



## Ohio Revised Code

### Section 2307.80 Punitive or exemplary damages from manufacturer or supplier.

Effective: April 7, 2005

Legislation: Senate Bill 80 - 125th General Assembly

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(A) Subject to 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)(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.

(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.

(3) For purposes of divisions (C) and (D) of this section:

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



(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.