REFERENDUM PETITION

To the Secretary of State and Attorney General of Ohio: Pursuant to Ohio Revised Code section 3519.01(B), the undersigned electors of the State of Ohio, numbering in excess of one thousand, hereby submit to each of you the full text of Ohio Revised Code sections 1345.09, 2307.71, 2307.73, and 2317.02, as amended by Amended Substitute Senate Bill Number 117 of the 126th General Assembly, and a summary of the same.

SUMMARY

Am. Sub. S. B. No. 117 amends Ohio Revised Code sections 1345.09, 2307.71, 2307.73, and 2317.02, relating to damages under the Consumer Sales Practices Act, product liability claims, and attorney-client privilege, including, but not limited to, the following:

- Limits the damages a consumer may recover under the Consumer Sales Practices Act, which had previously contained no limit on compensatory damages and allowed a consumer to recover three times the amount of actual damages in some cases. The amended law places a $5,000 limit on noneconomic damages, does not allow noneconomic damages to be tripled, and allows for tripling of actual economic damages in some cases.

- Expands the definition of "product liability claim" to include a public nuisance claim or cause of action at common law in which it is alleged that the design, manufacture, supply, marketing, distribution, promotion advertising, labeling, or sale of a product unreasonably interferes with a right common to the general public.

- Requires the claimant in a product liability action brought against a manufacturer to prove that the manufacturer designed, formulated, produced, constructed, created, assembled, or rebuilt the actual product that caused the harm for which the claimant seeks to recover compensatory damages in the action.

- Provides that proof that a manufacturer designed, formulated, produced, constructed, created, assembled, or rebuilt the type of product in question in a product liability claim is not proof that the manufacturer designed, formulated, produced, constructed, created, assembled, or rebuilt the actual defective product that is the basis of the claim.

- Provides that a manufacturer may not be held liable in a product liability action based on market share, enterprise, or industrywide liability.

- Provides that if an attorney's client is an insurance company the attorney may be compelled to testify about communications with the client that are made in the attorney-client relationship and that relate to the attorney's aiding or furthering an ongoing or future act of bad faith by the client if the person seeking disclosure of the communications makes a prima facie showing of bad faith, fraud, or criminal misconduct by the client.

If a majority of the voters vote not to approve the Ohio Revised Code sections being submitted for referendum, then enacted changes will not be in effect and the prior version of the affected laws will be in effect.

COMMITTEE TO REPRESENT THE PETITIONERS

The following persons are designated as a committee to represent the petitioners in all matters relating to the petition or its circulation:

William D. Faith  
340 Clinton Heights Avenue  
Columbus, Ohio 43202

Benson A. Wolman  
315 Eastmoor Boulevard  
Columbus, Ohio 43209

Rhonda Gail Davis  
2108 Teeple Drive  
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Laura K. McDowell  
3502 Curtis Street  
Mogadore, Ohio 44260

Todd L. Willis  
2590 Wright Road  
Akron, Ohio 44320
NOTICE

Whoever knowingly signs this petition more than once; except as provided in section 3501.382 of the Revised Code, signs a name other than one's own on this petition; or signs this petition when not a qualified voter, is liable to prosecution.

MUST USE MOST RECENT ADDRESS ON FILE WITH BOARD OF ELECTIONS

(Sign with ink. Your name, residence, and date of signing must be given)

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<td>Michelle Asher</td>
<td>Cuyahoga Falls</td>
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<td>Megan Sauers</td>
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<td>14. Paula Campbell</td>
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<td>15. Linda Reed</td>
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STATEMENT OF CIRCULATOR

I, [Name], declare under penalty of election falsification that I am the circulator of the foregoing petition paper containing the signatures of [Number] electors, that the signatures appended hereto were made and appended in my presence on the date set opposite each respective name, and are the signatures of the persons whose names they purport to be or of attorneys in fact acting pursuant to section 3501.38 of the Revised Code, and that the electors signing this petition did so with knowledge of the contents of same. I am employed to circulate this petition by [Employer]. (The preceding sentence shall be completed as required by section 3501.38 of the Revised Code if the circulator is being employed to circulate the petition.)

[Signature of Circulator]

[Address of Circulator's permanent residence in this state. House Number and Street, Road or Rural Rt.]

[Cuyahoga 61 44113]

City, Village or Township    State    Zip Code

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE
AN ACT

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

Be it enacted by the General Assembly of the State of Ohio:

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

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

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

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

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

2. The supplier has knowingly committed an act or practice that
(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.

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

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 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.

(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 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.

(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.
(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.

(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.

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

(1) "Claimant" means either of the following:
(a) A person who asserts a product liability claim or on whose behalf such a claim is asserted;
(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:
   (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;
   (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.
(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."
(3) "Environment" means only navigable waters, surface water, ground water, drinking water supplies, land surface, subsurface strata, and air.
(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.
(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.
(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;
(c) Any failure of that product to conform to any relevant representation or warranty.

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

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

(15)(a) "Supplier" means, subject to division (A)(15)(b) of this section, either of the following:
(i) A person that, in the course of a business conducted for the purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise participates in the placing of a product in the stream of commerce;
(ii) A person that, in the course of a business conducted for the purpose, installs, repairs, or maintains any aspect of a product that allegedly causes harm.
(b) "Supplier" does not include any of the following:
(i) A manufacturer;
(ii) A seller of real property;
(iii) A provider of professional services who, incidental to a professional transaction the essence of which is the furnishing of judgment, skill, or services, sells or uses a product;
(iv) Any person who acts only in a financial capacity with respect to the sale of a product, or who leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor.

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

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:

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;

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;

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.

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

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

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

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

The testimonial privilege established under this division does not apply concerning a communication between a client who has 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 relationship or the physician's or dentist's advice to a patient, except as otherwise provided in this division, division (H)(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;

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

(iii) 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.

(b) In any civil action concerning court-ordered treatment or services received by a patient, if the court-ordered treatment or services were ordered as part 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.

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

(d) In any criminal action against a physician or dentist. In such an action, the testimonial privilege established under this 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) 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 disclosure under
division (B)(1)(e)(i) of this section may seek a protective order pursuant to
Civil Rule 26.

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

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

(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.

(e) 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 practitioner, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect.
(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:
   (i) The confession or confidential communication was made directly to the cleric.
   (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.
(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;
(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;

(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.

(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 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 court-ordered
treatment or services received by a patient as part 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.

(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.

(F) 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;

(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.

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

(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:

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

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

(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.

(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 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 gives express consent to the testimony.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Selecting and evaluating available community resources;

(v) Making appropriate referrals;
(vi) Local and national employee assistance agreements;
(vii) Client confidentiality.

(3) Division (L)(1) of this section does not apply to any of the following:
   (a) A criminal action or proceeding involving an offense under sections
       2903.01 to 2903.06 of the Revised Code if the employee assistance
       professional's disclosure or testimony relates directly to the facts or
       immediate circumstances of the offense;
   (b) A communication made by a client to an employee assistance
       professional that reveals the contemplation or commission of a crime or
       serious, harmful act;
   (c) A communication that is made by a client who is an unemancipated
       minor or an adult adjudicated to be incompetent and indicates that the client
       was the victim of a crime or abuse;
   (d) A civil proceeding to determine an individual's mental competency
       or a criminal action in which a plea of not guilty by reason of insanity is
       entered;
   (e) A civil or criminal malpractice action brought against the employee
       assistance professional;
   (f) When the employee assistance professional has the express consent
       of the client or, if the client is deceased or disabled, the client's legal
       representative;
   (g) When the testimonial privilege otherwise provided by division
       (L)(1) of this section is abrogated under law.

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

SECTION 3. The General Assembly declares its intent that the
amendments made by this act to sections 2307.71 and 2307.73 of the
Revised Code are not intended to be substantive but are intended to clarify
the General Assembly's original intent in enacting the Ohio Product
Liability Act, sections 2307.71 to 2307.80 of the Revised Code, as initially
expressed in Section 3 of Am. Sub. S.B. 80 of the 125th General Assembly,
to abrogate all common law product liability causes of action including
common law public nuisance causes of action, regardless of how the claim
is described, styled, captioned, characterized, or designated, including
claims against a manufacturer or supplier for a public nuisance allegedly
caused by a manufacturer's or supplier's product.
SECTION 4. The General Assembly declares its intent that the amendments made by this act to section 2307.73 of the Revised Code are intended to clarify that section 2307.73 of the Revised Code is intended to follow the Ohio Supreme Court's holdings in Sutowski v. Eli Lilly & Co. (1998), 82 Ohio St.3d 347, and in Horton v. Harwick Chemical Corp. (1995), 73 Ohio St. 3d 679, that a plaintiff in a product liability claim must identify the particular manufacturer of the product that allegedly caused the plaintiff's harm in order to maintain the claim.

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

SECTION 6. The General Assembly declares that the attorney-client privilege is a substantial right and that it is the public policy of Ohio that all communications between an attorney and a client in that relation are worthy of the protection of privilege, and further that where it is alleged that the attorney aided or furthered an ongoing or future commission of insurance bad faith by the client, that the party seeking waiver of the privilege must make a prima facie showing that the privilege should be waived and the court should conduct an in camera inspection of disputed communications. The common law established in Boone v. Vanliner Ins. Co. (2001), 91 Ohio St.3d 209, Moskovitz v. Mt. Sinai Med. Ctr. (1994), 69 Ohio St.3d 638, and Peyko v. Frederick (1986), 25 Ohio St.3d 164, is modified accordingly to provide for judicial review regarding the privilege.
Am. Sub. S. B. No. 117

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

__________________________
Speaker _________________ of the House of Representatives.

__________________________
President _________________ of the Senate.

Passed ____________________, 20__

Approved ____________________, 20__

__________________________
Governor.
Am. Sub. S. B. No. 117

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

__________________________
Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of ____________, A. D. 20___.

__________________________
Secretary of State.

File No. ___________ Effective Date ____________________
September 11, 2007

The Honorable Jennifer L. Brunner
Ohio Secretary of State
The Borden Building
180 East Broad Street, 16th Floor
Columbus, Ohio 43215

Re: Proposed Referendum Petition of Am. Sub. S.B. 117 of the 126th General Assembly

Dear Secretary Brunner:

In accordance with the provisions of Section 3519.01(B)(3) of the Ohio Revised Code, a written petition proposing a partial referendum on Am. Sub. S.B. 117 of the 126th General Assembly was submitted for my examination, together with a summary of that legislation. A copy of the summary is enclosed.

Having considered only the language of the proposed summary which the petitions week to submit in a referendum, I find that the summary is a fair and truthful statement of the measure to be referred, and have so certified my finding to the committee of petitioners on this date as follows:

Without passing upon the advisability of the approval or rejection of the measure to be referred, but pursuant to the duties imposed upon me under Section 3519.01(B)(3) of the Ohio Revised Code, I hereby certify that the summary is a fair and truthful statement of the proposed referendum concerning the legislation known as Am. Sub. S.B. 117 of the 126th General Assembly.

I am hereby filing with you this letter containing the above certification and the attached petition containing the measure to be referred, and the petitioners’ summary as submitted and approved.

Sincerely,

Marc Dann
Attorney General
Enclosure
cc: Laurel Beatty
VIA FAX AND FIRST CLASS MAIL

September 11, 2007

Donald McTigue
550 East Walnut Street
Columbus, Ohio 43215

Re: Proposed Referendum Petition of Am. Sub. S.B. 117 of the 126th General Assembly

Dear Mr. McTigue:

In accordance with the provisions of Section 3519.01(B)(3) of the Ohio Revised Code, a written petition bearing a copy of a proposed partial referendum on Am. Sub. S.B. 117 of the 126th General Assembly was submitted for my examination, together with a summary of that legislation.

Having considered only the language of the proposed summary which you proposed to submit with the referendum, I am of the opinion that the summary is a fair and truthful statement of the measure to be referred. I am therefore submitting to you the following certification, which will also be transmitted to the Secretary of State:

Without passing upon the advisability of the approval or rejection of the measure to be referred, but pursuant to the duties imposed upon me under Section 3519.01(B)(3) of the Ohio Revised Code, I hereby certify that the summary is a fair and truthful statement of the proposed referendum concerning the legislation known as Am. Sub. S.B. 117 of the 126th General Assembly.

Sincerely,

Marc Dann
Attorney General

Enclosure

cc: Laurel Beatty