

As Concurred by the Senate

126th General Assembly

Regular Session

2005-2006

Am. Sub. S. B. No. 117

**Senators (Sponsor Removed by Request), Schuler, Amstutz, Clancy,
Goodman, Jordan, Mumper, Niehaus, Schuring, Wachtmann, Harris
Representatives Aslanides, Blasdel, Blessing, Bulp, Buehrer, Coley, Collier,
Flowers, Gibbs, Hood, Raussen, Schaffer, Schneider, Seitz, Setzer, White, D.,
Wolpert**

—

A B I L L

To amend sections 1345.09, 2307.60, 2307.71, 2307.73,	1
and 2317.02 of the Revised Code to specify the	2
nature of damages that may be recovered in certain	3
actions based on unfair or deceptive sales	4
practices, to provide that a final judgment,	5
entered after a trial or upon a plea of guilty in	6
certain criminal actions generally precludes the	7
offender from denying any fact essential to	8
sustain that judgment when entered in evidence in	9
a civil proceeding that is based on the criminal	10
act, to make an exception to the attorney-client	11
privilege for communications related to an	12
attorney's aiding or furthering an ongoing or	13
future commission of bad faith by a client that is	14
an insurance company, to prohibit the use of	15
enterprise theories of liability against	16
manufacturers in product liability claims, and to	17
include public nuisance claims under the	18
definition of product liability claims.	19

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

Section 1. That sections 1345.09, 2307.60, 2307.71, 2307.73, 20
and 2317.02 of the Revised Code be amended to read as follows: 21

Sec. 1345.09. For a violation of Chapter 1345. of the Revised 22
Code, a consumer has a cause of action and is entitled to relief 23
as follows: 24

(A) Where the violation was an act prohibited by section 25
1345.02, 1345.03, or 1345.031 of the Revised Code, the consumer 26
may, in an individual action, rescind the transaction or recover 27
the consumer's actual economic damages plus an amount not 28
exceeding five thousand dollars in noneconomic damages. 29

(B) Where the violation was an act or practice declared to be 30
deceptive or unconscionable by rule adopted under division (B)(2) 31
of section 1345.05 of the Revised Code before the consumer 32
transaction on which the action is based, or an act or practice 33
determined by a court of this state to violate section 1345.02, 34
1345.03, or 1345.031 of the Revised Code and committed after the 35
decision containing the determination has been made available for 36
public inspection under division (A)(3) of section 1345.05 of the 37
Revised Code, the consumer may rescind the transaction or recover, 38
but not in a class action, three times the amount of the 39
consumer's actual economic damages or two hundred dollars, 40
whichever is greater, plus an amount not exceeding five thousand 41
dollars in noneconomic damages or recover damages or other 42
appropriate relief in a class action under Civil Rule 23, as 43
amended. 44

(C)(1) Except as otherwise provided in division (C)(2) of 45
this section, in any action for rescission, revocation of the 46
consumer transaction must occur within a reasonable time after the 47

consumer discovers or should have discovered the ground for it and
before any substantial change in condition of the subject of the
consumer transaction.

(2) If a consumer transaction between a loan officer,
mortgage broker, or nonbank mortgage lender and a customer is in
connection with a residential mortgage, revocation of the consumer
transaction in an action for rescission is only available to a
consumer in an individual action, and shall occur for no reason
other than one or more of the reasons set forth in the "Truth in
Lending Act," 82 Stat. 146 (1968), 15 U.S.C. 1635, not later than
the time limit within which the right of rescission under section
125(f) of the "Truth in Lending Act" expires.

(D) Any consumer may seek a declaratory judgment, an
injunction, or other appropriate relief against an act or practice
that violates this chapter.

(E) When a consumer commences an individual action for a
declaratory judgment or an injunction or a class action under this
section, the clerk of court shall immediately mail a copy of the
complaint to the attorney general. Upon timely application, the
attorney general may be permitted to intervene in any private
action or appeal pending under this section. When a judgment under
this section becomes final, the clerk of court shall mail a copy
of the judgment including supporting opinions to the attorney
general for inclusion in the public file maintained under division
(A)(3) of section 1345.05 of the Revised Code.

(F) The court may award to the prevailing party a reasonable
attorney's fee limited to the work reasonably performed, if either
of the following apply:

(1) The consumer complaining of the act or practice that
violated this chapter has brought or maintained an action that is
groundless, and the consumer filed or maintained the action in bad

faith;

79

(2) The supplier has knowingly committed an act or practice
that violates this chapter.

80

81

(G) As used in this section, "actual economic damages" means
damages for direct, incidental, or consequential pecuniary losses
resulting from a violation of Chapter 1345. of the Revised Code
and does not include damages for noneconomic loss as defined in
section 2315.18 of the Revised Code.

82

83

84

85

86

(H) Nothing in this section shall preclude a consumer from
also proceeding with a cause of action under any other theory of
law.

87

88

89

Sec. 2307.60. (A)(1) 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.~~

90

91

92

93

94

95

96

97

98

99

100

(2) A final judgment of a trial court that has not been
reversed on appeal or otherwise set aside, nullified, or vacated,
entered after a trial or upon a plea of guilty, but not upon a
plea of no contest or the equivalent plea from another
jurisdiction, that adjudges an offender guilty of an offense of
violence punishable by death or imprisonment in excess of one
year, when entered as evidence in any subsequent civil proceeding
based on the criminal act, shall preclude the offender from

101

102

103

104

105

106

107

108

denying in the subsequent civil proceeding any fact essential to
sustaining that judgment, unless the offender can demonstrate that
extraordinary circumstances prevented the offender from having a
full and fair opportunity to litigate the issue in the criminal
proceeding or other extraordinary circumstances justify affording
the offender an opportunity to relitigate the issue. The offender
may introduce evidence of the offender's pending appeal of the
final judgment of the trial court, if applicable, and the court
may consider that evidence in determining the liability of the
offender.

109
110
111
112
113
114
115
116
117
118

(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.

119
120
121
122
123
124
125
126
127

(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.

128
129
130
131
132
133

(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.

134
135
136
137
138

Sec. 2307.71. (A) As used in sections 2307.71 to 2307.80 of

139

the Revised Code: 140

(1) "Claimant" means either of the following: 141

(a) A person who asserts a product liability claim or on 142
whose behalf such a claim is asserted; 143

(b) If a product liability claim is asserted on behalf of the 144
surviving spouse, children, parents, or other next of kin of a 145
decedent or on behalf of the estate of a decedent, whether as a 146
claim in a wrongful death action under Chapter 2125. of the 147
Revised Code or as a survivorship claim, whichever of the 148
following is appropriate: 149

(i) The decedent, if the reference is to the person who 150
allegedly sustained harm or economic loss for which, or in 151
connection with which, compensatory damages or punitive or 152
exemplary damages are sought to be recovered; 153

(ii) The personal representative of the decedent or the 154
estate of the decedent, if the reference is to the person who is 155
asserting or has asserted the product liability claim. 156

(2) "Economic loss" means direct, incidental, or 157
consequential pecuniary loss, including, but not limited to, 158
damage to the product in question, and nonphysical damage to 159
property other than that product. Harm is not "economic loss." 160

(3) "Environment" means only navigable waters, surface water, 161
ground water, drinking water supplies, land surface, subsurface 162
strata, and air. 163

(4) "Ethical drug" means a prescription drug that is 164
prescribed or dispensed by a physician or any other person who is 165
legally authorized to prescribe or dispense a prescription drug. 166

(5) "Ethical medical device" means a medical device that is 167
prescribed, dispensed, or implanted by a physician or any other 168
person who is legally authorized to prescribe, dispense, or 169

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.

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

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

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

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

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

(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."

(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.

(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.

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

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

(12)(a) "Product" means, subject to division (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:

(i) It is capable of delivery itself, or as an assembled
whole in a mixed or combined state, or as a component or
ingredient.

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

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

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

(13) "Product liability claim" means a claim or cause of
action 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:

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

(b) Any warning or instruction, or lack of warning or

instruction, associated with that product; 230

(c) Any failure of that product to conform to any relevant 231
representation or warranty. 232

"Product liability claim" also includes any public nuisance 233
claim or cause of action at common law in which it is alleged that 234
the design, manufacture, supply, marketing, distribution, 235
promotion, advertising, labeling, or sale of a product 236
unreasonably interferes with a right common to the general public. 237

(14) "Representation" means an express representation of a 238
material fact concerning the character, quality, or safety of a 239
product. 240

(15)(a) "Supplier" means, subject to division (A)(15)(b) of 241
this section, either of the following: 242

(i) A person that, in the course of a business conducted for 243
the purpose, sells, distributes, leases, prepares, blends, 244
packages, labels, or otherwise participates in the placing of a 245
product in the stream of commerce; 246

(ii) A person that, in the course of a business conducted for 247
the purpose, installs, repairs, or maintains any aspect of a 248
product that allegedly causes harm. 249

(b) "Supplier" does not include any of the following: 250

(i) A manufacturer; 251

(ii) A seller of real property; 252

(iii) A provider of professional services who, incidental to 253
a professional transaction the essence of which is the furnishing 254
of judgment, skill, or services, sells or uses a product; 255

(iv) Any person who acts only in a financial capacity with 256
respect to the sale of a product, or who leases a product under a 257
lease arrangement in which the selection, possession, maintenance, 258

and operation of the product are controlled by a person other than 259
the lessor. 260

(16) "Unavoidably unsafe" means that, in the state of 261
technical, scientific, and medical knowledge at the time a product 262
in question left the control of its manufacturer, an aspect of 263
that product was incapable of being made safe. 264

(B) Sections 2307.71 to 2307.80 of the Revised Code are 265
intended to abrogate all common law product liability claims or 266
causes of action. 267

Sec. 2307.73. (A) A manufacturer is subject to liability for 268
compensatory damages based on a product liability claim only if 269
the claimant establishes, by a preponderance of the evidence, ~~both~~ 270
all of the following: 271

(1) Subject to division (B) of this section, the 272
manufacturer's product in question was defective in manufacture or 273
construction as described in section 2307.74 of the Revised Code, 274
was defective in design or formulation as described in section 275
2307.75 of the Revised Code, was defective due to inadequate 276
warning or instruction as described in section 2307.76 of the 277
Revised Code, or was defective because it did not conform to a 278
representation made by its manufacturer as described in section 279
2307.77 of the Revised Code; 280

(2) A defective aspect of the manufacturer's product in 281
question as described in division (A)(1) of this section was a 282
proximate cause of harm for which the claimant seeks to recover 283
compensatory damages; 284

(3) The manufacturer designed, formulated, produced, 285
constructed, created, assembled, or rebuilt the actual product 286
that was the cause of harm for which the claimant seeks to recover 287
compensatory damages. 288

(B) If a claimant is unable because ~~a~~ the manufacturer's 289
product in question was destroyed to establish by direct evidence 290
that the manufacturer's product in question was defective or if a 291
claimant otherwise is unable to establish by direct evidence that 292
~~a~~ the manufacturer's product in question was defective, then, 293
consistent with the Rules of Evidence, it shall be sufficient for 294
the claimant to present circumstantial or other competent evidence 295
that establishes, by a preponderance of the evidence, that the 296
manufacturer's product in question was defective in any one of the 297
four respects specified in division (A)(1) of this section. 298

(C) Proof that a manufacturer designed, formulated, produced, 299
constructed, created, assembled, or rebuilt the type of product in 300
question is not proof that the manufacturer designed, formulated, 301
produced, constructed, created, assembled, or rebuilt the actual 302
defective product in the product liability claim. A manufacturer 303
may not be held liable in a product liability action based on 304
market share, enterprise, or industrywide liability. 305

Sec. 2317.02. The following persons shall not testify in 306
certain respects: 307

(A)(1) An attorney, concerning a communication made to the 308
attorney by a client in that relation or the attorney's advice to 309
a client, except that the attorney may testify by express consent 310
of the client or, if the client is deceased, by the express 311
consent of the surviving spouse or the executor or administrator 312
of the estate of the deceased client. However, if the client 313
voluntarily testifies or is deemed by section 2151.421 of the 314
Revised Code to have waived any testimonial privilege under this 315
division, the attorney may be compelled to testify on the same 316
subject. 317

The testimonial privilege established under this division 318
does not apply concerning a communication between a client who has 319

since died and the deceased client's attorney if the communication
is relevant to a dispute between parties who claim through that
deceased client, regardless of whether the claims are by testate
or intestate succession or by inter vivos transaction, and the
dispute addresses the competency of the deceased client when the
deceased client executed a document that is the basis of the
dispute or whether the deceased client was a victim of fraud,
undue influence, or duress when the deceased client executed a
document that is the basis of the dispute.

(2) An attorney, concerning a communication made to the
attorney by a client in that relationship or the attorney's advice
to a client, except that if the client is an insurance company,
the attorney may be compelled to testify, subject to an in camera
inspection by a court, about communications made by the client to
the attorney or by the attorney to the client that are related to
the attorney's aiding or furthering an ongoing or future
commission of bad faith by the client, if the party seeking
disclosure of the communications has made a prima facie showing of
bad faith, fraud, or criminal misconduct by the client.

(B)(1) A physician or a dentist concerning a communication
made to the physician or dentist by a patient in that relation or
the physician's or dentist's advice to a patient, except as
otherwise provided in this division, division (B)(2), and division
(B)(3) of this section, and except that, if the patient is deemed
by section 2151.421 of the Revised Code to have waived any
testimonial privilege under this division, the physician may be
compelled to testify on the same subject.

The testimonial privilege established under this division
does not apply, and a physician or dentist may testify or may be
compelled to testify, in any of the following circumstances:

(a) In any civil action, in accordance with the discovery

provisions of the Rules of Civil Procedure in connection with a 351
civil action, or in connection with a claim under Chapter 4123. of 352
the Revised Code, under any of the following circumstances: 353

(i) If the patient or the guardian or other legal 354
representative of the patient gives express consent; 355

(ii) If the patient is deceased, the spouse of the patient or 356
the executor or administrator of the patient's estate gives 357
express consent; 358

(iii) If a medical claim, dental claim, chiropractic claim, 359
or optometric claim, as defined in section 2305.113 of the Revised 360
Code, an action for wrongful death, any other type of civil 361
action, or a claim under Chapter 4123. of the Revised Code is 362
filed by the patient, the personal representative of the estate of 363
the patient if deceased, or the patient's guardian or other legal 364
representative. 365

(b) In any civil action concerning court-ordered treatment or 366
services received by a patient, if the court-ordered treatment or 367
services were ordered as part of a case plan journalized under 368
section 2151.412 of the Revised Code or the court-ordered 369
treatment or services are necessary or relevant to dependency, 370
neglect, or abuse or temporary or permanent custody proceedings 371
under Chapter 2151. of the Revised Code. 372

(c) In any criminal action concerning any test or the results 373
of any test that determines the presence or concentration of 374
alcohol, a drug of abuse, a combination of them, a controlled 375
substance, or a metabolite of a controlled substance in the 376
patient's whole blood, blood serum or plasma, breath, urine, or 377
other bodily substance at any time relevant to the criminal 378
offense in question. 379

(d) In any criminal action against a physician or dentist. In 380
such an action, the testimonial privilege established under this 381

division does not prohibit the admission into evidence, in
accordance with the Rules of Evidence, of a patient's medical or
dental records or other communications between a patient and the
physician or dentist that are related to the action and obtained
by subpoena, search warrant, or other lawful means. A court that
permits or compels a physician or dentist to testify in such an
action or permits the introduction into evidence of patient
records or other communications in such an action shall require
that appropriate measures be taken to ensure that the
confidentiality of any patient named or otherwise identified in
the records is maintained. Measures to ensure confidentiality that
may be taken by the court include sealing its records or deleting
specific information from its records.

(e)(i) If the communication was between a patient who has
since died and the deceased patient's physician or dentist, the
communication is relevant to a dispute between parties who claim
through that deceased patient, regardless of whether the claims
are by testate or intestate succession or by inter vivos
transaction, and the dispute addresses the competency of the
deceased patient when the deceased patient executed a document
that is the basis of the dispute or whether the deceased patient
was a victim of fraud, undue influence, or duress when the
deceased patient executed a document that is the basis of the
dispute.

(ii) If neither the spouse of a patient nor the executor or
administrator of that patient's estate gives consent under
division (B)(1)(a)(ii) of this section, testimony or the
disclosure of the patient's medical records by a physician,
dentist, or other health care provider under division (B)(1)(e)(i)
of this section is a permitted use or disclosure of protected
health information, as defined in 45 C.F.R. 160.103, and an
authorization or opportunity to be heard shall not be required.

(iii) Division (B)(1)(e)(i) of this section does not require 414
a mental health professional to disclose psychotherapy notes, as 415
defined in 45 C.F.R. 164.501. 416

(iv) An interested person who objects to testimony or 417
disclosure under division (B)(1)(e)(i) of this section may seek a 418
protective order pursuant to Civil Rule 26. 419

(v) A person to whom protected health information is 420
disclosed under division (B)(1)(e)(i) of this section shall not 421
use or disclose the protected health information for any purpose 422
other than the litigation or proceeding for which the information 423
was requested and shall return the protected health information to 424
the covered entity or destroy the protected health information, 425
including all copies made, at the conclusion of the litigation or 426
proceeding. 427

(2)(a) If any law enforcement officer submits a written 428
statement to a health care provider that states that an official 429
criminal investigation has begun regarding a specified person or 430
that a criminal action or proceeding has been commenced against a 431
specified person, that requests the provider to supply to the 432
officer copies of any records the provider possesses that pertain 433
to any test or the results of any test administered to the 434
specified person to determine the presence or concentration of 435
alcohol, a drug of abuse, a combination of them, a controlled 436
substance, or a metabolite of a controlled substance in the 437
person's whole blood, blood serum or plasma, breath, or urine at 438
any time relevant to the criminal offense in question, and that 439
conforms to section 2317.022 of the Revised Code, the provider, 440
except to the extent specifically prohibited by any law of this 441
state or of the United States, shall supply to the officer a copy 442
of any of the requested records the provider possesses. If the 443
health care provider does not possess any of the requested 444
records, the provider shall give the officer a written statement 445

that indicates that the provider does not possess any of the
requested records.

(b) If a health care provider possesses any records of the
type described in division (B)(2)(a) of this section regarding the
person in question at any time relevant to the criminal offense in
question, in lieu of personally testifying as to the results of
the test in question, the custodian of the records may submit a
certified copy of the records, and, upon its submission, the
certified copy is qualified as authentic evidence and may be
admitted as evidence in accordance with the Rules of Evidence.
Division (A) of section 2317.422 of the Revised Code does not
apply to any certified copy of records submitted in accordance
with this division. Nothing in this division shall be construed to
limit the right of any party to call as a witness the person who
administered the test to which the records pertain, the person
under whose supervision the test was administered, the custodian
of the records, the person who made the records, or the person
under whose supervision the records were made.

(3)(a) If the testimonial privilege described in division
(B)(1) of this section does not apply as provided in division
(B)(1)(a)(iii) of this section, a physician or dentist may be
compelled to testify or to submit to discovery under the Rules of
Civil Procedure only as to a communication made to the physician
or dentist by the patient in question in that relation, or the
physician's or dentist's advice to the patient in question, that
related causally or historically to physical or mental injuries
that are relevant to issues in the medical claim, dental claim,
chiropractic claim, or optometric claim, action for wrongful
death, other civil action, or claim under Chapter 4123. of the
Revised Code.

(b) If the testimonial privilege described in division (B)(1)
of this section does not apply to a physician or dentist as

provided in division (B)(1)(c) of this section, the physician or
dentist, in lieu of personally testifying as to the results of the
test in question, may submit a certified copy of those results,
and, upon its submission, the certified copy is qualified as
authentic evidence and may be admitted as evidence in accordance
with the Rules of Evidence. Division (A) of section 2317.422 of
the Revised Code does not apply to any certified copy of results
submitted in accordance with this division. Nothing in this
division shall be construed to limit the right of any party to
call as a witness the person who administered the test in
question, the person under whose supervision the test was
administered, the custodian of the results of the test, the person
who compiled the results, or the person under whose supervision
the results were compiled.

(4) The testimonial privilege described in division (B)(1) of
this section is not waived when a communication is made by a
physician to a pharmacist or when there is communication between a
patient and a pharmacist in furtherance of the physician-patient
relation.

(5)(a) As used in divisions (B)(1) to (4) of this section,
"communication" means acquiring, recording, or transmitting any
information, in any manner, concerning any facts, opinions, or
statements necessary to enable a physician or dentist to diagnose,
treat, prescribe, or act for a patient. A "communication" may
include, but is not limited to, any medical or dental, office, or
hospital communication such as a record, chart, letter,
memorandum, laboratory test and results, x-ray, photograph,
financial statement, diagnosis, or prognosis.

(b) As used in division (B)(2) of this section, "health care
provider" means a hospital, ambulatory care facility, long-term
care facility, pharmacy, emergency facility, or health care
practitioner.

(c) As used in division (B)(5)(b) of this section: 510

(i) "Ambulatory care facility" means a facility that provides 511
medical, diagnostic, or surgical treatment to patients who do not 512
require hospitalization, including a dialysis center, ambulatory 513
surgical facility, cardiac catheterization facility, diagnostic 514
imaging center, extracorporeal shock wave lithotripsy center, home 515
health agency, inpatient hospice, birthing center, radiation 516
therapy center, emergency facility, and an urgent care center. 517
"Ambulatory health care facility" does not include the private 518
office of a physician or dentist, whether the office is for an 519
individual or group practice. 520

(ii) "Emergency facility" means a hospital emergency 521
department or any other facility that provides emergency medical 522
services. 523

(iii) "Health care practitioner" has the same meaning as in 524
section 4769.01 of the Revised Code. 525

(iv) "Hospital" has the same meaning as in section 3727.01 of 526
the Revised Code. 527

(v) "Long-term care facility" means a nursing home, 528
residential care facility, or home for the aging, as those terms 529
are defined in section 3721.01 of the Revised Code; an adult care 530
facility, as defined in section 3722.01 of the Revised Code; a 531
nursing facility or intermediate care facility for the mentally 532
retarded, as those terms are defined in section 5111.20 of the 533
Revised Code; a facility or portion of a facility certified as a 534
skilled nursing facility under Title XVIII of the "Social Security 535
Act," 49 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended. 536

(vi) "Pharmacy" has the same meaning as in section 4729.01 of 537
the Revised Code. 538

(d) As used in divisions (B)(1) and ~~(B)~~(2) of this section, 539

"drug of abuse" has the same meaning as in section 4506.01 of the Revised Code.

(6) Divisions (B)(1), (2), (3), (4), and (5) of this section apply to doctors of medicine, doctors of osteopathic medicine, doctors of podiatry, and dentists.

(7) Nothing in divisions (B)(1) to (6) of this section affects, or shall be construed as affecting, the immunity from civil liability conferred by section 307.628 of the Revised Code or the immunity from civil liability conferred by section 2305.33 of the Revised Code upon physicians who report an employee's use of a drug of abuse, or a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee in accordance with division (B) of that section. As used in division (B)(7) of this section, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(C)(1) A cleric, when the cleric remains accountable to the authority of that cleric's church, denomination, or sect, concerning a confession made, or any information confidentially communicated, to the cleric for a religious counseling purpose in the cleric's professional character. The cleric may testify by express consent of the person making the communication, except when the disclosure of the information is in violation of a sacred trust and except that, if the person voluntarily testifies or is deemed by division (A)(4)(c) of section 2151.421 of the Revised Code to have waived any testimonial privilege under this division, the cleric may be compelled to testify on the same subject except when disclosure of the information is in violation of a sacred trust.

(2) As used in division (C) of this section:

(a) "Cleric" means a member of the clergy, rabbi, priest,

Christian ~~science~~ Science practitioner, or regularly ordained, 571
accredited, or licensed minister of an established and legally 572
cognizable church, denomination, or sect. 573

(b) "Sacred trust" means a confession or confidential 574
communication made to a cleric in the cleric's ecclesiastical 575
capacity in the course of discipline enjoined by the church to 576
which the cleric belongs, including, but not limited to, the 577
Catholic Church, if both of the following apply: 578

(i) The confession or confidential communication was made 579
directly to the cleric. 580

(ii) The confession or confidential communication was made in 581
the manner and context that places the cleric specifically and 582
strictly under a level of confidentiality that is considered 583
inviolable by canon law or church doctrine. 584

(D) Husband or wife, concerning any communication made by one 585
to the other, or an act done by either in the presence of the 586
other, during coverture, unless the communication was made, or act 587
done, in the known presence or hearing of a third person competent 588
to be a witness; and such rule is the same if the marital relation 589
has ceased to exist; 590

(E) A person who assigns a claim or interest, concerning any 591
matter in respect to which the person would not, if a party, be 592
permitted to testify; 593

(F) A person who, if a party, would be restricted under 594
section 2317.03 of the Revised Code, when the property or thing is 595
sold or transferred by an executor, administrator, guardian, 596
trustee, heir, devisee, or legatee, shall be restricted in the 597
same manner in any action or proceeding concerning the property or 598
thing. 599

(G)(1) A school guidance counselor who holds a valid educator 600

license from the state board of education as provided for in
section 3319.22 of the Revised Code, a person licensed under
Chapter 4757. of the Revised Code as a professional clinical
counselor, professional counselor, social worker, independent
social worker, marriage and family therapist or independent
marriage and family therapist, or registered under Chapter 4757.
of the Revised Code as a social work assistant concerning a
confidential communication received from a client in that relation
or the person's advice to a client unless any of the following
applies:

(a) The communication or advice indicates clear and present
danger to the client or other persons. For the purposes of this
division, cases in which there are indications of present or past
child abuse or neglect of the client constitute a clear and
present danger.

(b) The client gives express consent to the testimony.

(c) If the client is deceased, the surviving spouse or the
executor or administrator of the estate of the deceased client
gives express consent.

(d) The client voluntarily testifies, in which case the
school guidance counselor or person licensed or registered under
Chapter 4757. of the Revised Code may be compelled to testify on
the same subject.

(e) The court in camera determines that the information
communicated by the client is not germane to the counselor-client,
marriage and family therapist-client, or social worker-client
relationship.

(f) A court, in an action brought against a school, its
administration, or any of its personnel by the client, rules after
an in-camera inspection that the testimony of the school guidance
counselor is relevant to that action.

(g) The testimony is sought in a civil action and concerns 632
court-ordered treatment or services received by a patient as part 633
of a case plan journalized under section 2151.412 of the Revised 634
Code or the court-ordered treatment or services are necessary or 635
relevant to dependency, neglect, or abuse or temporary or 636
permanent custody proceedings under Chapter 2151. of the Revised 637
Code. 638

(2) Nothing in division (G)(1) of this section shall relieve 639
a school guidance counselor or a person licensed or registered 640
under Chapter 4757. of the Revised Code from the requirement to 641
report information concerning child abuse or neglect under section 642
2151.421 of the Revised Code. 643

(H) A mediator acting under a mediation order issued under 644
division (A) of section 3109.052 of the Revised Code or otherwise 645
issued in any proceeding for divorce, dissolution, legal 646
separation, annulment, or the allocation of parental rights and 647
responsibilities for the care of children, in any action or 648
proceeding, other than a criminal, delinquency, child abuse, child 649
neglect, or dependent child action or proceeding, that is brought 650
by or against either parent who takes part in mediation in 651
accordance with the order and that pertains to the mediation 652
process, to any information discussed or presented in the 653
mediation process, to the allocation of parental rights and 654
responsibilities for the care of the parents' children, or to the 655
awarding of parenting time rights in relation to their children; 656

(I) A communications assistant, acting within the scope of 657
the communication assistant's authority, when providing 658
telecommunications relay service pursuant to section 4931.35 of 659
the Revised Code or Title II of the "Communications Act of 1934," 660
104 Stat. 366 (1990), 47 U.S.C. 225, concerning a communication 661
made through a telecommunications relay service. Nothing in this 662
section shall limit the obligation of a communications assistant 663

to divulge information or testify when mandated by federal law or 664
regulation or pursuant to subpoena in a criminal proceeding. 665

Nothing in this section shall limit any immunity or privilege 666
granted under federal law or regulation. 667

(J)(1) A chiropractor in a civil proceeding concerning a 668
communication made to the chiropractor by a patient in that 669
relation or the chiropractor's advice to a patient, except as 670
otherwise provided in this division. The testimonial privilege 671
established under this division does not apply, and a chiropractor 672
may testify or may be compelled to testify, in any civil action, 673
in accordance with the discovery provisions of the Rules of Civil 674
Procedure in connection with a civil action, or in connection with 675
a claim under Chapter 4123. of the Revised Code, under any of the 676
following circumstances: 677

(a) If the patient or the guardian or other legal 678
representative of the patient gives express consent. 679

(b) If the patient is deceased, the spouse of the patient or 680
the executor or administrator of the patient's estate gives 681
express consent. 682

(c) If a medical claim, dental claim, chiropractic claim, or 683
optometric claim, as defined in section 2305.113 of the Revised 684
Code, an action for wrongful death, any other type of civil 685
action, or a claim under Chapter 4123. of the Revised Code is 686
filed by the patient, the personal representative of the estate of 687
the patient if deceased, or the patient's guardian or other legal 688
representative. 689

(2) If the testimonial privilege described in division (J)(1) 690
of this section does not apply as provided in division (J)(1)(c) 691
of this section, a chiropractor may be compelled to testify or to 692
submit to discovery under the Rules of Civil Procedure only as to 693
a communication made to the chiropractor by the patient in 694

question in that relation, or the chiropractor's advice to the
patient in question, that related causally or historically to
physical or mental injuries that are relevant to issues in the
medical claim, dental claim, chiropractic claim, or optometric
claim, action for wrongful death, other civil action, or claim
under Chapter 4123. of the Revised Code.

(3) The testimonial privilege established under this division
does not apply, and a chiropractor may testify or be compelled to
testify, in any criminal action or administrative proceeding.

(4) As used in this division, "communication" means
acquiring, recording, or transmitting any information, in any
manner, concerning any facts, opinions, or statements necessary to
enable a chiropractor to diagnose, treat, or act for a patient. A
communication may include, but is not limited to, any
chiropractic, office, or hospital communication such as a record,
chart, letter, memorandum, laboratory test and results, x-ray,
photograph, financial statement, diagnosis, or prognosis.

(K)(1) Except as provided under division (K)(2) of this
section, a critical incident stress management team member
concerning a communication received from an individual who
receives crisis response services from the team member, or the
team member's advice to the individual, during a debriefing
session.

(2) The testimonial privilege established under division
(K)(1) of this section does not apply if any of the following are
true:

(a) The communication or advice indicates clear and present
danger to the individual who receives crisis response services or
to other persons. For purposes of this division, cases in which
there are indications of present or past child abuse or neglect of
the individual constitute a clear and present danger.

(b) The individual who received crisis response services 726
gives express consent to the testimony. 727

(c) If the individual who received crisis response services 728
is deceased, the surviving spouse or the executor or administrator 729
of the estate of the deceased individual gives express consent. 730

(d) The individual who received crisis response services 731
voluntarily testifies, in which case the team member may be 732
compelled to testify on the same subject. 733

(e) The court in camera determines that the information 734
communicated by the individual who received crisis response 735
services is not germane to the relationship between the individual 736
and the team member. 737

(f) The communication or advice pertains or is related to any 738
criminal act. 739

(3) As used in division (K) of this section: 740

(a) "Crisis response services" means consultation, risk 741
assessment, referral, and on-site crisis intervention services 742
provided by a critical incident stress management team to 743
individuals affected by crisis or disaster. 744

(b) "Critical incident stress management team member" or 745
"team member" means an individual specially trained to provide 746
crisis response services as a member of an organized community or 747
local crisis response team that holds membership in the Ohio 748
critical incident stress management network. 749

(c) "Debriefing session" means a session at which crisis 750
response services are rendered by a critical incident stress 751
management team member during or after a crisis or disaster. 752

(L)(1) Subject to division (L)(2) of this section and except 753
as provided in division (L)(3) of this section, an employee 754
assistance professional, concerning a communication made to the 755

employee assistance professional by a client in the employee 756
assistance professional's official capacity as an employee 757
assistance professional. 758

(2) Division (L)(1) of this section applies to an employee 759
assistance professional who meets either or both of the following 760
requirements: 761

(a) Is certified by the employee assistance certification 762
commission to engage in the employee assistance profession; 763

(b) Has education, training, and experience in all of the 764
following: 765

(i) Providing workplace-based services designed to address 766
employer and employee productivity issues; 767

(ii) Providing assistance to employees and employees' 768
dependents in identifying and finding the means to resolve 769
personal problems that affect the employees or the employees' 770
performance; 771

(iii) Identifying and resolving productivity problems 772
associated with an employee's concerns about any of the following 773
matters: health, marriage, family, finances, substance abuse or 774
other addiction, workplace, law, and emotional issues; 775

(iv) Selecting and evaluating available community resources; 776

(v) Making appropriate referrals; 777

(vi) Local and national employee assistance agreements; 778

(vii) Client confidentiality. 779

(3) Division (L)(1) of this section does not apply to any of 780
the following: 781

(a) A criminal action or proceeding involving an offense 782
under sections 2903.01 to 2903.06 of the Revised Code if the 783
employee assistance professional's disclosure or testimony relates 784

directly to the facts or immediate circumstances of the offense; 785

(b) A communication made by a client to an employee 786
assistance professional that reveals the contemplation or 787
commission of a crime or serious, harmful act; 788

(c) A communication that is made by a client who is an 789
unemancipated minor or an adult adjudicated to be incompetent and 790
indicates that the client was the victim of a crime or abuse; 791

(d) A civil proceeding to determine an individual's mental 792
competency or a criminal action in which a plea of not guilty by 793
reason of insanity is entered; 794

(e) A civil or criminal malpractice action brought against 795
the employee assistance professional; 796

(f) When the employee assistance professional has the express 797
consent of the client or, if the client is deceased or disabled, 798
the client's legal representative; 799

(g) When the testimonial privilege otherwise provided by 800
division (L)(1) of this section is abrogated under law. 801

Section 2. That existing sections 1345.09, 2307.60, 2307.71, 802
2307.73, and 2317.02 of the Revised Code are hereby repealed. 803

Section 3. The General Assembly declares its intent that the 804
amendments made by this act to sections 2307.71 and 2307.73 of the 805
Revised Code are not intended to be substantive but are intended 806
to clarify the General Assembly's original intent in enacting the 807
Ohio Product Liability Act, sections 2307.71 to 2307.80 of the 808
Revised Code, as initially expressed in Section 3 of Am. Sub. S.B. 809
80 of the 125th General Assembly, to abrogate all common law 810
product liability causes of action including common law public 811
nuisance causes of action, regardless of how the claim is 812
described, styled, captioned, characterized, or designated, 813

including claims against a manufacturer or supplier for a public 814
nuisance allegedly caused by a manufacturer's or supplier's 815
product. 816

Section 4. The General Assembly declares its intent that the 817
amendments made by this act to section 2307.73 of the Revised Code 818
are intended to clarify that section 2307.73 of the Revised Code 819
is intended to follow the Ohio Supreme Court's holdings in 820
Sutowski v. Eli Lilly & Co. (1998), 82 Ohio St.3d 347, and in 821
Horton v. Harwick Chemical Corp. (1995), 73 Ohio St. 3d 679, that 822
a plaintiff in a product liability claim must identify the 823
particular manufacturer of the product that allegedly caused the 824
plaintiff's harm in order to maintain the claim. 825

Section 5. Section 1345.09 of the Revised Code, as amended by 826
this act, shall take effect on July 1, 2007, and shall apply to 827
actions commenced on or after that date and, to the extent 828
permitted under the constitutions of this state and of the United 829
States, to cases pending on that date. 830

Section 6. The General Assembly declares that the 831
attorney-client privilege is a substantial right and that it is 832
the public policy of Ohio that all communications between an 833
attorney and a client in that relation are worthy of the 834
protection of privilege, and further that where it is alleged that 835
the attorney aided or furthered an ongoing or future commission of 836
insurance bad faith by the client, that the party seeking waiver 837
of the privilege must make a prima facie showing that the 838
privilege should be waived and the court should conduct an in 839
camera inspection of disputed communications. The common law 840
established in *Boone v. Vanliner Ins. Co.* (2001), 91 Ohio St.3d 841
209, *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 842
and *Peyko v. Frederick* (1986), 25 Ohio St.3d 164, is modified 843

accordingly to provide for judicial review regarding the 844
privilege. 845

Section 7. Section 2317.02 of the Revised Code is presented 846
in this act as a composite of the section as amended by Sub. H.B. 847
144, Sub. S.B. 8, and Am. Sub. S.B. 17 of the 126th General 848
Assembly. The General Assembly, applying the principle stated in 849
division (B) of section 1.52 of the Revised Code that amendments 850
are to be harmonized if reasonably capable of simultaneous 851
operation, finds that the composite is the resulting version of 852
the section in effect prior to the effective date of the section 853
as presented in this act. 854