



CLIENT ALERT

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NEW OHIO TORT REFORM LAW TAKES EFFECT SOON

On January 6, 2005, Ohio Governor Robert A. Taft signed into law Senate Bill 80 (S.B. 80). The tort reform provisions in S.B. 80 will take effect on **April 6, 2005**, and will undoubtedly prompt an increase in Ohio tort filings as that date approaches.

S.B. 80 is the most recent addition to the Ohio General Assembly's tort reform effort, and broadly targets most tort claims. This comprehensive set of laws fills certain gaps left by previous tort reform legislation that focused more narrowly on medical malpractice claims, joint and several liability, prejudgment interest, and tort cases involving nursing homes, silica and asbestos.

The most significant provisions in S.B. 80 include caps on certain non-economic and punitive damages, expanded post-verdict review of non-economic damage awards, a 10-year statute of repose, the elimination of common law product liability claims, curtailing the consumer expectations test in product liability claims, limiting successor entity liability for asbestos claims, eliminating "discovery rule" extensions of the statute of limitations for certain torts, prohibiting "cumulative

consumption" obesity litigation against the food industry, and evidentiary changes allowing certain evidence of collateral source recoveries, non-taxability of damages, and seat belt use.

These tort reform provisions have numerous exceptions and limitations codified within the fifty-eight separate Ohio statutes changed by S.B. 80.

Caps On Non-Economic Damages (O.R.C. § 2315.18)

S.B. 80 establishes a limit on non-economic damages (i.e. pain and suffering, loss of consortium, etc.) *only* in non-catastrophic injury cases. There is no such cap for catastrophic injury tort cases. Catastrophic injury cases are those involving permanent and substantial physical deformity, loss of use of a limb, loss of a bodily organ system, or other permanent physical injuries.

In non-catastrophic injury cases, the cap for non-economic damages is the greater of \$250,000 or three times the plaintiff's economic damages, up to a maximum of \$350,000 per plaintiff and \$500,000 per occurrence.

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**Caps And Other Limits On Punitive Damages
(O.R.C. § 2315.21)**

S.B. 80 establishes a limit on punitive damages for most tort claims. The amount of the cap depends on whether the defendant is a large or small employer. Punitive damages for large employers (defined as having >500 employees in the manufacturing sector or >100 employees in the non-manufacturing sector) are limited to two times the amount of compensatory damages.

For small employers (defined as having =500 employees in the manufacturing sector or =100 employees in the non-manufacturing sector), the punitive damage limit is the lesser of two times compensatory damages, or 10% of the employer's net worth, up to a maximum of \$350,000.

In cases where punitive damages are sought, a bifurcated jury trial is now mandatory if requested by a party, in order to separate compensatory and punitive trial phases.

S.B. 80 prohibits the imposition of multiple punitive damage awards against a defendant who already paid punitive damages for the same act or course of conduct, under limited circumstances.

**Post-Verdict Review of Damage Awards
(O.R.C. § 2315.19)**

Under S.B. 80, the trial judge must now review evidence supporting an award of non-economic compensatory

damages, if a defendant challenges the award as excessive. In reviewing the award, the judge is to consider various factors including whether improper "punitive" arguments were made (such as arguments asking the jury to consider the defendant's wealth).

**Statutes Of Repose
(O.R.C. §§ 2125.02, 2305.10
and 2305.131)**

S.B. 80 establishes a 10-year statute of repose in product liability cases and cases arising out of a defective or unsafe condition of an improvement to real property. The statute of repose limits the time period during which these causes of action can be filed.

In product liability cases, all tort claims (including wrongful death) must be brought within ten years of the date the product was delivered to the first purchaser or lessee. For cases arising out of a defective or unsafe condition of an improvement to real property, all tort claims must be brought within ten years from the date of substantial completion of the improvement.

There are, however, exceptions to these statutes of repose in cases of fraud, longer express/written warranties, occurrences prior to the expiration of the statute of repose and disability of the plaintiff. The statutes of repose do not apply to asbestos bodily injury cases.

**Product Liability Claims
(O.R.C. §§ 2307.71, 2307.711, 2307.75
and 2307.80)**

S.B. 80 makes a number of changes to Ohio's product liability statutes. S.B.

80 obliterates all common law product liability causes of action and provides that Ohio's product liability statutes exclusively govern such claims.

S.B. 80 modifies the test for design defect product liability claims. Under the Act, a product is defective in design and formulation only if it fails the "risk-benefit" test. The previous "consumer expectations" test is now merely a factor to be considered in applying the "risk-benefit" analysis.

S.B. 80 provides that manufacturers of pharmaceuticals, medical devices and over-the-counter medications are immune from punitive damages if their products were manufactured and labeled in accordance with an FDA approval or license.

Similarly, manufacturers and suppliers of *non-medical* products are immune from punitive damages if the product complied with government safety and performance standards (subject to limitations).

**Asbestos Successor Liability
Limitations
(O.R.C. § 2307.97)**

Significant limitations on asbestos-related liability of successor entities are included in S.B. 80. This detailed provision limits certain liability for asbestos-related claims inherited from businesses acquired through stock/asset purchases, mergers and consolidations. Under some circumstances, the limitation of liability is set at the value of the acquired entity, as of the time of the acquisition. This limit applies to asbestos bodily injury cases pending on

the effective date of the Act (April 6, 2005).

**Statute Of Limitations For Bodily
Injury Claims
(O.R.C. § 2305.10)**

The two-year statute of limitations for certain bodily injury claims has been codified to eliminate the "discovery rule" exception. However, the discovery rule is retained for pharmaceutical, medical device, and toxic tort claims.

**Obesity – Cumulative Consumption
Claims
(O.R.C. § 2305.36)**

S.B. 80 provides that food manufacturers, sellers and trade associations are now immune from civil damages for a person's cumulative consumption, obesity or other related health condition (including increased cholesterol or heart disease).

**Collateral Source Evidence
Admissible
(O.R.C. § 2315.20)**

Under S.B. 80, in all tort actions, a defendant is now permitted to introduce evidence of certain "collateral source" benefits that have been paid to the plaintiff. However, such evidence is not permitted if the source of the collateral benefits has certain subrogation rights.

**Taxability Instructions
(O.R.C. § 2315.01)**

Under S.B. 80, the court is required to instruct the jury in tort actions regarding the non-taxability of certain compensatory or punitive damages.

Seat Belts
(O.R.C. § 4513.263)

S.B. 80 also makes evidentiary changes regarding the plaintiff's use of seat belts in bodily injury cases. Under this bill, evidence of the non-use of a seat belt is now admissible for the purpose of reducing non-economic compensatory damage awards.

Applicability

Questions will undoubtedly arise as to whether portions of S.B. 80 can apply to pending cases. The statutes of repose in S.B. 80 specifically provide that they apply to all cases commenced on or after the effective date of the Act (April 6, 2005). Other provisions in S.B. 80 contain clauses stating that they *do* apply to pending litigation, while other sections are silent on this issue.

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