apply:

(1) The sample is furnished by a manufacturer, manufacturer's representative, or wholesale dealer in pharmaceuticals to a licensed health professional authorized to prescribe drugs, or is furnished by such a professional to a patient for use as medication;

(2) The drug is in the original container in which it was placed by the manufacturer, and the container is plainly marked as a sample;

(3) Prior to its being furnished, the drug sample has been stored under the proper conditions to prevent its deterioration or contamination;

(4) If the drug is of a type which deteriorates with time, the sample container is plainly marked with the date beyond which the drug sample is unsafe to use, and the date has not expired on the sample furnished. Compliance with the labeling requirements of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, shall be deemed compliance with this section.

(5) The drug is distributed, stored, or discarded in such a way that the drug sample may not be acquired or used by any unauthorized person, or by any person, including a child, for whom it may present a health or safety hazard.

(B) Division (A) of this section does not do any of the following:

(1) Apply to or restrict the furnishing of any sample of a nonnarcotic substance if the substance may, under the "Federal Food, Drug, and Cosmetic Act" and under the laws of this state, otherwise be lawfully sold over the counter without a prescription;

(2) Authorize a licensed health professional authorized to prescribe drugs who is a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner~~, or advanced practice nurse~~ to furnish a sample of a drug that is not a drug the nurse is authorized to prescribe;

(3) Authorize an optometrist to furnish a sample of a drug that is not a drug the optometrist is authorized to prescribe.

(C) The state board of pharmacy shall, in accordance with Chapter 119. of the Revised Code, adopt rules as necessary to give effect to this section.

Sec. 4507.07. (A) The registrar of motor vehicles shall not grant the application of any minor under eighteen years of age for a probationary license, a restricted license, or a temporary instruction permit, unless the application is signed by one of the minor's parents, the minor's guardian, another person having custody of the applicant, or, if there is no parent or guardian, a responsible person who is willing to assume the obligation

imposed under this section.

At the time a minor under eighteen years of age submits an application for a license or permit at a driver's license examining station, the adult who signs the application shall present identification establishing that the adult is the individual whose signature appears on the application. The registrar shall prescribe, by rule, the types of identification that are suitable for the purposes of this paragraph. If the adult who signs the application does not provide identification as required by this paragraph, the application shall not be accepted.

When a minor under eighteen years of age applies for a probationary license, a restricted license, or a temporary instruction permit, the registrar shall give the adult who signs the application notice of the potential liability that may be imputed to the adult pursuant to division (B) of this section and notice of how the adult may prevent any liability from being imputed to the adult pursuant to that division.

(B) Any negligence, or willful or wanton misconduct, that is committed by a minor under eighteen years of age when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application of the minor for a probationary license, restricted license, or temporary instruction permit, which person shall be jointly and severally liable with the minor for any damages caused by the negligence or the willful or wanton misconduct. This joint and several liability is not subject to section 2307.22~~,~~ or 2315.36~~, or 2315.46~~ of the Revised Code with respect to a ~~negligence~~ tort claim that otherwise is subject to that section.

There shall be no imputed liability imposed under this division if a minor under eighteen years of age has proof of financial responsibility with respect to the operation of a motor vehicle owned by the minor or, if the minor is not the owner of a motor vehicle, with respect to the minor's operation of any motor vehicle, in the form and in the amounts required under Chapter 4509. of the Revised Code.

(C) Any person who has signed the application of a minor under eighteen years of age for a license or permit subsequently may surrender to the registrar the license or temporary instruction permit of the minor and request that the license or permit be canceled. The registrar then shall cancel the license or temporary instruction permit, and the person who signed the application of the minor shall be relieved from the liability imposed by division (B) of this section.

(D) Any minor under eighteen years of age whose probationary license, restricted license, or temporary instruction permit is surrendered to the registrar by the person who signed the application for the license or permit

and whose license or temporary instruction permit subsequently is canceled by the registrar may obtain a new license or temporary instruction permit without having to undergo the examinations otherwise required by sections 4507.11 and 4507.12 of the Revised Code and without having to tender the fee for that license or temporary instruction permit, if the minor is able to produce another parent, guardian, other person having custody of the minor, or other adult, and that adult is willing to assume the liability imposed under division (B) of this section. That adult shall comply with the procedures contained in division (A) of this section.

Sec. 4513.263. (A) As used in this section and in section 4513.99 of the Revised Code:

(1) "Automobile" means any commercial tractor, passenger car, commercial car, or truck that is required to be factory-equipped with an occupant restraining device for the operator or any passenger by regulations adopted by the United States secretary of transportation pursuant to the "National Traffic and Motor Vehicle Safety Act of 1966," 80 Stat. 719, 15 U.S.C.A. 1392.

(2) "Occupant restraining device" means a seat safety belt, shoulder belt, harness, or other safety device for restraining a person who is an operator of or passenger in an automobile and that satisfies the minimum federal vehicle safety standards established by the United States department of transportation.

(3) "Passenger" means any person in an automobile, other than its operator, who is occupying a seating position for which an occupant restraining device is provided.

(4) "Commercial tractor," "passenger car," and "commercial car" have the same meanings as in section 4501.01 of the Revised Code.

(5) "Vehicle" and "motor vehicle," as used in the definitions of the terms set forth in division (A)(4) of this section, have the same meanings as in section 4511.01 of the Revised Code.

(6) "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 breach of contract or another agreement between persons.

(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;

(4) Operate a taxicab on any street or highway unless all factory-equipped occupant restraining devices in the taxicab are maintained in usable form.

(C) Division (B)(3) of this section does not apply to a person who is required by section 4511.81 of the Revised Code to be secured in a child restraint device. Division (B)(1) of this section does not apply to a person who is an employee of the United States postal service or of a newspaper home delivery service, during any period in which the person is engaged in the operation of an automobile to deliver mail or newspapers to addressees. Divisions (B)(1) and (3) of this section do not apply to a person who has an affidavit signed by a physician licensed to practice in this state under Chapter 4731. of the Revised Code or a chiropractor licensed to practice in this state under Chapter 4734. of the Revised Code that states that the person has a physical impairment that makes use of an occupant restraining device impossible or impractical.

(D) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of division (B) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

(E) All fines collected for violations of division (B) of this section, or for violations of any ordinance or resolution of a political subdivision that is substantively comparable to that division, shall be forwarded to the treasurer of state for deposit as follows:

(1) Eight per cent shall be deposited into the seat belt education fund, which is hereby created in the state treasury, and shall be used by the department of public safety to establish a seat belt education program.

(2) Eight per cent shall be deposited into the elementary school program fund, which is hereby created in the state treasury, and shall be used by the department of public safety to establish and administer elementary school programs that encourage seat safety belt use.

(3) Two per cent shall be deposited into the Ohio medical transportation trust fund created by section 4766.05 of the Revised Code.

(4) Twenty-eight per cent shall be deposited into the trauma and emergency medical services fund, which is hereby created in the state treasury, and shall be used by the department of public safety for the administration of the division of emergency medical services and the state board of emergency medical services.

(5) Fifty-four per cent shall be deposited into the trauma and emergency medical services grants fund, which is hereby created in the state treasury, and shall be used by the state board of emergency medical services to make grants, in accordance with section 4765.07 of the Revised Code and rules the board adopts under section 4765.11 of the Revised Code.

(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 ~~the~~ that person is wearing all of the available elements of ~~such~~ 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~~, shall not~~. 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 ~~for~~ of compensatory damages that represents noneconomic loss, as defined in section 2307.011 of the Revised Code, in ~~any civil~~ a tort action ~~involving the person arising from the ownership, maintenance, or operation of an automobile;~~ 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 ~~any civil or~~ 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.

~~(3) As used in division (F)(2) of this section, "tort action" means a civil action for damages for injury, death, or loss to person or property. "Tort action" includes a product liability claim 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 a contract or another agreement between persons.~~

(G)(1) Whoever violates division (B)(1) of this section shall be fined thirty dollars.

(2) Whoever violates division (B)(3) of this section shall be fined twenty dollars.

(3) Except as otherwise provided in this division, whoever violates division (B)(4) of this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to a violation of division (B)(4) of this section, whoever violates division (B)(4) of this section is guilty of a misdemeanor of the third degree.

Sec. 4713.02. (A) There is hereby created the state board of cosmetology, consisting of all of the following members appointed by the governor, with the advice and consent of the senate:

(1) One person holding a current, valid cosmetologist, managing cosmetologist, or cosmetology instructor license at the time of appointment;

(2) Two persons holding current, valid managing cosmetologist licenses and actively engaged in managing beauty salons at the time of appointment;

(3) One person who holds a current, valid independent contractor license at the time of appointment or the owner or manager of a licensed

salon in which at least one person holding a current, valid independent contractor license practices a branch of cosmetology;

(4) One person who represents individuals who teach the theory and practice of a branch of cosmetology at a vocational school;

(5) One owner of a licensed school of cosmetology;

(6) One owner of at least five licensed salons;

(7) One person who is either ~~an advanced practice nurse approved under section 4723.55 of the Revised Code,~~ a certified nurse practitioner or clinical nurse specialist holding a certificate of authority issued under ~~section 4723.41~~ Chapter 4723. of the Revised Code, or a physician authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery;

(8) One person representing the general public.

(B) The superintendent of public instruction shall nominate three persons for the governor to choose from when making an appointment under division (A)(4) of this section.

(C) All members shall be at least twenty-five years of age, residents of the state, and citizens of the United States. No more than two members, at any time, shall be graduates of the same school of cosmetology.

Except for the initial members appointed under divisions (A)(3) and (4) of this section, terms of office are for five years. The term of the initial member appointed under division (A)(3) of this section shall be three years. The term of the initial member appointed under division (A)(4) of this section shall be four years. Terms shall commence on the first day of November and end on the thirty-first day of October. Each member shall hold office from the date of appointment until the end of the term for which appointed. In case of a vacancy occurring on the board, the governor shall, in the same manner prescribed for the regular appointment to the board, fill the vacancy by appointing a member. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. Any member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of sixty days has elapsed, whichever occurs first. Before entering upon the discharge of the duties of the office of member, each member shall take, and file with the secretary of state, the oath of office required by Section 7 of Article XV, Ohio Constitution.

The members of the board shall receive an amount fixed pursuant to Chapter 124. of the Revised Code per diem for every meeting of the board which they attend, together with their necessary expenses, and mileage for

each mile necessarily traveled.

The members of the board shall annually elect, from among their number, a chairperson.

The board shall prescribe the duties of its officers and establish an office at Columbus, Ohio. The board shall keep all records and files at the office and have the records and files at all reasonable hours open to public inspection. The board also shall adopt a seal.

Sec. 4715.42. (A)(1) As used in this section, "indigent and uninsured person" and "operation" have the same meanings as in section 2305.234 of the Revised Code.

(2) For the purposes of this section, a person shall be considered retired from practice if the person's license has been surrendered or allowed to expire with the intention of ceasing to practice as a dentist or dental hygienist for remuneration.

(B) ~~The~~ Within thirty days after receiving an application for a volunteer's certificate that includes all of the items listed in divisions (C)(1), (2), and (3) of this section, the state dental board ~~may~~ shall issue, without examination, a volunteer's certificate to a person who is retired from practice so that the person may provide dental services to indigent and uninsured persons.

(C) An application for a volunteer's certificate shall include all of the following:

(1) A copy of the applicant's degree from dental college or dental hygiene school.

(2) One of the following, as applicable:

(a) A copy of the applicant's most recent license to practice dentistry or dental hygiene issued by a jurisdiction in the United States that licenses persons to practice dentistry or dental hygiene.

(b) A copy of the applicant's most recent license equivalent to a license to practice dentistry or dental hygiene in one or more branches of the United States armed services that the United States government issued.

(3) Evidence of one of the following, as applicable:

(a) The applicant has maintained for at least ten years prior to retirement full licensure in good standing in any jurisdiction in the United States that licenses persons to practice dentistry or dental hygiene.

(b) The applicant has practiced as a dentist or dental hygienist in good standing for at least ten years prior to retirement in one or more branches of the United States armed services.

~~(4) A notarized statement from the applicant, on a form prescribed by the board, that the applicant will not accept any form of remuneration for~~

~~any dental services rendered while in possession of a volunteer's certificate.~~

(D) The holder of a volunteer's certificate may provide dental services only to indigent and uninsured persons. The holder shall not accept any form of remuneration for providing dental services while in possession of the certificate. Except in a dental emergency, the holder shall not perform any operation. The board may revoke a volunteer's certificate on receiving proof satisfactory to the board that the holder has engaged in practice in this state outside the scope of the holder's certificate or that there are grounds for action against the person under section 4715.30 of the Revised Code.

(E)(1) A volunteer's certificate shall be valid for a period of three years, and may be renewed upon the application of the holder, unless the certificate was previously revoked under division (D) of this section. The board shall maintain a register of all persons who hold volunteer's certificates. The board shall not charge a fee for issuing or renewing a certificate pursuant to this section.

(2) To be eligible for renewal of a volunteer's certificate, the holder of the certificate shall certify to the board completion of sixty hours of continuing dental education that meets the requirements of section 4715.141 of the Revised Code and the rules adopted under that section, or completion of eighteen hours of continuing dental hygiene education that meets the requirements of section 4715.25 of the Revised Code and the rules adopted under that section, as the case may be. The board may not renew a certificate if the holder has not complied with the appropriate continuing education requirements. Any entity for which the holder provides dental services may pay for or reimburse the holder for any costs incurred in obtaining the required continuing education credits.

(3) The board shall issue to each person who qualifies under this section for a volunteer's certificate a wallet certificate and a wall certificate that state that the certificate holder is authorized to provide dental services pursuant to the laws of this state. The holder shall keep the wallet certificate on the holder's person while providing dental services and shall display the wall certificate prominently at the location where the holder primarily practices.

(4) The holder of a volunteer's certificate issued pursuant to this section is subject to the immunity provisions in section 2305.234 of the Revised Code.

(F) The board shall adopt rules in accordance with Chapter 119. of the Revised Code to administer and enforce this section.

(G) Within ninety days after the effective date of this amendment, the state dental board shall make available through the board's website the

application form for a volunteer's certificate under this section, a description of the application process, and a list of all items that are required by division (C) of this section to be submitted with the application.

Sec. 4723.01. As used in this chapter:

(A) "Registered nurse" means an individual who holds a current, valid license issued under this chapter that authorizes the practice of nursing as a registered nurse.

(B) "Practice of nursing as a registered nurse" means providing to individuals and groups nursing care requiring specialized knowledge, judgment, and skill derived from the principles of biological, physical, behavioral, social, and nursing sciences. Such nursing care includes:

(1) Identifying patterns of human responses to actual or potential health problems amenable to a nursing regimen;

(2) Executing a nursing regimen through the selection, performance, management, and evaluation of nursing actions;

(3) Assessing health status for the purpose of providing nursing care;

(4) Providing health counseling and health teaching;

(5) Administering medications, treatments, and executing regimens authorized by an individual who is authorized to practice in this state and is acting within the course of the individual's professional practice;

(6) Teaching, administering, supervising, delegating, and evaluating nursing practice.

(C) "Nursing regimen" may include preventative, restorative, and health-promotion activities.

(D) "Assessing health status" means the collection of data through nursing assessment techniques, which may include interviews, observation, and physical evaluations for the purpose of providing nursing care.

(E) "Licensed practical nurse" means an individual who holds a current, valid license issued under this chapter that authorizes the practice of nursing as a licensed practical nurse.

(F) "The practice of nursing as a licensed practical nurse" means providing to individuals and groups nursing care requiring the application of basic knowledge of the biological, physical, behavioral, social, and nursing sciences at the direction of a licensed physician, dentist, podiatrist, optometrist, chiropractor, or registered nurse. Such nursing care includes:

(1) Observation, patient teaching, and care in a diversity of health care settings;

(2) Contributions to the planning, implementation, and evaluation of nursing;

(3) Administration of medications and treatments authorized by an

individual who is authorized to practice in this state and is acting within the course of the individual's professional practice, except that administration of intravenous therapy shall be performed only in accordance with section 4723.17 or 4723.171 of the Revised Code. Medications may be administered by a licensed practical nurse upon proof of completion of a course in medication administration approved by the board of nursing.

(4) Administration to an adult of intravenous therapy authorized by an individual who is authorized to practice in this state and is acting within the course of the individual's professional practice, on the condition that the licensed practical nurse is authorized under section 4723.17 or 4723.171 of the Revised Code to perform intravenous therapy and performs intravenous therapy only in accordance with those sections.

(G) "Certified registered nurse anesthetist" means a registered nurse who holds a valid certificate of authority issued under this chapter that authorizes the practice of nursing as a certified registered nurse anesthetist in accordance with section 4723.43 of the Revised Code and rules adopted by the board of nursing.

(H) "Clinical nurse specialist" means a registered nurse who holds a valid certificate of authority issued under this chapter that authorizes the practice of nursing as a clinical nurse specialist in accordance with section 4723.43 of the Revised Code and rules adopted by the board of nursing.

(I) "Certified nurse-midwife" means a registered nurse who holds a valid certificate of authority issued under this chapter that authorizes the practice of nursing as a certified nurse-midwife in accordance with section 4723.43 of the Revised Code and rules adopted by the board of nursing.

(J) "Certified nurse practitioner" means a registered nurse who holds a valid certificate of authority issued under this chapter that authorizes the practice of nursing as a certified nurse practitioner in accordance with section 4723.43 of the Revised Code and rules adopted by the board of nursing.

(K) "Physician" means an individual authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.

(L) "Collaboration" or "collaborating" means the following:

(1) In the case of a clinical nurse specialist, except as provided in division (L)(3) of this section, or a certified nurse practitioner, that one or more podiatrists acting within the scope of practice of podiatry in accordance with section 4731.51 of the Revised Code and with whom the nurse has entered into a standard care arrangement or one or more physicians with whom the nurse has entered into a standard care

arrangement are continuously available to communicate with the clinical nurse specialist or certified nurse practitioner either in person or by radio, telephone, or other form of telecommunication;

(2) In the case of a certified nurse-midwife, that one or more physicians with whom the certified nurse-midwife has entered into a standard care arrangement are continuously available to communicate with the certified nurse-midwife either in person or by radio, telephone, or other form of telecommunication;

(3) In the case of a clinical nurse specialist who practices the nursing specialty of mental health or psychiatric mental health without being authorized to prescribe drugs and therapeutic devices, that one or more physicians are continuously available to communicate with the nurse either in person or by radio, telephone, or other form of telecommunication.

(M) "Supervision," as it pertains to a certified registered nurse anesthetist, means that the certified registered nurse anesthetist is under the direction of a podiatrist acting within the podiatrist's scope of practice in accordance with section 4731.51 of the Revised Code, a dentist acting within the dentist's scope of practice in accordance with Chapter 4715. of the Revised Code, or a physician, and, when administering anesthesia, the certified registered nurse anesthetist is in the immediate presence of the podiatrist, dentist, or physician.

(N) "Standard care arrangement~~,~~" ~~except as it pertains to an advanced practice nurse,~~ means a written, formal guide for planning and evaluating a patient's health care that is developed by one or more collaborating physicians or podiatrists and a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner and meets the requirements of section 4723.431 of the Revised Code.

(O) "Advanced practice nurse~~,~~" ~~until three years and eight months after May 17, 2000,~~ means a ~~registered nurse who is approved by the board of nursing under section 4723.55 of the Revised Code to practice as an advanced practice nurse~~ certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner.

(P) "Dialysis care" means the care and procedures that a dialysis technician is authorized to provide and perform, as specified in section 4723.72 of the Revised Code.

(Q) "Dialysis technician" means an individual who holds a current, valid certificate or temporary certificate issued under this chapter that authorizes the individual to practice as a dialysis technician in accordance with section 4723.72 of the Revised Code.

(R) "Certified community health worker" means an individual who

holds a current, valid certificate as a community health worker issued by the board of nursing under section 4723.85 of the Revised Code.

Sec. 4723.03. (A) No person shall engage in the practice of nursing as a registered nurse, represent the person as being a registered nurse, or use the title "registered nurse," the initials "R.N.," or any other title implying that the person is a registered nurse, for a fee, salary, or other consideration, or as a volunteer, without holding a current, valid license as a registered nurse under this chapter.

(B) No person shall engage in the practice of nursing as a licensed practical nurse, represent the person as being a licensed practical nurse, or use the title "licensed practical nurse," the initials "L.P.N.," or any other title implying that the person is a licensed practical nurse, for a fee, salary, or other consideration, or as a volunteer, without holding a current, valid license as a practical nurse under this chapter.

(C) No person shall use the titles or initials "graduate nurse," "G.N.," "professional nurse," "P.N.," "graduate practical nurse," "G.P.N.," "practical nurse," "P.N.," "trained nurse," "T.N.," or any other statement, title, or initials that would imply or represent to the public that the person is authorized to practice nursing in this state, except as follows:

(1) A person licensed under this chapter to practice nursing as a registered nurse may use that title and the initials "R.N.";

(2) A person licensed under this chapter to practice nursing as a licensed practical nurse may use that title and the initials "L.P.N.";

(3) A person authorized under this chapter to practice nursing as a certified registered nurse anesthetist may use that title, the initials "C.R.N.A." or "N.A.," and any other title or initials approved by the board of nursing;

(4) A person authorized under this chapter to practice nursing as a clinical nurse specialist may use that title, the initials "C.N.S.," and any other title or initials approved by the board;

(5) A person authorized under this chapter to practice nursing as a certified nurse-midwife may use that title, the initials "C.N.M.," and any other title or initials approved by the board;

(6) A person authorized under this chapter to practice nursing as a certified nurse practitioner may use that title, the initials "C.N.P.," and any other title or initials approved by the board;

(7) A person authorized under this chapter to practice as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner may use the title "advanced practice nurse" or the initials "A.P.N."

(D) No person shall employ a person not licensed as a registered nurse under this chapter to engage in the practice of nursing as a registered nurse. No person shall employ a person not licensed as a practical nurse under this chapter to engage in the practice of nursing as a licensed practical nurse.

(E) No person shall sell or fraudulently obtain or furnish any nursing diploma, license, certificate, renewal, or record, or aid or abet such acts.

Sec. 4723.28. (A) The board of nursing, by a vote of a quorum, may revoke or may refuse to grant a nursing license, certificate of authority, or dialysis technician certificate to a person found by the board to have committed fraud in passing an examination required to obtain the license, certificate of authority, or dialysis technician certificate or to have committed fraud, misrepresentation, or deception in applying for or securing any nursing license, certificate of authority, or dialysis technician certificate issued by the board.

(B) Subject to division (N) of this section, the board of nursing, by a vote of a quorum, may impose one or more of the following sanctions: deny, revoke, suspend, or place restrictions on any nursing license, certificate of authority, or dialysis technician certificate issued by the board; reprimand or otherwise discipline a holder of a nursing license, certificate of authority, or dialysis technician certificate; or impose a fine of not more than five hundred dollars per violation. The sanctions may be imposed for any of the following:

(1) Denial, revocation, suspension, or restriction of authority to practice a health care occupation, including nursing or practice as a dialysis technician, for any reason other than a failure to renew, in Ohio or another state or jurisdiction;

(2) Engaging in the practice of nursing or engaging in practice as a dialysis technician, having failed to renew a nursing license or dialysis technician certificate issued under this chapter, or while a nursing license or dialysis technician certificate is under suspension;

(3) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice;

(4) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for intervention in lieu of conviction for, any felony or of any crime involving gross immorality or moral turpitude;

(5) Selling, giving away, or administering drugs or therapeutic devices for other than legal and legitimate therapeutic purposes; or conviction of, a

plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for intervention in lieu of conviction for, violating any municipal, state, county, or federal drug law;

(6) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for intervention in lieu of conviction for, an act in another jurisdiction that would constitute a felony or a crime of moral turpitude in Ohio;

(7) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for intervention in lieu of conviction for, an act in the course of practice in another jurisdiction that would constitute a misdemeanor in Ohio;

(8) Self-administering or otherwise taking into the body any dangerous drug, as defined in section 4729.01 of the Revised Code, in any way not in accordance with a legal, valid prescription issued for that individual;

(9) Habitual indulgence in the use of controlled substances, other habit-forming drugs, or alcohol or other chemical substances to an extent that impairs ability to practice;

(10) Impairment of the ability to practice according to acceptable and prevailing standards of safe nursing care because of habitual or excessive use of drugs, alcohol, or other chemical substances that impair the ability to practice;

(11) Impairment of the ability to practice according to acceptable and prevailing standards of safe nursing care because of a physical or mental disability;

(12) Assaulting or causing harm to a patient or depriving a patient of the means to summon assistance;

(13) Obtaining or attempting to obtain money or anything of value by intentional misrepresentation or material deception in the course of practice;

(14) Adjudication by a probate court of being mentally ill or mentally incompetent. The board may restore the person's nursing license or dialysis technician certificate upon adjudication by a probate court of the person's restoration to competency or upon submission to the board of other proof of competency.

(15) The suspension or termination of employment by the department of defense or the veterans administration of the United States for any act that violates or would violate this chapter;

(16) Violation of this chapter or any rules adopted under it;

(17) Violation of any restrictions placed on a nursing license or dialysis technician certificate by the board;

(18) Failure to use universal blood and body fluid precautions established by rules adopted under section 4723.07 of the Revised Code;

(19) Failure to practice in accordance with acceptable and prevailing standards of safe nursing care or safe dialysis care;

(20) In the case of a registered nurse, engaging in activities that exceed the practice of nursing as a registered nurse;

(21) In the case of a licensed practical nurse, engaging in activities that exceed the practice of nursing as a licensed practical nurse;

(22) In the case of a dialysis technician, engaging in activities that exceed those permitted under section 4723.72 of the Revised Code;

(23) Aiding and abetting a person in that person's practice of nursing without a license or practice as a dialysis technician without a certificate issued under this chapter;

(24) In the case of a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner, ~~or advanced practice nurse,~~ except as provided in division (M) of this section, either of the following:

(a) Waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers such nursing services, would otherwise be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from that provider;

(b) Advertising that the nurse will waive the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers such nursing services, would otherwise be required to pay.

(25) Failure to comply with the terms and conditions of participation in the chemical dependency monitoring program established under section 4723.35 of the Revised Code;

(26) Failure to comply with the terms and conditions required under the practice intervention and improvement program established under section 4723.282 of the Revised Code;

(27) In the case of a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner:

(a) Engaging in activities that exceed those permitted for the nurse's nursing specialty under section 4723.43 of the Revised Code;

(b) Failure to meet the quality assurance standards established under section 4723.07 of the Revised Code.

(28) In the case of a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner, failure to maintain a standard care arrangement in accordance with section 4723.431 of the Revised Code or to practice in accordance with the standard care arrangement;

(29) In the case of a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a certificate to prescribe issued under section 4723.48 of the Revised Code, failure to prescribe drugs and therapeutic devices in accordance with section 4723.481 of the Revised Code;

(30) Prescribing any drug or device to perform or induce an abortion, or otherwise performing or inducing an abortion;

(31) Failure to establish and maintain professional boundaries with a patient, as specified in rules adopted under section 4723.07 of the Revised Code;

(32) Regardless of whether the contact or verbal behavior is consensual, engaging with a patient other than the spouse of the registered nurse, licensed practical nurse, or dialysis technician in any of the following:

(a) Sexual contact, as defined in section 2907.01 of the Revised Code;

(b) Verbal behavior that is sexually demeaning to the patient or may be reasonably interpreted by the patient as sexually demeaning.

(33) Assisting suicide as defined in section 3795.01 of the Revised Code.

(C) Disciplinary actions taken by the board under divisions (A) and (B) of this section shall be taken pursuant to an adjudication conducted under Chapter 119. of the Revised Code, except that in lieu of a hearing, the board may enter into a consent agreement with an individual to resolve an allegation of a violation of this chapter or any rule adopted under it. A consent agreement, when ratified by a vote of a quorum, shall constitute the findings and order of the board with respect to the matter addressed in the agreement. If the board refuses to ratify a consent agreement, the admissions and findings contained in the agreement shall be of no effect.

(D) The hearings of the board shall be conducted in accordance with Chapter 119. of the Revised Code, the board may appoint a hearing examiner, as provided in section 119.09 of the Revised Code, to conduct any hearing the board is authorized to hold under Chapter 119. of the Revised Code.

In any instance in which the board is required under Chapter 119. of the Revised Code to give notice of an opportunity for a hearing and the applicant or license holder does not make a timely request for a hearing in accordance with section 119.07 of the Revised Code, the board is not

required to hold a hearing, but may adopt, by a vote of a quorum, a final order that contains the board's findings. In the final order, the board may order any of the sanctions listed in division (A) or (B) of this section.

(E) If a criminal action is brought against a registered nurse, licensed practical nurse, or dialysis technician for an act or crime described in divisions (B)(3) to (7) of this section and the action is dismissed by the trial court other than on the merits, the board shall conduct an adjudication to determine whether the registered nurse, licensed practical nurse, or dialysis technician committed the act on which the action was based. If the board determines on the basis of the adjudication that the registered nurse, licensed practical nurse, or dialysis technician committed the act, or if the registered nurse, licensed practical nurse, or dialysis technician fails to participate in the adjudication, the board may take action as though the registered nurse, licensed practical nurse, or dialysis technician had been convicted of the act.

If the board takes action on the basis of a conviction, plea, or a judicial finding as described in divisions (B)(3) to (7) of this section that is overturned on appeal, the registered nurse, licensed practical nurse, or dialysis technician may, on exhaustion of the appeal process, petition the board for reconsideration of its action. On receipt of the petition and supporting court documents, the board shall temporarily rescind its action. If the board determines that the decision on appeal was a decision on the merits, it shall permanently rescind its action. If the board determines that the decision on appeal was not a decision on the merits, it shall conduct an adjudication to determine whether the registered nurse, licensed practical nurse, or dialysis technician committed the act on which the original conviction, plea, or judicial finding was based. If the board determines on the basis of the adjudication that the registered nurse, licensed practical nurse, or dialysis technician committed such act, or if the registered nurse, licensed practical nurse, or dialysis technician does not request an adjudication, the board shall reinstate its action; otherwise, the board shall permanently rescind its action.

Notwithstanding the provision of division (C)(2) of section 2953.32 of the Revised Code specifying that if records pertaining to a criminal case are sealed under that section the proceedings in the case shall be deemed not to have occurred, sealing of the records of a conviction on which the board has based an action under this section shall have no effect on the board's action or any sanction imposed by the board under this section.

The board shall not be required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.

(F) The board may investigate an individual's criminal background in

performing its duties under this section.

(G) During the course of an investigation conducted under this section, the board may compel any registered nurse, licensed practical nurse, or dialysis technician or applicant under this chapter to submit to a mental or physical examination, or both, as required by the board and at the expense of the individual, if the board finds reason to believe that the individual under investigation may have a physical or mental impairment that may affect the individual's ability to provide safe nursing care. Failure of any individual to submit to a mental or physical examination when directed constitutes an admission of the allegations, unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence.

If the board finds that an individual is impaired, the board shall require the individual to submit to care, counseling, or treatment approved or designated by the board, as a condition for initial, continued, reinstated, or renewed authority to practice. The individual shall be afforded an opportunity to demonstrate to the board that the individual can begin or resume the individual's occupation in compliance with acceptable and prevailing standards of care under the provisions of the individual's authority to practice.

For purposes of this division, any registered nurse, licensed practical nurse, or dialysis technician or applicant under this chapter shall be deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the board, and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication.

(H) The board shall investigate evidence that appears to show that any person has violated any provision of this chapter or any rule of the board. Any person may report to the board any information the person may have that appears to show a violation of any provision of this chapter or rule of the board. In the absence of bad faith, any person who reports such information or who testifies before the board in any adjudication conducted under Chapter 119. of the Revised Code shall not be liable for civil damages as a result of the report or testimony.

(I) All of the following apply under this chapter with respect to the confidentiality of information:

(1) Information received by the board pursuant to an investigation is confidential and not subject to discovery in any civil action, except that the board may disclose information to law enforcement officers and government entities investigating a registered nurse, licensed practical nurse, or dialysis

technician or a person who may have engaged in the unauthorized practice of nursing. No law enforcement officer or government entity with knowledge of any information disclosed by the board pursuant to this division shall divulge the information to any other person or government entity except for the purpose of an adjudication by a court or licensing or registration board or officer to which the person to whom the information relates is a party.

(2) If an investigation requires a review of patient records, the investigation and proceeding shall be conducted in such a manner as to protect patient confidentiality.

(3) All adjudications and investigations of the board shall be considered civil actions for the purposes of section 2305.252 of the Revised Code.

(4) Any board activity that involves continued monitoring of an individual as part of or following any disciplinary action taken under this section shall be conducted in a manner that maintains the individual's confidentiality. Information received or maintained by the board with respect to the board's monitoring activities is confidential and not subject to discovery in any civil action.

(J) Any action taken by the board under this section resulting in a suspension from practice shall be accompanied by a written statement of the conditions under which the person may be reinstated to practice.

(K) When the board refuses to grant a license or certificate to an applicant, revokes a license or certificate, or refuses to reinstate a license or certificate, the board may specify that its action is permanent. An individual subject to permanent action taken by the board is forever ineligible to hold a license or certificate of the type that was refused or revoked and the board shall not accept from the individual an application for reinstatement of the license or certificate or for a new license or certificate.

(L) No unilateral surrender of a nursing license, certificate of authority, or dialysis technician certificate issued under this chapter shall be effective unless accepted by majority vote of the board. No application for a nursing license, certificate of authority, or dialysis technician certificate issued under this chapter may be withdrawn without a majority vote of the board. The board's jurisdiction to take disciplinary action under this section is not removed or limited when an individual has a license or certificate classified as inactive or fails to renew a license or certificate.

(M) Sanctions shall not be imposed under division (B)(24) of this section against any licensee who waives deductibles and copayments as follows:

(1) In compliance with the health benefit plan that expressly allows such

a practice. Waiver of the deductibles or copayments shall be made only with the full knowledge and consent of the plan purchaser, payer, and third-party administrator. Documentation of the consent shall be made available to the board upon request.

(2) For professional services rendered to any other person licensed pursuant to this chapter to the extent allowed by this chapter and the rules of the board.

(N)(1) Any person who enters a prelicensure nursing education program on or after June 1, 2003, and who subsequently applies under division (A) of section 4723.09 of the Revised Code for licensure to practice as a registered nurse or as a licensed practical nurse and any person who applies under division (B) of that section for license by endorsement to practice nursing as a registered nurse or as a licensed practical nurse shall submit a request to the bureau of criminal identification and investigation for the bureau to conduct a criminal records check of the applicant and to send the results to the board, in accordance with section 4723.09 of the Revised Code.

The board shall refuse to grant a license to practice nursing as a registered nurse or as a licensed practical nurse under section 4723.09 of the Revised Code to a person who entered a prelicensure nursing education program on or after June 1, 2003, and applied under division (A) of section 4723.09 of the Revised Code for the license or a person who applied under division (B) of that section for the license, if the criminal records check performed in accordance with division (C) of that section indicates that the person has pleaded guilty to, been convicted of, or has had a judicial finding of guilt for violating section 2903.01, 2903.02, 2903.03, 2903.11, 2905.01, 2907.02, 2907.03, 2907.05, 2909.02, 2911.01, or 2911.11 of the Revised Code or a substantially similar law of another state, the United States, or another country.

(2) Any person who enters a dialysis training program on or after June 1, 2003, and who subsequently applies for a certificate to practice as a dialysis technician shall submit a request to the bureau of criminal identification and investigation for the bureau to conduct a criminal records check of the applicant and to send the results to the board, in accordance with section 4723.75 of the Revised Code.

The board shall refuse to issue a certificate to practice as a dialysis technician under section 4723.75 of the Revised Code to a person who entered a dialysis training program on or after June 1, 2003, and whose criminal records check performed in accordance with division (C) of that section indicates that the person has pleaded guilty to, been convicted of, or has had a judicial finding of guilt for violating section 2903.01, 2903.02,

2903.03, 2903.11, 2905.01, 2907.02, 2907.03, 2907.05, 2909.02, 2911.01, or 2911.11 of the Revised Code or a substantially similar law of another state, the United States, or another country.

Sec. 4723.43. A certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner may provide to individuals and groups nursing care that requires knowledge and skill obtained from advanced formal education and clinical experience. In this capacity as an advanced practice nurse, a certified nurse-midwife is subject to division (A) of this section, a certified registered nurse anesthetist is subject to division (B) of this section, a certified nurse practitioner is subject to division (C) of this section, and a clinical nurse specialist is subject to division (D) of this section.

(A) A nurse authorized to practice as a certified nurse-midwife, in collaboration with one or more physicians, may provide the management of preventive services and those primary care services necessary to provide health care to women antepartally, intrapartally, postpartally, and gynecologically, consistent with the nurse's education and certification, and in accordance with rules adopted by the board.

No certified nurse-midwife may perform version, deliver breech or face presentation, use forceps, do any obstetric operation, or treat any other abnormal condition, except in emergencies. Division (A) of this section does not prohibit a certified nurse-midwife from performing episiotomies or normal vaginal deliveries, or repairing vaginal tears. A certified nurse-midwife who holds a certificate to prescribe issued under section 4723.48 of the Revised Code may, in collaboration with one or more physicians, prescribe drugs and therapeutic devices in accordance with section 4723.481 of the Revised Code.

(B) A nurse authorized to practice as a certified registered nurse anesthetist, with the supervision and in the immediate presence of a physician, podiatrist, or dentist, may administer anesthesia and perform anesthesia induction, maintenance, and emergence, and may perform with supervision preanesthetic preparation and evaluation, postanesthesia care, and clinical support functions, consistent with the nurse's education and certification, and in accordance with rules adopted by the board. A certified registered nurse anesthetist is not required to obtain a certificate to prescribe in order to provide the anesthesia care described in this division.

The physician, podiatrist, or dentist supervising a certified registered nurse anesthetist must be actively engaged in practice in this state. When a certified registered nurse anesthetist is supervised by a podiatrist, the nurse's scope of practice is limited to the anesthesia procedures that the podiatrist

has the authority under section 4731.51 of the Revised Code to perform. A certified registered nurse anesthetist may not administer general anesthesia under the supervision of a podiatrist in a podiatrist's office. When a certified registered nurse anesthetist is supervised by a dentist, the nurse's scope of practice is limited to the anesthesia procedures that the dentist has the authority under Chapter 4715. of the Revised Code to perform.

(C) A nurse authorized to practice as a certified nurse practitioner, in collaboration with one or more physicians or podiatrists, may provide preventive and primary care services and evaluate and promote patient wellness within the nurse's nursing specialty, consistent with the nurse's education and certification, and in accordance with rules adopted by the board. A certified nurse practitioner who holds a certificate to prescribe issued under section 4723.48 of the Revised Code may, in collaboration with one or more physicians or podiatrists, prescribe drugs and therapeutic devices in accordance with section 4723.481 of the Revised Code.

When a certified nurse practitioner is collaborating with a podiatrist, the nurse's scope of practice is limited to the procedures that the podiatrist has the authority under section 4731.51 of the Revised Code to perform.

(D) A nurse authorized to practice as a clinical nurse specialist, in collaboration with one or more physicians or podiatrists, may provide and manage the care of individuals and groups with complex health problems and provide health care services that promote, improve, and manage health care within the nurse's nursing specialty, consistent with the nurse's education and in accordance with rules adopted by the board. A clinical nurse specialist who holds a certificate to prescribe issued under section 4723.48 of the Revised Code may, in collaboration with one or more physicians or podiatrists, prescribe drugs and therapeutic devices in accordance with section 4723.481 of the Revised Code.

When a clinical nurse specialist is collaborating with a podiatrist, the nurse's scope of practice is limited to the procedures that the podiatrist has the authority under section 4731.51 of the Revised Code to perform.

Sec. 4723.44. (A) No person shall do any of the following unless the person holds a current, valid certificate of authority to practice nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner issued by the board of nursing under this chapter:

(1) Engage in the practice of nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner for a fee, salary, or other consideration, or as a volunteer;

(2) Represent the person as being a certified registered nurse anesthetist,

clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner;

(3) Use any title or initials implying that the person is a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner;

(4) Represent the person as being an advanced practice nurse;

(5) Use any title or initials implying that the person is an advanced practice nurse.

(B) No person who is not certified by the national council on certification of nurse anesthetists of the American association of nurse anesthetists, the national council on recertification of nurse anesthetists of the American association of nurse anesthetists, or another national certifying organization approved by the board under section 4723.46 of the Revised Code shall use the title "certified registered nurse anesthetist" or the initials "C.R.N.A.," or any other title or initial implying that the person has been certified by the council or organization.

(C) No certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner shall do any of the following:

(1) Engage, for a fee, salary, or other consideration, or as a volunteer, in the practice of a nursing specialty other than the specialty designated on the nurse's current, valid certificate of authority issued by the board under this chapter;

(2) Represent the person as being authorized to practice any nursing specialty other than the specialty designated on the current, valid certificate of authority;

(3) Use the title "certified registered nurse anesthetist" or the initials "N.A." or "C.R.N.A.," the title "clinical nurse specialist" or the initials "C.N.S.," the title "certified nurse-midwife" or the initials "C.N.M.," the title "certified nurse practitioner" or the initials "C.N.P.," the title "advanced practice nurse" or the initials "A.P.N.," or any other title or initials implying that the nurse is authorized to practice any nursing specialty other than the specialty designated on the nurse's current, valid certificate of authority;

(4) Enter into a standard care arrangement with a physician or podiatrist whose practice is not the same as or similar to the nurse's nursing specialty;

(5) Prescribe drugs or therapeutic devices unless the nurse holds a current, valid certificate to prescribe issued under section 4723.48 of the Revised Code;

(6) Prescribe drugs or therapeutic devices under a certificate to prescribe in a manner that does not comply with section 4723.481 of the Revised

Code;

(7) Prescribe any drug or device to perform or induce an abortion, or otherwise Perform or induce an abortion.

(D) No person shall knowingly employ a person to engage in the practice of nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner unless the person so employed holds a current, valid certificate of authority to engage in that nursing specialty issued by the board under this chapter.

(E) A certificate certified by the executive director of the board, under the official seal of the board, to the effect that it appears from the records that no certificate of authority to practice nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner has been issued to any person specified therein, or that a certificate, if issued, has been revoked or suspended, shall be received as prima-facie evidence of the record in any court or before any officer of the state.

Sec. 4723.48. (A) A clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner seeking authority to prescribe drugs and therapeutic devices shall file with the board of nursing a written application for a certificate to prescribe. The board of nursing shall issue a certificate to prescribe to each applicant who meets the requirements specified in section 4723.482 or 4723.484 of the Revised Code.

Except as provided in division (B) of this section, the initial certificate to prescribe that the board issues to an applicant shall be issued as an externship certificate. Under an externship certificate, the nurse may obtain experience in prescribing drugs and therapeutic devices by participating in an externship that evaluates the nurse's competence, knowledge, and skill in pharmacokinetic principles and their clinical application to the specialty being practiced. During the externship, the nurse may prescribe drugs and therapeutic devices only when one or more physicians are providing supervision in accordance with rules adopted under section 4723.50 of the Revised Code.

After completing the externship, the holder of an externship certificate may apply for a new certificate to prescribe. On receipt of the new certificate, the nurse may prescribe drugs and therapeutic devices in collaboration with one or more physicians or podiatrists.

(B) In the case of ~~an advanced practice nurse~~ an applicant who on May 17, 2000, ~~is~~ was approved ~~under section 4723.56 of the Revised Code~~ to prescribe drugs and therapeutic devices under section 4723.56 of the Revised Code, as that section existed on that date, the initial certificate to

prescribe that the board issues to the ~~nurse~~ applicant under this section shall not be an externship certificate. The ~~nurse~~ applicant shall be issued a certificate to prescribe that permits the ~~nurse~~ recipient to prescribe drugs and therapeutic devices in collaboration with one or more physicians or podiatrists.

Sec. 4723.482. (A) An applicant shall include with the application submitted under section 4723.48 of the Revised Code all of the following:

(1) Subject to section 4723.483 of the Revised Code, evidence of holding a current, valid certificate of authority issued under ~~section 4723.41 of the Revised Code~~ this chapter to practice as a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner;

(2) Except for ~~an advanced practice nurse~~ a person who on ~~the effective date of this section is~~ May 17, 2000, was approved ~~under section 4723.56 of the Revised Code~~ to prescribe drugs and therapeutic devices under section 4723.56 of the Revised Code, as that section existed on that date, evidence of successfully completing the instruction in advanced pharmacology and related topics specified in division (B) of this section;

(3) The fee required by section 4723.08 of the Revised Code for a certificate to prescribe;

(4) Any additional information the board requires pursuant to rules adopted under section 4723.50 of the Revised Code.

(B) All of the following apply to the instruction required under division (A)(2) of this section:

(1) The instruction must be obtained not longer than three years before the application for the certificate to prescribe is filed.

(2) The instruction must be obtained through a course of study consisting of planned classroom and clinical study that is approved by the board of nursing in accordance with standards established in rules adopted under section 4723.50 of the Revised Code.

(3) The content of the instruction must be specific to the applicant's nursing specialty and include all of the following:

(a) A minimum of thirty contact hours of training in advanced pharmacology that includes pharmacokinetic principles and clinical application and the use of drugs and therapeutic devices in the prevention of illness and maintenance of health;

(b) Training in the fiscal and ethical implications of prescribing drugs and therapeutic devices;

(c) Training in the state and federal laws that apply to the authority to prescribe;

(d) Any additional training required pursuant to rules adopted under

section 4723.50 of the Revised Code.

Sec. 4729.01. As used in this chapter:

(A) "Pharmacy," except when used in a context that refers to the practice of pharmacy, means any area, room, rooms, place of business, department, or portion of any of the foregoing where the practice of pharmacy is conducted.

(B) "Practice of pharmacy" means providing pharmacist care requiring specialized knowledge, judgment, and skill derived from the principles of biological, chemical, behavioral, social, pharmaceutical, and clinical sciences. As used in this division, "pharmacist care" includes the following:

(1) Interpreting prescriptions;

(2) Compounding or dispensing drugs and dispensing drug therapy related devices;

(3) Counseling individuals with regard to their drug therapy, recommending drug therapy related devices, and assisting in the selection of drugs and appliances for treatment of common diseases and injuries and providing instruction in the proper use of the drugs and appliances;

(4) Performing drug regimen reviews with individuals by discussing all of the drugs that the individual is taking and explaining the interactions of the drugs;

(5) Performing drug utilization reviews with licensed health professionals authorized to prescribe drugs when the pharmacist determines that an individual with a prescription has a drug regimen that warrants additional discussion with the prescriber;

(6) Advising an individual and the health care professionals treating an individual with regard to the individual's drug therapy;

(7) Acting pursuant to a consult agreement with a physician authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery, if an agreement has been established with the physician;

(8) Administering the adult immunizations specified in section 4729.41 of the Revised Code, if the pharmacist has met the requirements of that section.

(C) "Compounding" means the preparation, mixing, assembling, packaging, and labeling of one or more drugs in any of the following circumstances:

(1) Pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs;

(2) Pursuant to the modification of a prescription made in accordance with a consult agreement;

(3) As an incident to research, teaching activities, or chemical analysis;

(4) In anticipation of prescription drug orders based on routine, regularly observed dispensing patterns.

(D) "Consult agreement" means an agreement to manage an individual's drug therapy that has been entered into by a pharmacist and a physician authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.

(E) "Drug" means:

(1) Any article recognized in the United States pharmacopoeia and national formulary, or any supplement to them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(2) Any other article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(3) Any article, other than food, intended to affect the structure or any function of the body of humans or animals;

(4) Any article intended for use as a component of any article specified in division ~~(C)~~(E)(1), (2), or (3) of this section; but does not include devices or their components, parts, or accessories.

(F) "Dangerous drug" means any of the following:

(1) Any drug to which either of the following applies:

(a) Under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, the drug is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or the drug may be dispensed only upon a prescription;

(b) Under Chapter 3715. or 3719. of the Revised Code, the drug may be dispensed only upon a prescription.

(2) Any drug that contains a schedule V controlled substance and that is exempt from Chapter 3719. of the Revised Code or to which that chapter does not apply;

(3) Any drug intended for administration by injection into the human body other than through a natural orifice of the human body.

(G) "Federal drug abuse control laws" has the same meaning as in section 3719.01 of the Revised Code.

(H) "Prescription" means a written, electronic, or oral order for drugs or combinations or mixtures of drugs to be used by a particular individual or for treating a particular animal, issued by a licensed health professional authorized to prescribe drugs.

(I) "Licensed health professional authorized to prescribe drugs" or "prescriber" means an individual who is authorized by law to prescribe drugs or dangerous drugs or drug therapy related devices in the course of the individual's professional practice, including only the following:

(1) A dentist licensed under Chapter 4715. of the Revised Code;

(2) ~~Until January 17, 2000, an advanced practice nurse approved under section 4723.56 of the Revised Code to prescribe drugs and therapeutic devices;~~

~~(3)~~ A clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a certificate to prescribe issued under section 4723.48 of the Revised Code;

~~(4)~~(3) An optometrist licensed under Chapter 4725. of the Revised Code to practice optometry under a therapeutic pharmaceutical agents certificate;

~~(5)~~(4) A physician authorized under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatry;

~~(6)~~(5) A veterinarian licensed under Chapter 4741. of the Revised Code.

(J) "Sale" and "sell" include delivery, transfer, barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal proprietor, agent, or employee.

(K) "Wholesale sale" and "sale at wholesale" mean any sale in which the purpose of the purchaser is to resell the article purchased or received by the purchaser.

(L) "Retail sale" and "sale at retail" mean any sale other than a wholesale sale or sale at wholesale.

(M) "Retail seller" means any person that sells any dangerous drug to consumers without assuming control over and responsibility for its administration. Mere advice or instructions regarding administration do not constitute control or establish responsibility.

(N) "Price information" means the price charged for a prescription for a particular drug product and, in an easily understandable manner, all of the following:

(1) The proprietary name of the drug product;

(2) The established (generic) name of the drug product;

(3) The strength of the drug product if the product contains a single active ingredient or if the drug product contains more than one active ingredient and a relevant strength can be associated with the product without indicating each active ingredient. The established name and quantity of each active ingredient are required if such a relevant strength cannot be so associated with a drug product containing more than one ingredient.

(4) The dosage form;

(5) The price charged for a specific quantity of the drug product. The stated price shall include all charges to the consumer, including, but not limited to, the cost of the drug product, professional fees, handling fees, if any, and a statement identifying professional services routinely furnished by the pharmacy. Any mailing fees and delivery fees may be stated separately without repetition. The information shall not be false or misleading.

(O) "Wholesale distributor of dangerous drugs" means a person engaged in the sale of dangerous drugs at wholesale and includes any agent or employee of such a person authorized by the person to engage in the sale of dangerous drugs at wholesale.

(P) "Manufacturer of dangerous drugs" means a person, other than a pharmacist, who manufactures dangerous drugs and who is engaged in the sale of those dangerous drugs within this state.

(Q) "Terminal distributor of dangerous drugs" means a person who is engaged in the sale of dangerous drugs at retail, or any person, other than a wholesale distributor or a pharmacist, who has possession, custody, or control of dangerous drugs for any purpose other than for that person's own use and consumption, and includes pharmacies, hospitals, nursing homes, and laboratories and all other persons who procure dangerous drugs for sale or other distribution by or under the supervision of a pharmacist or licensed health professional authorized to prescribe drugs.

(R) "Promote to the public" means disseminating a representation to the public in any manner or by any means, other than by labeling, for the purpose of inducing, or that is likely to induce, directly or indirectly, the purchase of a dangerous drug at retail.

(S) "Person" includes any individual, partnership, association, limited liability company, or corporation, the state, any political subdivision of the state, and any district, department, or agency of the state or its political subdivisions.

(T) "Finished dosage form" has the same meaning as in section 3715.01 of the Revised Code.

(U) "Generically equivalent drug" has the same meaning as in section 3715.01 of the Revised Code.

(V) "Animal shelter" means a facility operated by a humane society or any society organized under Chapter 1717. of the Revised Code or a dog pound operated pursuant to Chapter 955. of the Revised Code.

(W) "Food" has the same meaning as in section 3715.01 of the Revised Code.

Sec. 4731.22. (A) The state medical board, by an affirmative vote of not

fewer than six of its members, may revoke or may refuse to grant a certificate to a person found by the board to have committed fraud during the administration of the examination for a certificate to practice or to have committed fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board.

(B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

(1) Permitting one's name or one's certificate to practice or certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given;

(2) Failure to maintain minimal standards applicable to the selection or administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease;

(3) Selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug;

(4) Willfully betraying a professional confidence.

For purposes of this division, "willfully betraying a professional confidence" does not include providing any information, documents, or reports to a child fatality review board under sections 307.621 to 307.629 of the Revised Code and does not include the making of a report of an employee's use of a drug of abuse, or a report of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(5) Making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board.

As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;

(7) Representing, with the purpose of obtaining compensation or other advantage as personal gain or for any other person, that an incurable disease or injury, or other incurable condition, can be permanently cured;

(8) The obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice;

(9) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony;

(10) Commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;

(11) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice;

(12) Commission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;

(13) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor involving moral turpitude;

(14) Commission of an act involving moral turpitude that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;

(15) Violation of the conditions of limitation placed by the board upon a certificate to practice;

(16) Failure to pay license renewal fees specified in this chapter;

(17) Except as authorized in section 4731.31 of the Revised Code, engaging in the division of fees for referral of patients, or the receiving of a thing of value in return for a specific referral of a patient to utilize a particular service or business;

(18) Subject to section 4731.226 of the Revised Code, violation of any provision of a code of ethics of the American medical association, the

American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule. The state medical board shall obtain and keep on file current copies of the codes of ethics of the various national professional organizations. The individual whose certificate is being suspended or revoked shall not be found to have violated any provision of a code of ethics of an organization not appropriate to the individual's profession.

For purposes of this division, a "provision of a code of ethics of a national professional organization" does not include any provision that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(19) Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills.

In enforcing this division, the board, upon a showing of a possible violation, may compel any individual authorized to practice by this chapter or who has submitted an application pursuant to this chapter to submit to a mental examination, physical examination, including an HIV test, or both a mental and a physical examination. The expense of the examination is the responsibility of the individual compelled to be examined. Failure to submit to a mental or physical examination or consent to an HIV test ordered by the board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board finds an individual unable to practice because of the reasons set forth in this division, the board shall require the individual to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for initial, continued, reinstated, or renewed authority to practice. An individual affected under this division shall be afforded an opportunity to demonstrate to the board the ability to resume practice in compliance with acceptable and prevailing standards under the provisions of the individual's certificate. For

the purpose of this division, any individual who applies for or receives a certificate to practice under this chapter accepts the privilege of practicing in this state and, by so doing, shall be deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the board, and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication.

(20) Except when civil penalties are imposed under section 4731.225 or 4731.281 of the Revised Code, and subject to section 4731.226 of the Revised Code, violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board.

This division does not apply to a violation or attempted violation of, assisting in or abetting the violation of, or a conspiracy to violate, any provision of this chapter or any rule adopted by the board that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(21) The violation of any abortion rule adopted by the public health council pursuant to section 3701.341 of the Revised Code;

(22) Any of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand;

(23) The violation of section 2919.12 of the Revised Code or the performance or inducement of an abortion upon a pregnant woman with actual knowledge that the conditions specified in division (B) of section 2317.56 of the Revised Code have not been satisfied or with a heedless indifference as to whether those conditions have been satisfied, unless an affirmative defense as specified in division (H)(2) of that section would apply in a civil action authorized by division (H)(1) of that section;

(24) The revocation, suspension, restriction, reduction, or termination of clinical privileges by the United States department of defense or department of veterans affairs or the termination or suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States department of justice;

(25) Termination or suspension from participation in the medicare or medicaid programs by the department of health and human services or other responsible agency for any act or acts that also would constitute a violation of division (B)(2), (3), (6), (8), or (19) of this section;

(26) Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice.

For the purposes of this division, any individual authorized to practice by this chapter accepts the privilege of practicing in this state subject to supervision by the board. By filing an application for or holding a certificate to practice under this chapter, an individual shall be deemed to have given consent to submit to a mental or physical examination when ordered to do so by the board in writing, and to have waived all objections to the admissibility of testimony or examination reports that constitute privileged communications.

If it has reason to believe that any individual authorized to practice by this chapter or any applicant for certification to practice suffers such impairment, the board may compel the individual to submit to a mental or physical examination, or both. The expense of the examination is the responsibility of the individual compelled to be examined. Any mental or physical examination required under this division shall be undertaken by a treatment provider or physician who is qualified to conduct the examination and who is chosen by the board.

Failure to submit to a mental or physical examination ordered by the board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board determines that the individual's ability to practice is impaired, the board shall suspend the individual's certificate or deny the individual's application and shall require the individual, as a condition for initial, continued, reinstated, or renewed certification to practice, to submit to treatment.

Before being eligible to apply for reinstatement of a certificate suspended under this division, the impaired practitioner shall demonstrate to the board the ability to resume practice in compliance with acceptable and

prevailing standards of care under the provisions of the practitioner's certificate. The demonstration shall include, but shall not be limited to, the following:

(a) Certification from a treatment provider approved under section 4731.25 of the Revised Code that the individual has successfully completed any required inpatient treatment;

(b) Evidence of continuing full compliance with an aftercare contract or consent agreement;

(c) Two written reports indicating that the individual's ability to practice has been assessed and that the individual has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the board for making the assessments and shall describe the basis for their determination.

The board may reinstate a certificate suspended under this division after that demonstration and after the individual has entered into a written consent agreement.

When the impaired practitioner resumes practice, the board shall require continued monitoring of the individual. The monitoring shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by board order after a hearing, and, upon termination of the consent agreement, submission to the board for at least two years of annual written progress reports made under penalty of perjury stating whether the individual has maintained sobriety.

(27) A second or subsequent violation of section 4731.66 or 4731.69 of the Revised Code;

(28) Except as provided in division (N) of this section:

(a) Waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the individual's services, otherwise would be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from that individual;

(b) Advertising that the individual will waive the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the individual's services, otherwise would be required to pay.

(29) Failure to use universal blood and body fluid precautions established by rules adopted under section 4731.051 of the Revised Code;

(30) ~~Failure of a collaborating physician to fulfill the responsibilities agreed to by the physician and an advanced practice nurse participating in a pilot program under section 4723.52 of the Revised Code;~~

~~(31)~~ Failure to provide notice to, and receive acknowledgment of the notice from, a patient when required by section 4731.143 of the Revised Code prior to providing nonemergency professional services, or failure to maintain that notice in the patient's file;

~~(32)~~(31) Failure of a physician supervising a physician assistant to maintain supervision in accordance with the requirements of Chapter 4730. of the Revised Code and the rules adopted under that chapter;

~~(33)~~(32) Failure of a physician or podiatrist to enter into a standard care arrangement with a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner with whom the physician or podiatrist is in collaboration pursuant to section 4731.27 of the Revised Code or failure to fulfill the responsibilities of collaboration after entering into a standard care arrangement;

~~(34)~~(33) Failure to comply with the terms of a consult agreement entered into with a pharmacist pursuant to section 4729.39 of the Revised Code;

~~(35)~~(34) Failure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue;

~~(36)~~(35) Failure to supervise an acupuncturist in accordance with Chapter 4762. of the Revised Code and the board's rules for supervision of an acupuncturist;

~~(37)~~(36) Failure to supervise an anesthesiologist assistant in accordance with Chapter 4760. of the Revised Code and the board's rules for supervision of an anesthesiologist assistant;

~~(38)~~(37) Assisting suicide as defined in section 3795.01 of the Revised Code.

(C) Disciplinary actions taken by the board under divisions (A) and (B) of this section shall be taken pursuant to an adjudication under Chapter 119. of the Revised Code, except that in lieu of an adjudication, the board may enter into a consent agreement with an individual to resolve an allegation of a violation of this chapter or any rule adopted under it. A consent agreement, when ratified by an affirmative vote of not fewer than six members of the board, shall constitute the findings and order of the board with respect to the matter addressed in the agreement. If the board refuses to ratify a consent

agreement, the admissions and findings contained in the consent agreement shall be of no force or effect.

(D) For purposes of divisions (B)(10), (12), and (14) of this section, the commission of the act may be established by a finding by the board, pursuant to an adjudication under Chapter 119. of the Revised Code, that the individual committed the act. The board does not have jurisdiction under those divisions if the trial court renders a final judgment in the individual's favor and that judgment is based upon an adjudication on the merits. The board has jurisdiction under those divisions if the trial court issues an order of dismissal upon technical or procedural grounds.

(E) The sealing of conviction records by any court shall have no effect upon a prior board order entered under this section or upon the board's jurisdiction to take action under this section if, based upon a plea of guilty, a judicial finding of guilt, or a judicial finding of eligibility for intervention in lieu of conviction, the board issued a notice of opportunity for a hearing prior to the court's order to seal the records. The board shall not be required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.

(F)(1) The board shall investigate evidence that appears to show that a person has violated any provision of this chapter or any rule adopted under it. Any person may report to the board in a signed writing any information that the person may have that appears to show a violation of any provision of this chapter or any rule adopted under it. In the absence of bad faith, any person who reports information of that nature or who testifies before the board in any adjudication conducted under Chapter 119. of the Revised Code shall not be liable in damages in a civil action as a result of the report or testimony. Each complaint or allegation of a violation received by the board shall be assigned a case number and shall be recorded by the board.

(2) Investigations of alleged violations of this chapter or any rule adopted under it shall be supervised by the supervising member elected by the board in accordance with section 4731.02 of the Revised Code and by the secretary as provided in section 4731.39 of the Revised Code. The president may designate another member of the board to supervise the investigation in place of the supervising member. No member of the board who supervises the investigation of a case shall participate in further adjudication of the case.

(3) In investigating a possible violation of this chapter or any rule adopted under this chapter, the board may administer oaths, order the taking of depositions, issue subpoenas, and compel the attendance of witnesses and production of books, accounts, papers, records, documents, and testimony,

except that a subpoena for patient record information shall not be issued without consultation with the attorney general's office and approval of the secretary and supervising member of the board. Before issuance of a subpoena for patient record information, the secretary and supervising member shall determine whether there is probable cause to believe that the complaint filed alleges a violation of this chapter or any rule adopted under it and that the records sought are relevant to the alleged violation and material to the investigation. The subpoena may apply only to records that cover a reasonable period of time surrounding the alleged violation.

On failure to comply with any subpoena issued by the board and after reasonable notice to the person being subpoenaed, the board may move for an order compelling the production of persons or records pursuant to the Rules of Civil Procedure.

A subpoena issued by the board may be served by a sheriff, the sheriff's deputy, or a board employee designated by the board. Service of a subpoena issued by the board may be made by delivering a copy of the subpoena to the person named therein, reading it to the person, or leaving it at the person's usual place of residence. When the person being served is a person whose practice is authorized by this chapter, service of the subpoena may be made by certified mail, restricted delivery, return receipt requested, and the subpoena shall be deemed served on the date delivery is made or the date the person refuses to accept delivery.

A sheriff's deputy who serves a subpoena shall receive the same fees as a sheriff. Each witness who appears before the board in obedience to a subpoena shall receive the fees and mileage provided for witnesses in civil cases in the courts of common pleas.

(4) All hearings and investigations of the board shall be considered civil actions for the purposes of section 2305.252 of the Revised Code.

(5) Information received by the board pursuant to an investigation is confidential and not subject to discovery in any civil action.

The board shall conduct all investigations and proceedings in a manner that protects the confidentiality of patients and persons who file complaints with the board. The board shall not make public the names or any other identifying information about patients or complainants unless proper consent is given or, in the case of a patient, a waiver of the patient privilege exists under division (B) of section 2317.02 of the Revised Code, except that consent or a waiver of that nature is not required if the board possesses reliable and substantial evidence that no bona fide physician-patient relationship exists.

The board may share any information it receives pursuant to an

investigation, including patient records and patient record information, with law enforcement agencies, other licensing boards, and other governmental agencies that are prosecuting, adjudicating, or investigating alleged violations of statutes or administrative rules. An agency or board that receives the information shall comply with the same requirements regarding confidentiality as those with which the state medical board must comply, notwithstanding any conflicting provision of the Revised Code or procedure of the agency or board that applies when it is dealing with other information in its possession. In a judicial proceeding, the information may be admitted into evidence only in accordance with the Rules of Evidence, but the court shall require that appropriate measures are taken to ensure that confidentiality is maintained with respect to any part of the information that contains names or other identifying information about patients or complainants whose confidentiality was protected by the state medical board when the information was in the board's possession. Measures to ensure confidentiality that may be taken by the court include sealing its records or deleting specific information from its records.

(6) On a quarterly basis, the board shall prepare a report that documents the disposition of all cases during the preceding three months. The report shall contain the following information for each case with which the board has completed its activities:

(a) The case number assigned to the complaint or alleged violation;

(b) The type of certificate to practice, if any, held by the individual against whom the complaint is directed;

(c) A description of the allegations contained in the complaint;

(d) The disposition of the case.

The report shall state how many cases are still pending and shall be prepared in a manner that protects the identity of each person involved in each case. The report shall be a public record under section 149.43 of the Revised Code.

(G) If the secretary and supervising member determine that there is clear and convincing evidence that an individual has violated division (B) of this section and that the individual's continued practice presents a danger of immediate and serious harm to the public, they may recommend that the board suspend the individual's certificate to practice without a prior hearing. Written allegations shall be prepared for consideration by the board.

The board, upon review of those allegations and by an affirmative vote of not fewer than six of its members, excluding the secretary and supervising member, may suspend a certificate without a prior hearing. A telephone conference call may be utilized for reviewing the allegations and

taking the vote on the summary suspension.

The board shall issue a written order of suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. The order shall not be subject to suspension by the court during pendency of any appeal filed under section 119.12 of the Revised Code. If the individual subject to the summary suspension requests an adjudicatory hearing by the board, the date set for the hearing shall be within fifteen days, but not earlier than seven days, after the individual requests the hearing, unless otherwise agreed to by both the board and the individual.

Any summary suspension imposed under this division shall remain in effect, unless reversed on appeal, until a final adjudicative order issued by the board pursuant to this section and Chapter 119. of the Revised Code becomes effective. The board shall issue its final adjudicative order within sixty days after completion of its hearing. A failure to issue the order within sixty days shall result in dissolution of the summary suspension order but shall not invalidate any subsequent, final adjudicative order.

(H) If the board takes action under division (B)(9), (11), or (13) of this section and the judicial finding of guilt, guilty plea, or judicial finding of eligibility for intervention in lieu of conviction is overturned on appeal, upon exhaustion of the criminal appeal, a petition for reconsideration of the order may be filed with the board along with appropriate court documents. Upon receipt of a petition of that nature and supporting court documents, the board shall reinstate the individual's certificate to practice. The board may then hold an adjudication under Chapter 119. of the Revised Code to determine whether the individual committed the act in question. Notice of an opportunity for a hearing shall be given in accordance with Chapter 119. of the Revised Code. If the board finds, pursuant to an adjudication held under this division, that the individual committed the act or if no hearing is requested, the board may order any of the sanctions identified under division (B) of this section.

(I) The certificate to practice issued to an individual under this chapter and the individual's practice in this state are automatically suspended as of the date the individual pleads guilty to, is found by a judge or jury to be guilty of, or is subject to a judicial finding of eligibility for intervention in lieu of conviction in this state or treatment or intervention in lieu of conviction in another jurisdiction for any of the following criminal offenses in this state or a substantially equivalent criminal offense in another jurisdiction: aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary. Continued

practice after suspension shall be considered practicing without a certificate.

The board shall notify the individual subject to the suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. If an individual whose certificate is suspended under this division fails to make a timely request for an adjudication under Chapter 119. of the Revised Code, the board shall enter a final order permanently revoking the individual's certificate to practice.

(J) If the board is required by Chapter 119. of the Revised Code to give notice of an opportunity for a hearing and if the individual subject to the notice does not timely request a hearing in accordance with section 119.07 of the Revised Code, the board is not required to hold a hearing, but may adopt, by an affirmative vote of not fewer than six of its members, a final order that contains the board's findings. In that final order, the board may order any of the sanctions identified under division (A) or (B) of this section.

(K) Any action taken by the board under division (B) of this section resulting in a suspension from practice shall be accompanied by a written statement of the conditions under which the individual's certificate to practice may be reinstated. The board shall adopt rules governing conditions to be imposed for reinstatement. Reinstatement of a certificate suspended pursuant to division (B) of this section requires an affirmative vote of not fewer than six members of the board.

(L) When the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.

(M) Notwithstanding any other provision of the Revised Code, all of the following apply:

(1) The surrender of a certificate issued under this chapter shall not be effective unless or until accepted by the board. Reinstatement of a certificate surrendered to the board requires an affirmative vote of not fewer than six members of the board.

(2) An application for a certificate made under the provisions of this chapter may not be withdrawn without approval of the board.

(3) Failure by an individual to renew a certificate of registration in accordance with this chapter shall not remove or limit the board's jurisdiction to take any disciplinary action under this section against the

individual.

(N) Sanctions shall not be imposed under division (B)(28) of this section against any person who waives deductibles and copayments as follows:

(1) In compliance with the health benefit plan that expressly allows such a practice. Waiver of the deductibles or copayments shall be made only with the full knowledge and consent of the plan purchaser, payer, and third-party administrator. Documentation of the consent shall be made available to the board upon request.

(2) For professional services rendered to any other person authorized to practice pursuant to this chapter, to the extent allowed by this chapter and rules adopted by the board.

(O) Under the board's investigative duties described in this section and subject to division (F) of this section, the board shall develop and implement a quality intervention program designed to improve through remedial education the clinical and communication skills of individuals authorized under this chapter to practice medicine and surgery, osteopathic medicine and surgery, and podiatric medicine and surgery. In developing and implementing the quality intervention program, the board may do all of the following:

(1) Offer in appropriate cases as determined by the board an educational and assessment program pursuant to an investigation the board conducts under this section;

(2) Select providers of educational and assessment services, including a quality intervention program panel of case reviewers;

(3) Make referrals to educational and assessment service providers and approve individual educational programs recommended by those providers. The board shall monitor the progress of each individual undertaking a recommended individual educational program.

(4) Determine what constitutes successful completion of an individual educational program and require further monitoring of the individual who completed the program or other action that the board determines to be appropriate;

(5) Adopt rules in accordance with Chapter 119. of the Revised Code to further implement the quality intervention program.

An individual who participates in an individual educational program pursuant to this division shall pay the financial obligations arising from that educational program.

SECTION 2. That existing sections 1533.18, 1701.76, 1701.82, 1775.14,

2117.06, 2125.02, 2125.04, 2305.01, 2305.03, 2305.10, 2305.113, 2305.234, 2305.25, 2307.011, 2307.23, 2307.29, 2307.60, 2307.71, 2307.75, 2307.80, 2315.01, 2315.21, 2315.32, 2315.33, 2315.34, 2315.36, 2323.51, 2505.02, 3719,81, 4507.07, 4513.263, 4713.02, 4715.42, 4723.01, 4723.03, 4723.28, 4723.43, 4723.44, 4723.48, 4723.482, 4729.01, and 4731.22 and sections 2315.41, 2315.42, 2315.43, 2315.44, 2315.45, and 2315.46 of the Revised Code are hereby repealed.

SECTION 3. The General Assembly makes the following statement of findings and intent:

(A) The General Assembly finds:

(1) The current civil litigation system represents a challenge to the economy of the state of Ohio, which is dependent on business providing essential jobs and creative innovation.

(2) The General Assembly recognizes that a fair system of civil justice strikes an essential balance between the rights of those who have been legitimately harmed and the rights of those who have been unfairly sued.

(3) This state has a rational and legitimate state interest in making certain that Ohio has a fair, predictable system of civil justice that preserves the rights of those who have been harmed by negligent behavior, while curbing the number of frivolous lawsuits, which increases the cost of doing business, threatens Ohio jobs, drives up costs to consumers, and may stifle innovation. The General Assembly bases its findings on this state interest upon the following evidence:

(a) A National Bureau of Economic Research study estimates that states that have adopted abuse reforms have experienced employment growth between eleven and twelve per cent, productivity growth of seven to eight per cent, and total output growth between ten and twenty per cent for liability reducing reforms.

(b) According to a 2002 study from the White House Council of Economic Advisors, the cost of tort litigation is equal to a two and one tenth per cent wage and salary tax, a one and three tenth per cent tax on personal consumption, and a three and one tenth per cent tax on capital investment income.

(c) The 2003 Harris Poll of nine hundred and twenty-eight senior corporate attorneys conducted by the United States Chamber of Commerce's Institute for Legal Reform reports that eight out of ten respondents claim that the litigation environment in a state could affect important business

decisions about their company, such as where to locate or do business. In addition, one in four senior attorneys surveyed cited limits on damages as one specific means for state policy makers to improve the litigation environment in their state and promote economic development.

(d) The cost of the United States tort system grew at a record rate in 2001, according to a February 2003 study published by Tillinghast-Towers Perrin. The system, however, failed to return even fifty cents for every dollar to people who were injured. Tillinghast-Towers Perrin also found that fifty-four per cent of the total cost accounted for attorney's fees, both for plaintiffs and defendants, and administration. Only twenty-two per cent of the tort system's cost was used directly to reimburse people for the economic damages associated with injuries and losses they sustain.

(e) The Tillinghast-Towers Perrin study also found that the cost of the United States tort system grew fourteen and three tenths of a per cent in 2001, the highest increase since 1986, greatly exceeding overall economic growth of two and six tenth per cent. As a result, the cost of the United States tort system rose to two hundred and five billion dollars total or seven hundred and twenty-one dollars per citizen, equal to a five per cent tax on wages.

(f) As stated in testimony by Ohio Department of Development Director Bruce Johnson, as a percentage of the gross domestic product, United States tort costs have grown from six tenths of a per cent to two per cent since 1950, about double the percentage that other industrialized nations pay annually. These tort costs put Ohio businesses at a disadvantage vis-a-vis foreign competition and are not helpful to development.

(4)(a) Reform to the punitive damages law in Ohio is urgently needed to restore balance, fairness, and predictability to the civil justice system.

(b) In prohibiting a court from entering judgment for punitive or exemplary damages in excess of the two times the amount of compensatory damages awarded to the plaintiff and, with respect to an individual or small employer that employs not more than one hundred persons or if the employer is classified as being in the manufacturing sector not more than five hundred persons, from entering judgment for punitive or exemplary damages in excess of the lesser of two times the amount of compensatory damages awarded to the plaintiff or ten per cent of the individual's or employer's net worth when the tort was committed up to a maximum of three hundred fifty thousand dollars, the General Assembly finds the following:

(i) Punitive or exemplary damages awarded in tort actions are similar in nature to fines and additional court costs imposed in criminal actions,

because punitive or exemplary damages, fines, and additional court costs are designed to punish a tortfeasor for certain wrongful actions or omissions.

(ii) The absence of a statutory ceiling upon recoverable punitive or exemplary damages in tort actions has resulted in occasional multiple awards of punitive or exemplary damages that have no rational connection to the wrongful actions or omissions of the tortfeasor.

(iii) The distinction between small employers and other defendants based on the number of full-time permanent employees distinguishes all other defendants including individuals and nonemployers. This distinction is rationally based on size considering both the economic capacity of an employer to maintain that number of employees and to impact the community at large, as exemplified by the North American Industry Classification System and the United States Small Business Administration's Office of Advocacy.

(c) The limits on punitive or exemplary damages as specified in section 2315.21 of the Revised Code, as amended by this act, are based on guidance recently provided by the United States Supreme Court in *State Farm Mutual Insurance v. Campbell* (2003), 123 S.Ct. 1513. In determining whether a one hundred and forty-five million dollar award of punitive damages was appropriate, the United States Supreme Court referred to the three guideposts for punitive damages articulated in *BMW of North America Inc. v. Gore* (1996), 517 U.S. 599: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages awarded; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. According to the United States Supreme Court, "few awards exceeding a single digit ratio between punitive damages and compensatory damages. . . will satisfy due process." *Id.* at 31.

(d) The limits on punitive or exemplary damages as specified in section 2315.21 of the Revised Code, as amended by this act, are based on testimony asking members of the General Assembly to recognize the economic impact of occasional multiple punitive damages awards and stating that a number of other states have imposed limits on punitive or exemplary damage awards.

(5)(a) Statutes of repose are vital instruments that provide time limits, closure, and peace of mind to potential parties of lawsuits.

(b) Forty-seven other states have adopted statutes of repose to protect architects, engineers, and constructors of improvements to real property from lawsuits arising after a specific number of years after completion of an

improvement to real property. The General Assembly recognizes that Kentucky, New York, and Ohio are the only three states that do not have a statute of repose. The General Assembly also acknowledges that Ohio stands by itself, due to the fact that both Kentucky and New York have a rebuttable presumption that exists and only if a plaintiff can overcome that presumption can a claim continue.

(c) As stated in testimony by Jack Pottmeyer, architect and managing principal of MKC Associates, Inc., this unlimited liability forces professionals to maintain records in perpetuity, because those professionals cannot reasonably predict when a record from fifteen or twenty years earlier may become the subject of a civil action. Those actions occur despite the fact that, over the course of many years, owners of the property or those responsible for its maintenance could make modifications or other substantial changes that would significantly change the intent or scope of the original design of the property designed by an architectural firm. The problem is compounded by the fact that professional liability insurance for architects and engineers is offered by relatively few insurance carriers and is written on what is known as a "claims made basis," meaning a policy must be in effect when the claim is made, not at the time of the service, in order for the claim to be paid. Without a statute of repose, professional liability insurance must be maintained forever to ensure coverage of any potential claim on previous services. These minimum annual premiums can add up, averaging between three thousand five hundred dollars and five thousand dollars annually, which is especially burdensome for a retired design professional.

(6)(a) Noneconomic damages include such things as pain and suffering, emotional distress, and loss of consortium or companionship, which do not involve an economic loss and have, therefore, no precise economic value. Punitive damages are intended to punish a defendant for wrongful conduct. Pain and suffering awards are distinct from punitive damages. Pain and suffering awards are intended to compensate a person for the person's loss. They are not intended to punish a defendant for wrongful conduct.

(b) The judicial analysis of compensatory damages representing noneconomic loss, as specified in section 2315.19 of the Revised Code, are based on testimony asking members of the General Assembly to recognize these distinctions.

(c) With respect to noneconomic loss for either: (1) permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system; or (2) permanent physical functional injury that permanently prevents the injured person from being able to independently care for self

and perform life-sustaining activities, the General Assembly recognizes that evidence that juries may consider in awarding pain and suffering damages for these types of injuries is different from evidence courts may consider for punitive damages. For example, the amount of a plaintiff's pain and suffering is not relevant to a decision on wrongdoing, and the degree of the defendant's wrongdoing is not relevant to the amount of pain and suffering.

(d) While pain and suffering awards are inherently subjective, it is believed that this inflation of noneconomic damages is partially due to the improper consideration of evidence of wrongdoing in assessing pain and suffering damages.

(e) Inflated damage awards create an improper resolution of civil justice claims. The increased and improper cost of litigation and resulting rise in insurance premiums is passed on to the general public through higher prices for products and services.

(f) Therefore, with respect to the types of injuries articulated in division (A)(6)(c) of this section, the General Assembly finds that courts should provide juries with clear instructions about the purpose of pain and suffering damages. Courts should instruct juries that evidence of misconduct is not to be considered in deciding compensation for noneconomic damages for those types of injuries. Rather, it is to be considered solely for the purpose of deciding punitive damage awards. In cases in which punitive damages are requested, defendants should have the right to request bifurcation of a trial to ensure that evidence of misconduct is not inappropriately considered by the jury in its determination of liability and compensatory damages. As additional protection, trial and appellate courts should rigorously review pain and suffering awards to ensure that they properly serve compensatory purposes and are not excessive.

(7)(a) The collateral source rule prohibits a defendant from introducing evidence that the plaintiff received any benefits from sources outside the dispute.

(b) Twenty-one states have modified or abolished the collateral source rule.

(B) In enacting section 2305.131 of the Revised Code in this act, it is the intent of the General Assembly to do all of the following:

(1) To declare that the ten-year statute of repose prescribed by section 2305.131 of the Revised Code, as enacted by this act, is a specific provision intended to promote a greater interest than the interest underlying the general four-year statute of limitations prescribed by section 2305.09 of the Revised Code, the general two-year statute of limitations prescribed by section 2305.10 of the Revised Code, and other general statutes of limitation

prescribed by the Revised Code;

(2) To recognize that, subsequent to the completion of the construction of an improvement to real property, all of the following generally apply to the persons who provided services for the improvement or who furnished the design, planning, supervision of construction, or construction of the improvement:

(a) They lack control over the improvement, the ability to make determinations with respect to the improvement, and the opportunity or responsibility to maintain or undertake the maintenance of the improvement.

(b) They lack control over other forces, uses, and intervening causes that may cause stress, strain, or wear and tear to the improvement.

(c) They have no right or opportunity to be made aware of, to evaluate the effect of, or to take action to overcome the effect of the forces, uses, and intervening causes described in division (E)(5)(b) of this section.

(3) To recognize that, more than ten years after the completion of the construction of an improvement to real property, the availability of relevant evidence pertaining to the improvement and the availability of witnesses knowledgeable with respect to the improvement is problematic;

(4) To recognize that maintaining records and other documentation pertaining to services provided for an improvement to real property or the design, planning, supervision of construction, or construction of an improvement to real property for a reasonable period of time is appropriate and to recognize that, because the useful life of an improvement to real property may be substantially longer than ten years after the completion of the construction of the improvement, it is an unacceptable burden to require the maintenance of those types of records and other documentation for a period in excess of ten years after that completion;

(5) To declare that section 2305.131 of the Revised Code, as enacted by this act, strikes a rational balance between the rights of prospective claimants and the rights of design professionals, construction contractors, and construction subcontractors and to declare that the ten-year statute of repose prescribed in that section is a rational period of repose intended to preclude the pitfalls of stale litigation but not to affect civil actions against those in actual control and possession of an improvement to real property at the time that a defective and unsafe condition of that improvement causes an injury to real or personal property, bodily injury, or wrongful death.

(C) In enacting division (D)(2) of section 2125.02 and division (C) of section 2305.10 of the Revised Code in this act, it is the intent of the General Assembly to do all of the following:

(1) To declare that the ten-year statute of repose prescribed by division

(D)(2) of section 2125.02 and division (C) of section 2305.10 of the Revised Code, as enacted by this act, are specific provisions intended to promote a greater interest than the interest underlying the general four-year statute of limitations prescribed by section 2305.09 of the Revised Code, the general two-year statutes of limitations prescribed by sections 2125.02 and 2305.10 of the Revised Code, and other general statutes of limitations prescribed by the Revised Code;

(2) To declare that, subject to the two-year exceptions prescribed in division (D)(2)(d) of section 2125.02 and in division (C)(4) of section 2305.10 of the Revised Code, the ten-year statutes of repose shall serve as a limitation upon the commencement of a civil action in accordance with an otherwise applicable statute of limitations prescribed by the Revised Code;

(3) To recognize that subsequent to the delivery of a product, the manufacturer or supplier lacks control over the product, over the uses made of the product, and over the conditions under which the product is used;

(4) To recognize that under the circumstances described in division (C)(3) of this section, it is more appropriate for the party or parties who have had control over the product during the intervening time period to be responsible for any harm caused by the product;

(5) To recognize that, more than ten years after a product has been delivered, it is very difficult for a manufacturer or supplier to locate reliable evidence and witnesses regarding the design, production, or marketing of the product, thus severely disadvantaging manufacturers or suppliers in their efforts to defend actions based on a product liability claim;

(6) To recognize the inappropriateness of applying current legal and technological standards to products manufactured many years prior to the commencement of an action based on a product liability claim;

(7) To recognize that a statute of repose for product liability claims would enhance the competitiveness of Ohio manufacturers by reducing their exposure to disruptive and protracted liability with respect to products long out of their control, by increasing finality in commercial transactions, and by allowing manufacturers to conduct their affairs with increased certainty;

(8) To declare that division (D)(2) of section 2125.02 and division (C) of section 2305.10 of the Revised Code, as enacted by this act, strike a rational balance between the rights of prospective claimants and the rights of product manufacturers and suppliers and to declare that the ten-year statutes of repose prescribed in those sections are rational periods of repose intended to preclude the problems of stale litigation but not to affect civil actions against those in actual control and possession of a product at the time that the product causes an injury to real or personal property, bodily injury, or

wrongful death;

(D) The General Assembly declares its intent that the amendment made by this act to section 2307.71 of the Revised Code is intended to supersede the holding of the Ohio Supreme Court in *Carrel v. Allied Products Corp.* (1997), 78 Ohio St.3d 284, that the common law product liability cause of action of negligent design survives the enactment of the Ohio Product Liability Act, sections 2307.71 to 2307.80 of the Revised Code, and to abrogate all common law product liability causes of action.

(E) The Ohio General Assembly respectfully requests the Ohio Supreme Court to uphold this intent in the courts of Ohio, to reconsider its holding on damage caps in *State v. Sheward* (1999), Ohio St. 3d 451, to reconsider its holding on the deductibility of collateral source benefits in *Sorrel v. Thevenir* (1994), 69 Ohio St. 3d 415, and to reconsider its holding on statutes of repose in *Brennaman v. R.M.I. Co.* (1994), 70 Ohio St. 3d 460.

SECTION 4. (A) The General Assembly acknowledges the Court's authority in prescribing rules governing practice and procedure in the courts of this state, as provided by Section 5 of Article IV of the Ohio Constitution.

(B) The General Assembly hereby requests the Supreme Court to adopt a "Legal Consumer's Bill of Rights" that would substantially conform with the following language:

Each attorney who is licensed to practice law in this state shall append to every written retainer agreement or contract for legal services a legal consumer's bill of rights that shall be substantially in the following form:

"LEGAL CONSUMER'S BILL OF RIGHTS

Consumers of legal services have both rights and responsibilities in the resolution of legal disputes. Lawyers, as well, have duties and rights related to the clients they represent. This listing is designed to provide consumers with an overview of their rights and responsibilities in relating to their lawyers and in the resolution of their legal matters.

Client rights and lawyer duties:

1. COURTESY

You can expect to be treated with courtesy and consideration by your lawyer and by others under the supervision of your lawyer involved in your legal matter.

2. PROFESSIONALISM

You can expect competent and diligent representation by your lawyer, in accord with accepted aspirational standards of professionalism.

3. ATTENTION

You can expect your lawyer's independent professional judgment and

loyalty uncompromised by conflicts of interest. Your lawyer will maintain accurate records and protect any funds you provide regarding your legal matter.

4. FEE DISCLOSURE

You can expect your lawyer to fully disclose fee arrangements and other costs at the onset of your relationship, and to provide a written fee agreement or contingency fee contract.

5. RESPONSIVENESS

You can expect to have your questions answered and telephone calls returned by your lawyer in a reasonable time in accordance with professional standards.

6. CONTROL

You can expect your lawyer to keep you informed about the progress of your legal matter, to disclose alternative approaches to resolving your legal matter, and to have you participate meaningfully in the resolution process.

7. RESPECT

You can expect to have your lawyer respect your legitimate objectives and to include you in making settlement decisions regarding your legal dispute.

8. CONFIDENTIALITY

You can expect to have your lawyer honor the attorney-client privilege, protect your right to privacy and preserve your secrets and confidences.

9. ETHICS

You can expect ethical conduct from your lawyer in accord with the Code of Professional Responsibility.

10. NON-DISCRIMINATION

You may not be refused representation based upon race, creed, color, religion, sex, age, national origin or disability.

11. GRIEVANCES

You may file a grievance with the certified grievance committee of your local bar association or the Ohio State Bar Association or with the Board of Commissioners on Grievances and Discipline of the Supreme Court if you are not satisfied with the legal services you have retained. The committee and the board include nonattorneys as members. The Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio has the authority to discipline and to impose sanctions on attorneys in Ohio.

Client responsibilities

1. TRUTHFULNESS

Your lawyer can expect you to be truthful and to have you provide a full disclosure of pertinent information needed to handle your legal matter.

2. RESPONSIVENESS

Your lawyer can expect you to provide timely responses to reasonable requests for information, and to be on time for legal proceedings. Your lawyer can expect you to pay your legal bills in a timely manner.

3. COURTESY

Just as you expect to be treated with respect and courtesy, your lawyer can expect you to set appointments in advance to meet with your lawyer, to be responsible for making reasonable requests of your lawyer's time, and to be treated respectfully.

4. COMMUNICATION

Your lawyers can expect you to communicate in a timely manner about your legal matter, or if you are unhappy with the way your matter is being handled. There is a grievance procedure in place to handle disputes with your lawyer that you are not able to resolve on your own.

5. ETHICS

Your lawyer can expect not to be asked to engage in behavior that is unethical, inappropriate, unprofessional, or illegal."

(C) The General Assembly hereby requests the Supreme Court to amend Ohio Rules of Civil Procedure Rule 68 to conform to Federal Rules of Civil Procedure Rule 68.

SECTION 5. If any item of law that constitutes the whole or part of a section of law contained in this act, or if any application of any item of law that constitutes the whole or part of a section of law contained in this act, is held invalid, the invalidity does not affect other items of law or applications of items of law that can be given effect without the invalid item of law or application. To this end, the items of law of which the sections contained in this act are composed, and their applications, are independent and severable.

SECTION 6. If any item of law that constitutes the whole or part of a section of law contained in this act, or if any application of any item of law contained in this act, is held to be preempted by federal law, the preemption of the item of law or its application does not affect other items of law or applications that can be given affect. The items of law of which the sections of this act are composed, and their applications, are independent and severable.

SECTION 7. Section 2505.02 of the Revised Code is presented in this act

as a composite of the section as amended by Am. Sub. H.B. 292, Am. Sub. H.B. 342, and Sub. S.B. 187 of the 125th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

SECTION 8. Section 2323.44 of the Revised Code, as enacted by this act, shall take effect January 1, 2006.

SECTION 9. This act's amendment of division (A)(7) of section 4713.02 of the Revised Code does not affect the term of office of any person serving as a member of the State Board of Cosmetology on the effective date of this act.

SECTION 10. This act's amendment of division (B)(24) of section 4723.28 of the Revised Code does not remove the authority of the Board of Nursing to conduct investigations and take disciplinary actions regarding a person who engaged in the activities specified in that division while participating in one of the advanced practice nurse pilot programs operated pursuant to sections 4723.52 to 4723.60 of the Revised Code prior to January 17, 2004, the effective date of the repeal of those sections, as provided in Section 3 of Am. Sub. H.B. 241 of the 123rd General Assembly.

SECTION 11. This act's amendment of division (B)(30) of section 4731.22 of the Revised Code does not remove the State Medical Board's authority to conduct investigations and take disciplinary actions regarding the failure of a collaborating physician to fulfill the responsibilities agreed to by the physician and a person participating in one of the advanced practice nurse pilot programs operated pursuant to sections 4723.52 to 4723.60 of the Revised Code prior to January 17, 2004, the effective date of the repeal of those sections, as provided in Section 3 of Am. Sub. H.B. 241 of the 123rd General Assembly.

SECTION 12. Section 4723.28 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 474 and Sub. S.B. 179 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

SECTION 13. Section 4731.22 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 474 and Sub. S.B. 179 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

SECTION 14. For any cause of action that arises before the effective date of this act, the provisions set forth in sections 1701.76, 1701.82, and 2307.97 of the Revised Code, as amended or enacted in Sections 1 and 2 of this act, are to be applied unless the court that has jurisdiction over the case finds both of the following:

(A) That a substantive right of a party to the case has been impaired;

(B) That the impairment is otherwise in violation of Section 28 of Article II, Ohio Constitution.

_____

Speaker _____ of the House of Representatives.

_____

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

_____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

_____

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

_____

Secretary of State.

File No. _____ Effective Date _____

Ohio Statutes Annotated - 1993

R.C. 2305.131
BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XXIII COURTS--COMMON PLEAS
CHAPTER 2305 JURISDICTION; LIMITATION OF ACTIONS
LIMITATIONS--MISCELLANEOUS

2305.131 LIMITATION OF ACTION FOR DAMAGES BASED ON SERVICES TO IMPROVE REAL PROPERTY

No action to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages sustained as a result of said injury, shall be brought against any person performing services for or furnishing the design, planning, supervision of construction, or construction of such improvement to real property, more than ten years after the performance or furnishing of such services and construction. This limitation does not apply to actions against any person in actual possession and control as owner, tenant, or otherwise of the improvement at the time the defective and unsafe condition of such improvement constitutes the proximate cause of the injury or damage for which the action is brought.

HISTORY: 1971 S 307, eff. 11-18-71

130 v S 112