



# OHIO CHAMBER OF COMMERCE

## ***BEFORE THE SENATE JUDICIARY COMMITTEE PROPONENT TESTIMONY ON HOUSE BILL 126***

Chairman Manning, Vice-Chair Reynolds, Ranking Member Hicks-Hudson and members of the Senate Judiciary Committee, thank you for the opportunity to provide proponent testimony on House Bill 126 (HB 126). My name is Kevin Shimp and I am an associate attorney at the law firm Dickinson Wright testifying on behalf of the Ohio Chamber of Commerce.

The Ohio Chamber is the state's leading business advocate. The organization represents over 8,000 companies that do business in Ohio and their mission is to aggressively champion free enterprise, economic competitiveness and growth for the benefit of all Ohioans.

In our efforts to champion economic competitiveness, the Ohio Chamber supports HB 126 because it codifies a recent Ohio Supreme Court decision that brings greater stability and predictability to our state's legal environment. Under House Bill 126, no person may bring a public nuisance lawsuit alleging a product unreasonably interferes with a right common to the general public. This prohibition will stop the nefarious trend of product liability claims masquerading as public nuisance lawsuits. Similarly, it restores the longstanding precedent that public nuisance claims should be reserved for lawsuits arising from the use of someone's land.

Public nuisance actions are one of the oldest legal claims with its origins tracing back to British common law. It was traditionally reserved for claims alleging someone's use of land interferes with a public right – such as a person installing a dam on a river that prevents further use of the river downstream. However, over recent decades, individuals, cities, and states have brought these claims against manufacturers, distributors, and retailers of certain products.

These lawsuits seek to bypass traditional notions of causation that exist in product liability, negligence, and other causes of action. Instead to prevail in a public nuisance lawsuit, a party must only establish two elements: (1) an interference with a public right, and (2) the party must have suffered an injury distinct from that suffered by the public at large. By ignoring causation, parties can now bring a claim against almost any person or company and attempt to seek a jury award or settlement that can reach into the billions.

That is what happened recently in Ohio. Rather than take a portion of a \$17.3 billion nationwide settlement that paid Ohio over \$679.6 million, two Ohio counties pursued a public nuisance claim against pharmacies alleging their actions resulted in significant expenses to the counties due to the opioid crisis. Initially, the counties were successful, as a federal trial court judge from Ohio awarded the two counties a \$650.9 million.



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Ultimately however, after the 6th Circuit of Appeals certified a question of state law to the Ohio Supreme Court, our high court found the legislature had precluded the counties from filing this action.

In their holding, the Ohio Supreme Court found that Ohio's Product Liability Act completely abrogates all forms of common law public nuisance claims. To come to this finding, the state's high court reviewed amendments to the product liability law from 2005 and 2007. The 2005 amendment, enacted with the passage of Senate Bill 80, was the legislature's first attempt to expressly abrogate public nuisance claims using the product liability statutes. In this amendment, the legislature plainly and unambiguously states the Ohio Product Liability Act "abrogate[s] all common law product liability causes of action."

This unequivocal mandate should have foreclosed the possibility of all future product based public nuisance claims in the Buckeye State. Yet, only two years later, further legislative action was necessary since courts had limited the statute's application to only abolish the common-law theory of negligent design – despite a clear intention and statute stating otherwise.

In 2007, the legislature adopted SB 117 to clarify Ohio's Product Liability Act does in fact apply to all types of product-based public nuisance claims. This amendment expanded the definition of product liability claims to "also include 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." R.C. 2307.71(A)(13).

Until the turn of this decade, the revised product liability statute adopted by Senate Bill 117 worked and Ohio did not see significant product-based public nuisance actions. However, further action from this legislature is now necessary because a federal court read into our state statute a distinction between public nuisance claims seeking common-law remedies and those seeking statutory damages.

That distinction exists nowhere in our law, yet businesses faced multi-year, expansive litigation to finally have that novel reading put to rest. House Bill 126 seeks to stop the game of legislative whack-a-mole by codifying the Ohio Supreme Court decision finding our state's product liability law abrogates all common-law public nuisance claims. Indeed, House Bill 126 does not create any new law, but rather helps assure future businesses are not facing near endless liability without any showing of causation by inserting the Ohio Supreme Court's decision *from In re. National Prescription Opiate Litigation* into Ohio's product liability laws.



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Specifically, the legislation precludes any person from bringing a public nuisance claim alleging the design, manufacture, supply, marketing, distribution, promotion, advertising, labeling, or sale of a product unreasonably interferes with a right common to the general public. Reforming our state's product liability statute in this manner will improve Ohio's business and legal climate by helping companies better predict and manage potential liabilities.

In closing, the Ohio Chamber urges your support for House Bill 126 because its enactment bolsters a common-sense system of civil justice by foreclosing future litigants from pursuing creative legal arguments that seek an end around for Ohio's unambiguous Ohio Product Liability Act that expressly and plainly abrogates all common law public nuisance claims.

Thank you for the opportunity to provide testimony today, and I welcome any questions from the committee.