

**As Reported by the House Judiciary Committee**

**126th General Assembly**

**Regular Session**

**2005-2006**

**Sub. S. B. No. 117**

**Senators Mallory, Dann, Fedor, Jacobson, Miller, R., Schuler, Amstutz, Zurz,  
Armbruster, Brady, Clancy, Fingerhut, Goodman, Hagan, Jordan, Mumper,  
Niehaus, Padgett, Schuring, Wachtmann, Wilson, Harris, Spada, Cates**

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**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 48  
before any substantial change in condition of the subject of the 49

consumer transaction. 50

(2) If a consumer transaction between a loan officer, 51  
mortgage broker, or nonbank mortgage lender and a customer is in 52  
connection with a residential mortgage, revocation of the consumer 53  
transaction in an action for rescission is only available to a 54  
consumer in an individual action, and shall occur for no reason 55  
other than one or more of the reasons set forth in the "Truth in 56  
Lending Act," 82 Stat. 146 (1968), 15 U.S.C. 1635, not later than 57  
the time limit within which the right of rescission under section 58  
125(f) of the "Truth in Lending Act" expires. 59

(D) Any consumer may seek a declaratory judgment, an 60  
injunction, or other appropriate relief against an act or practice 61  
that violates this chapter. 62

(E) When a consumer commences an individual action for a 63  
declaratory judgment or an injunction or a class action under this 64  
section, the clerk of court shall immediately mail a copy of the 65  
complaint to the attorney general. Upon timely application, the 66  
attorney general may be permitted to intervene in any private 67  
action or appeal pending under this section. When a judgment under 68  
this section becomes final, the clerk of court shall mail a copy 69  
of the judgment including supporting opinions to the attorney 70  
general for inclusion in the public file maintained under division 71  
(A)(3) of section 1345.05 of the Revised Code. 72

(F) The court may award to the prevailing party a reasonable 73  
attorney's fee limited to the work reasonably performed, if either 74  
of the following apply: 75

(1) The consumer complaining of the act or practice that 76  
violated this chapter has brought or maintained an action that is 77  
groundless, and the consumer filed or maintained the action in bad 78  
faith; 79

(2) The supplier has knowingly committed an act or practice 80

that violates this chapter.

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(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.

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

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**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.~~

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(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, when entered as evidence in any subsequent civil proceeding based on the criminal act, shall preclude the offender from 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

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criminal proceeding or other extraordinary circumstances justify 112  
affording the offender an opportunity to relitigate the issue. The 113  
offender may introduce evidence of the offender's pending appeal 114  
of the final judgment of the trial court, if applicable, and the 115  
court may consider that evidence in determining the liability of 116  
the offender. 117

(B)(1) As used in division (B) of this section, "tort action" 118  
means a civil action for damages for injury, death, or loss to 119  
person or property other than a civil action for damages for a 120  
breach of contract or another agreement between persons. "Tort 121  
action" includes, but is not limited to, a product liability 122  
claim, as defined in section 2307.71 of the Revised Code, and an 123  
asbestos claim, as defined in section 2307.91 of the Revised Code, 124  
an action for wrongful death under Chapter 2125. of the Revised 125  
Code, and an action based on derivative claims for relief. 126

(2) Recovery on a claim for relief in a tort action is barred 127  
to any person or the person's legal representative if the person 128  
has been convicted of or has pleaded guilty to a felony, or to a 129  
misdemeanor that is an offense of violence, arising out of 130  
criminal conduct that was a proximate cause of the injury or loss 131  
for which relief is claimed in the action. 132

(3) Division (B) of this section does not apply to civil 133  
claims based upon alleged intentionally tortious conduct, alleged 134  
violations of the United States Constitution, or alleged 135  
violations of statutes of the United States pertaining to civil 136  
rights. 137

**Sec. 2307.71.** (A) As used in sections 2307.71 to 2307.80 of 138  
the Revised Code: 139

(1) "Claimant" means either of the following: 140

(a) A person who asserts a product liability claim or on 141

whose behalf such a claim is asserted;	142
(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:	143 144 145 146 147 148
(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;	149 150 151 152
(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.	153 154 155
(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."	156 157 158 159
(3) "Environment" means <u>only</u> navigable waters, surface water, ground water, drinking water supplies, land surface, subsurface strata, and air.	160 161 162
(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.	163 164 165
(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.	166 167 168 169 170 171

(6) "Foreseeable risk" means a risk of harm that satisfies	172
both of the following:	173
(a) It is associated with an intended or reasonably	174
foreseeable use, modification, or alteration of a product in	175
question.	176
(b) It is a risk that the manufacturer in question should	177
recognize while exercising both of the following:	178
(i) The attention, perception, memory, knowledge, and	179
intelligence that a reasonable manufacturer should possess;	180
(ii) Any superior attention, perception, memory, knowledge,	181
or intelligence that the manufacturer in question possesses.	182
(7) "Harm" means death, physical injury to person, serious	183
emotional distress, or physical damage to property other than the	184
product in question. Economic loss is not "harm."	185
(8) "Hazardous or toxic substances" include, but are not	186
limited to, hazardous waste as defined in section 3734.01 of the	187
Revised Code, hazardous waste as specified in the rules of the	188
director of environmental protection pursuant to division (A) of	189
section 3734.12 of the Revised Code, hazardous substances as	190
defined in section 3716.01 of the Revised Code, and hazardous	191
substances, pollutants, and contaminants as defined in or by	192
regulations adopted pursuant to the "Comprehensive Environmental	193
Response, Compensation, and Liability Act of 1980," 94 Stat. 2767,	194
42 U.S.C. 9601, as amended.	195
(9) "Manufacturer" means a person engaged in a business to	196
design, formulate, produce, create, make, construct, assemble, or	197
rebuild a product or a component of a product.	198
(10) "Person" has the same meaning as in division (C) of	199
section 1.59 of the Revised Code and also includes governmental	200
entities.	201

(11) "Physician" means a person who is licensed to practice medicine and surgery or osteopathic medicine and surgery by the state medical board.	202 203 204
(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:	205 206 207 208
(i) It is capable of delivery itself, or as an assembled whole in a mixed or combined state, or as a component or ingredient.	209 210 211
(ii) It is produced, manufactured, or supplied for introduction into trade or commerce.	212 213
(iii) It is intended for sale or lease to persons for commercial or personal use.	214 215
(b) "Product" does not include human tissue, blood, or organs.	216 217
(13) "Product liability claim" means a claim <u>or cause of action</u> 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:	218 219 220 221 222 223 224
(a) The design, formulation, production, construction, creation, assembly, rebuilding, testing, or marketing of that product;	225 226 227
(b) Any warning or instruction, or lack of warning or instruction, associated with that product;	228 229
(c) Any failure of that product to conform to any relevant representation or warranty.	230 231



"Product liability claim" also includes any public nuisance 232  
claim or cause of action at common law in which it is alleged that 233  
the design, manufacture, supply, marketing, distribution, 234  
promotion, advertising, labeling, or sale of a product 235  
unreasonably interferes with a right common to the general public. 236

(14) "Representation" means an express representation of a 237  
material fact concerning the character, quality, or safety of a 238  
product. 239

(15)(a) "Supplier" means, subject to division (A)(15)(b) of 240  
this section, either of the following: 241

(i) A person that, in the course of a business conducted for 242  
the purpose, sells, distributes, leases, prepares, blends, 243  
packages, labels, or otherwise participates in the placing of a 244  
product in the stream of commerce; 245

(ii) A person that, in the course of a business conducted for 246  
the purpose, installs, repairs, or maintains any aspect of a 247  
product that allegedly causes harm. 248

(b) "Supplier" does not include any of the following: 249

(i) A manufacturer; 250

(ii) A seller of real property; 251

(iii) A provider of professional services who, incidental to 252  
a professional transaction the essence of which is the furnishing 253  
of judgment, skill, or services, sells or uses a product; 254

(iv) Any person who acts only in a financial capacity with 255  
respect to the sale of a product, or who leases a product under a 256  
lease arrangement in which the selection, possession, maintenance, 257  
and operation of the product are controlled by a person other than 258  
the lessor. 259

(16) "Unavoidably unsafe" means that, in the state of 260  
technical, scientific, and medical knowledge at the time a product 261

in question left the control of its manufacturer, an aspect of  
that product was incapable of being made safe.

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

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

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

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

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

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(B) If a claimant is unable because a the manufacturer's  
product in question was destroyed to establish by direct evidence  
that the manufacturer's product in question was defective or if a  
claimant otherwise is unable to establish by direct evidence that

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a the manufacturer's product in question was defective, then, 292  
consistent with the Rules of Evidence, it shall be sufficient for 293  
the claimant to present circumstantial or other competent evidence 294  
that establishes, by a preponderance of the evidence, that the 295  
manufacturer's product in question was defective in any one of the 296  
four respects specified in division (A)(1) of this section. 297

(C) Proof that a manufacturer designed, formulated, produced, 298  
constructed, created, assembled, or rebuilt the type of product in 299  
question is not proof that the manufacturer designed, formulated, 300  
produced, constructed, created, assembled, or rebuilt the actual 301  
defective product in the product liability claim. A manufacturer 302  
may not be held liable in a product liability action based on 303  
market share, enterprise, or industrywide liability. 304

**Sec. 2317.02.** The following persons shall not testify in 305  
certain respects: 306

(A)(1) An attorney, concerning a communication made to the 307  
attorney by a client in that relation or the attorney's advice to 308  
a client, except that the attorney may testify by express consent 309  
of the client or, if the client is deceased, by the express 310  
consent of the surviving spouse or the executor or administrator 311  
of the estate of the deceased client. However, if the client 312  
voluntarily testifies or is deemed by section 2151.421 of the 313  
Revised Code to have waived any testimonial privilege under this 314  
division, the attorney may be compelled to testify on the same 315  
subject. 316

The testimonial privilege established under this division 317  
does not apply concerning a communication between a client who has 318  
since died and the deceased client's attorney if the communication 319  
is relevant to a dispute between parties who claim through that 320  
deceased client, regardless of whether the claims are by testate 321  
or intestate succession or by inter vivos transaction, and the 322

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  
civil action, or in connection with a claim under Chapter 4123. of  
the Revised Code, under any of the following circumstances:

(i) If the patient or the guardian or other legal

representative of the patient gives express consent; 354

(ii) If the patient is deceased, the spouse of the patient or 355  
the executor or administrator of the patient's estate gives 356  
express consent; 357

(iii) If a medical claim, dental claim, chiropractic claim, 358  
or optometric claim, as defined in section 2305.113 of the Revised 359  
Code, an action for wrongful death, any other type of civil 360  
action, or a claim under Chapter 4123. of the Revised Code is 361  
filed by the patient, the personal representative of the estate of 362  
the patient if deceased, or the patient's guardian or other legal 363  
representative. 364

(b) In any civil action concerning court-ordered treatment or 365  
services received by a patient, if the court-ordered treatment or 366  
services were ordered as part of a case plan journalized under 367  
section 2151.412 of the Revised Code or the court-ordered 368  
treatment or services are necessary or relevant to dependency, 369  
neglect, or abuse or temporary or permanent custody proceedings 370  
under Chapter 2151. of the Revised Code. 371

(c) In any criminal action concerning any test or the results 372  
of any test that determines the presence or concentration of 373  
alcohol, a drug of abuse, a combination of them, a controlled 374  
substance, or a metabolite of a controlled substance in the 375  
patient's whole blood, blood serum or plasma, breath, urine, or 376  
other bodily substance at any time relevant to the criminal 377  
offense in question. 378

(d) In any criminal action against a physician or dentist. In 379  
such an action, the testimonial privilege established under this 380  
division does not prohibit the admission into evidence, in 381  
accordance with the Rules of Evidence, of a patient's medical or 382  
dental records or other communications between a patient and the 383  
physician or dentist that are related to the action and obtained 384

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  
a mental health professional to disclose psychotherapy notes, as  
defined in 45 C.F.R. 164.501.

(iv) An interested person who objects to testimony or 416  
disclosure under division (B)(1)(e)(i) of this section may seek a 417  
protective order pursuant to Civil Rule 26. 418

(v) A person to whom protected health information is 419  
disclosed under division (B)(1)(e)(i) of this section shall not 420  
use or disclose the protected health information for any purpose 421  
other than the litigation or proceeding for which the information 422  
was requested and shall return the protected health information to 423  
the covered entity or destroy the protected health information, 424  
including all copies made, at the conclusion of the litigation or 425  
proceeding. 426

(2)(a) If any law enforcement officer submits a written 427  
statement to a health care provider that states that an official 428  
criminal investigation has begun regarding a specified person or 429  
that a criminal action or proceeding has been commenced against a 430  
specified person, that requests the provider to supply to the 431  
officer copies of any records the provider possesses that pertain 432  
to any test or the results of any test administered to the 433  
specified person to determine the presence or concentration of 434  
alcohol, a drug of abuse, a combination of them, a controlled 435  
substance, or a metabolite of a controlled substance in the 436  
person's whole blood, blood serum or plasma, breath, or urine at 437  
any time relevant to the criminal offense in question, and that 438  
conforms to section 2317.022 of the Revised Code, the provider, 439  
except to the extent specifically prohibited by any law of this 440  
state or of the United States, shall supply to the officer a copy 441  
of any of the requested records the provider possesses. If the 442  
health care provider does not possess any of the requested 443  
records, the provider shall give the officer a written statement 444  
that indicates that the provider does not possess any of the 445  
requested records. 446

(b) If a health care provider possesses any records of the 447

type described in division (B)(2)(a) of this section regarding the 448  
person in question at any time relevant to the criminal offense in 449  
question, in lieu of personally testifying as to the results of 450  
the test in question, the custodian of the records may submit a 451  
certified copy of the records, and, upon its submission, the 452  
certified copy is qualified as authentic evidence and may be 453  
admitted as evidence in accordance with the Rules of Evidence. 454  
Division (A) of section 2317.422 of the Revised Code does not 455  
apply to any certified copy of records submitted in accordance 456  
with this division. Nothing in this division shall be construed to 457  
limit the right of any party to call as a witness the person who 458  
administered the test to which the records pertain, the person 459  
under whose supervision the test was administered, the custodian 460  
of the records, the person who made the records, or the person 461  
under whose supervision the records were made. 462

(3)(a) If the testimonial privilege described in division 463  
(B)(1) of this section does not apply as provided in division 464  
(B)(1)(a)(iii) of this section, a physician or dentist may be 465  
compelled to testify or to submit to discovery under the Rules of 466  
Civil Procedure only as to a communication made to the physician 467  
or dentist by the patient in question in that relation, or the 468  
physician's or dentist's advice to the patient in question, that 469  
related causally or historically to physical or mental injuries 470  
that are relevant to issues in the medical claim, dental claim, 471  
chiropractic claim, or optometric claim, action for wrongful 472  
death, other civil action, or claim under Chapter 4123. of the 473  
Revised Code. 474

(b) If the testimonial privilege described in division (B)(1) 475  
of this section does not apply to a physician or dentist as 476  
provided in division (B)(1)(c) of this section, the physician or 477  
dentist, in lieu of personally testifying as to the results of the 478  
test in question, may submit a certified copy of those results, 479



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:

(i) "Ambulatory care facility" means a facility that provides

medical, diagnostic, or surgical treatment to patients who do not  
require hospitalization, including a dialysis center, ambulatory  
surgical facility, cardiac catheterization facility, diagnostic  
imaging center, extracorporeal shock wave lithotripsy center, home  
health agency, inpatient hospice, birthing center, radiation  
therapy center, emergency facility, and an urgent care center.  
"Ambulatory health care facility" does not include the private  
office of a physician or dentist, whether the office is for an  
individual or group practice.

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

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

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

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

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

(d) As used in divisions (B)(1) and ~~(B)~~(2) of this section,  
"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 541  
apply to doctors of medicine, doctors of osteopathic medicine, 542  
doctors of podiatry, and dentists. 543

(7) Nothing in divisions (B)(1) to (6) of this section 544  
affects, or shall be construed as affecting, the immunity from 545  
civil liability conferred by section 307.628 of the Revised Code 546  
or the immunity from civil liability conferred by section 2305.33 547  
of the Revised Code upon physicians who report an employee's use 548  
of a drug of abuse, or a condition of an employee other than one 549  
involving the use of a drug of abuse, to the employer of the 550  
employee in accordance with division (B) of that section. As used 551  
in division (B)(7) of this section, "employee," "employer," and 552  
"physician" have the same meanings as in section 2305.33 of the 553  
Revised Code. 554

(C)(1) A cleric, when the cleric remains accountable to the 555  
authority of that cleric's church, denomination, or sect, 556  
concerning a confession made, or any information confidentially 557  
communicated, to the cleric for a religious counseling purpose in 558  
the cleric's professional character. The cleric may testify by 559  
express consent of the person making the communication, except 560  
when the disclosure of the information is in violation of a sacred 561  
trust and except that, if the person voluntarily testifies or is 562  
deemed by division (A)(4)(c) of section 2151.421 of the Revised 563  
Code to have waived any testimonial privilege under this division, 564  
the cleric may be compelled to testify on the same subject except 565  
when disclosure of the information is in violation of a sacred 566  
trust. 567

(2) As used in division (C) of this section: 568

(a) "Cleric" means a member of the clergy, rabbi, priest, 569  
Christian ~~science~~ Science practitioner, or regularly ordained, 570  
accredited, or licensed minister of an established and legally 571

cognizable church, denomination, or sect.	572
(b) "Sacred trust" means a confession or confidential communication made to a cleric in the cleric's ecclesiastical capacity in the course of discipline enjoined by the church to which the cleric belongs, including, but not limited to, the Catholic Church, if both of the following apply:	573 574 575 576 577
(i) The confession or confidential communication was made directly to the cleric.	578 579
(ii) The confession or confidential communication was made in the manner and context that places the cleric specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine.	580 581 582 583
(D) Husband or wife, concerning any communication made by one to the other, or an act done by either in the presence of the other, during coverture, unless the communication was made, or act done, in the known presence or hearing of a third person competent to be a witness; and such rule is the same if the marital relation has ceased to exist;	584 585 586 587 588 589
(E) A person who assigns a claim or interest, concerning any matter in respect to which the person would not, if a party, be permitted to testify;	590 591 592
(F) A person who, if a party, would be restricted under section 2317.03 of the Revised Code, when the property or thing is sold or transferred by an executor, administrator, guardian, trustee, heir, devisee, or legatee, shall be restricted in the same manner in any action or proceeding concerning the property or thing.	593 594 595 596 597 598
(G)(1) A school guidance counselor who holds a valid educator 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	599 600 601 602

counselor, professional counselor, social worker, independent 603  
social worker, marriage and family therapist or independent 604  
marriage and family therapist, or registered under Chapter 4757. 605  
of the Revised Code as a social work assistant concerning a 606  
confidential communication received from a client in that relation 607  
or the person's advice to a client unless any of the following 608  
applies: 609

(a) The communication or advice indicates clear and present 610  
danger to the client or other persons. For the purposes of this 611  
division, cases in which there are indications of present or past 612  
child abuse or neglect of the client constitute a clear and 613  
present danger. 614

(b) The client gives express consent to the testimony. 615

(c) If the client is deceased, the surviving spouse or the 616  
executor or administrator of the estate of the deceased client 617  
gives express consent. 618

(d) The client voluntarily testifies, in which case the 619  
school guidance counselor or person licensed or registered under 620  
Chapter 4757. of the Revised Code may be compelled to testify on 621  
the same subject. 622

(e) The court in camera determines that the information 623  
communicated by the client is not germane to the counselor-client, 624  
marriage and family therapist-client, or social worker-client 625  
relationship. 626

(f) A court, in an action brought against a school, its 627  
administration, or any of its personnel by the client, rules after 628  
an in-camera inspection that the testimony of the school guidance 629  
counselor is relevant to that action. 630

(g) The testimony is sought in a civil action and concerns 631  
court-ordered treatment or services received by a patient as part 632

of a case plan journalized under section 2151.412 of the Revised Code or the court-ordered treatment or services are necessary or relevant to dependency, neglect, or abuse or temporary or permanent custody proceedings under Chapter 2151. of the Revised Code. 633  
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(2) Nothing in division (G)(1) of this section shall relieve a school guidance counselor or a person licensed or registered under Chapter 4757. of the Revised Code from the requirement to report information concerning child abuse or neglect under section 2151.421 of the Revised Code. 638  
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(H) A mediator acting under a mediation order issued under division (A) of section 3109.052 of the Revised Code or otherwise issued in any proceeding for divorce, dissolution, legal separation, annulment, or the allocation of parental rights and responsibilities for the care of children, in any action or proceeding, other than a criminal, delinquency, child abuse, child neglect, or dependent child action or proceeding, that is brought by or against either parent who takes part in mediation in accordance with the order and that pertains to the mediation process, to any information discussed or presented in the mediation process, to the allocation of parental rights and responsibilities for the care of the parents' children, or to the awarding of parenting time rights in relation to their children; 643  
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(I) A communications assistant, acting within the scope of the communication assistant's authority, when providing telecommunications relay service pursuant to section 4931.35 of the Revised Code or Title II of the "Communications Act of 1934," 104 Stat. 366 (1990), 47 U.S.C. 225, concerning a communication made through a telecommunications relay service. Nothing in this section shall limit the obligation of a communications assistant to divulge information or testify when mandated by federal law or regulation or pursuant to subpoena in a criminal proceeding. 656  
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Nothing in this section shall limit any immunity or privilege granted under federal law or regulation. 665  
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(J)(1) A chiropractor in a civil proceeding concerning a communication made to the chiropractor by a patient in that relation or the chiropractor's advice to a patient, except as otherwise provided in this division. The testimonial privilege established under this division does not apply, and a chiropractor may testify or may be compelled to testify, in any civil action, in accordance with the discovery provisions of the Rules of Civil Procedure in connection with a civil action, or in connection with a claim under Chapter 4123. of the Revised Code, under any of the following circumstances: 667  
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(a) If the patient or the guardian or other legal representative of the patient gives express consent. 677  
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(b) If the patient is deceased, the spouse of the patient or the executor or administrator of the patient's estate gives express consent. 679  
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(c) If a medical claim, dental claim, chiropractic claim, or optometric claim, as defined in section 2305.113 of the Revised Code, an action for wrongful death, any other type of civil action, or a claim under Chapter 4123. of the Revised Code is filed by the patient, the personal representative of the estate of the patient if deceased, or the patient's guardian or other legal representative. 682  
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(2) If the testimonial privilege described in division (J)(1) of this section does not apply as provided in division (J)(1)(c) of this section, a chiropractor may be compelled to testify or to submit to discovery under the Rules of Civil Procedure only as to a communication made to the chiropractor by the patient in question in that relation, or the chiropractor's advice to the patient in question, that related causally or historically to 689  
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physical or mental injuries that are relevant to issues in the 696  
medical claim, dental claim, chiropractic claim, or optometric 697  
claim, action for wrongful death, other civil action, or claim 698  
under Chapter 4123. of the Revised Code. 699

(3) The testimonial privilege established under this division 700  
does not apply, and a chiropractor may testify or be compelled to 701  
testify, in any criminal action or administrative proceeding. 702

(4) As used in this division, "communication" means 703  
acquiring, recording, or transmitting any information, in any 704  
manner, concerning any facts, opinions, or statements necessary to 705  
enable a chiropractor to diagnose, treat, or act for a patient. A 706  
communication may include, but is not limited to, any 707  
chiropractic, office, or hospital communication such as a record, 708  
chart, letter, memorandum, laboratory test and results, x-ray, 709  
photograph, financial statement, diagnosis, or prognosis. 710

(K)(1) Except as provided under division (K)(2) of this 711  
section, a critical incident stress management team member 712  
concerning a communication received from an individual who 713  
receives crisis response services from the team member, or the 714  
team member's advice to the individual, during a debriefing 715  
session. 716

(2) The testimonial privilege established under division 717  
(K)(1) of this section does not apply if any of the following are 718  
true: 719

(a) The communication or advice indicates clear and present 720  
danger to the individual who receives crisis response services or 721  
to other persons. For purposes of this division, cases in which 722  
there are indications of present or past child abuse or neglect of 723  
the individual constitute a clear and present danger. 724

(b) The individual who received crisis response services 725  
gives express consent to the testimony. 726



(c) If the individual who received crisis response services 727  
is deceased, the surviving spouse or the executor or administrator 728  
of the estate of the deceased individual gives express consent. 729

(d) The individual who received crisis response services 730  
voluntarily testifies, in which case the team member may be 731  
compelled to testify on the same subject. 732

(e) The court in camera determines that the information 733  
communicated by the individual who received crisis response 734  
services is not germane to the relationship between the individual 735  
and the team member. 736

(f) The communication or advice pertains or is related to any 737  
criminal act. 738

(3) As used in division (K) of this section: 739

(a) "Crisis response services" means consultation, risk 740  
assessment, referral, and on-site crisis intervention services 741  
provided by a critical incident stress management team to 742  
individuals affected by crisis or disaster. 743

(b) "Critical incident stress management team member" or 744  
"team member" means an individual specially trained to provide 745  
crisis response services as a member of an organized community or 746  
local crisis response team that holds membership in the Ohio 747  
critical incident stress management network. 748

(c) "Debriefing session" means a session at which crisis 749  
response services are rendered by a critical incident stress 750  
management team member during or after a crisis or disaster. 751

(L)(1) Subject to division (L)(2) of this section and except 752  
as provided in division (L)(3) of this section, an employee 753  
assistance professional, concerning a communication made to the 754  
employee assistance professional by a client in the employee 755  
assistance professional's official capacity as an employee 756

assistance professional.	757
(2) Division (L)(1) of this section applies to an employee	758
assistance professional who meets either or both of the following	759
requirements:	760
(a) Is certified by the employee assistance certification	761
commission to engage in the employee assistance profession;	762
(b) Has education, training, and experience in all of the	763
following:	764
(i) Providing workplace-based services designed to address	765
employer and employee productivity issues;	766
(ii) Providing assistance to employees and employees'	767
dependents in identifying and finding the means to resolve	768
personal problems that affect the employees or the employees'	769
performance;	770
(iii) Identifying and resolving productivity problems	771
associated with an employee's concerns about any of the following	772
matters: health, marriage, family, finances, substance abuse or	773
other addiction, workplace, law, and emotional issues;	774
(iv) Selecting and evaluating available community resources;	775
(v) Making appropriate referrals;	776
(vi) Local and national employee assistance agreements;	777
(vii) Client confidentiality.	778
(3) Division (L)(1) of this section does not apply to any of	779
the following:	780
(a) A criminal action or proceeding involving an offense	781
under sections 2903.01 to 2903.06 of the Revised Code if the	782
employee assistance professional's disclosure or testimony relates	783
directly to the facts or immediate circumstances of the offense;	784
(b) A communication made by a client to an employee	785

assistance professional that reveals the contemplation or	786
commission of a crime or serious, harmful act;	787
(c) A communication that is made by a client who is an	788
unemancipated minor or an adult adjudicated to be incompetent and	789
indicates that the client was the victim of a crime or abuse;	790
(d) A civil proceeding to determine an individual's mental	791
competency or a criminal action in which a plea of not guilty by	792
reason of insanity is entered;	793
(e) A civil or criminal malpractice action brought against	794
the employee assistance professional;	795
(f) When the employee assistance professional has the express	796
consent of the client or, if the client is deceased or disabled,	797
the client's legal representative;	798
(g) When the testimonial privilege otherwise provided by	799
division (L)(1) of this section is abrogated under law.	800
<b>Section 2.</b> That existing sections 1345.09, 2307.60, 2307.71,	801
2307.73, and 2317.02 of the Revised Code are hereby repealed.	802
<b>Section 3.</b> The General Assembly declares its intent that the	803
amendments made by this act to sections 2307.71 and 2307.73 of the	804
Revised Code are not intended to be substantive but are intended	805
to clarify the General Assembly's original intent in enacting the	806
Ohio Product Liability Act, sections 2307.71 to 2307.80 of the	807
Revised Code, as initially expressed in Section 3 of Am. Sub. S.B.	808
80 of the 125th General Assembly, to abrogate all common law	809
product liability causes of action including common law public	810
nuisance causes of action, regardless of how the claim is	811
described, styled, captioned, characterized, or designated,	812
including claims against a manufacturer or supplier for a public	813
nuisance allegedly caused by a manufacturer's or supplier's	814

product. 815

**Section 4.** The General Assembly declares its intent that the 816  
amendments made by this act to section 2307.73 of the Revised Code 817  
are intended to clarify that section 2307.73 of the Revised Code 818  
is intended to follow the Ohio Supreme Court's holdings in 819  
*Sutowski v. Eli Lilly & Co.* (1998), 82 Ohio St.3d 347, and in 820  
*Horton v. Harwick Chemical Corp.* (1995), 73 Ohio St. 3d 679, that 821  
a plaintiff in a product liability claim must identify the 822  
particular manufacturer of the product that allegedly caused the 823  
plaintiff's harm in order to maintain the claim. 824

**Section 5.** Section 1345.09 of the Revised Code, as amended by 825  
this act, shall take effect on July 1, 2007, and shall apply to 826  
actions commenced on or after that date and, to the extent 827  
permitted under the constitutions of this state and of the United 828  
States, to cases pending on that date. 829

**Section 6.** The General Assembly declares that the 830  
attorney-client privilege is a substantial right and that it is 831  
the public policy of Ohio that all communications between an 832  
attorney and a client in that relation are worthy of the 833  
protection of privilege, and further that where it is alleged that 834  
the attorney aided or furthered an ongoing or future commission of 835  
insurance bad faith by the client, that the party seeking waiver 836  
of the privilege must make a prima facie showing that the 837  
privilege should be waived and the court should conduct an in 838  
camera inspection of disputed communications. The common law 839  
established in *Boone v. Vanliner Ins. Co.* (2001), 91 Ohio St.3d 840  
209, *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 841  
and *Peyko v. Frederick* (1986), 25 Ohio St.3d 164, is modified 842  
accordingly to provide for judicial review regarding the 843  
privilege. 844

**Section 7.** Section 2317.02 of the Revised Code is presented 845  
in this act as a composite of the section as amended by Sub. H.B. 846  
144, Sub. S.B. 8, and Am. Sub. S.B. 17 of the 126th General 847  
Assembly. The General Assembly, applying the principle stated in 848  
division (B) of section 1.52 of the Revised Code that amendments 849  
are to be harmonized if reasonably capable of simultaneous 850  
operation, finds that the composite is the resulting version of 851  
the section in effect prior to the effective date of the section 852  
as presented in this act. 853