

2315.21 Punitive or exemplary damages.

(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 (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, 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 from that defendant.

(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.

(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 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.

(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.

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