

As Reported by the House Judiciary Committee

136th General Assembly

Regular Session

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Sub. H. B. No. 126

Representatives Mathews, A., Craig

Cosponsor: Representative Stewart

To amend sections 715.44, 2307.71, and 2307.72 and
to enact section 2307.801 of the Revised Code to
prohibit public nuisance actions concerning
product liability.

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

Section 1. That sections 715.44, 2307.71, and 2307.72 be
amended and section 2307.801 of the Revised Code be enacted to
read as follows:

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Sec. 715.44. A—Subject to section 2307.801 of the Revised
Code, a municipal corporation may:

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(A) Abate any nuisance and prosecute in any court of
competent jurisdiction, any person who creates, continues,
contributes to, or suffers such nuisance to exist;

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(B) Regulate and prevent the emission of dense smoke,
prohibit the careless or negligent emission of dense smoke from
locomotive engines, declare each of such acts a nuisance, and
prescribe and enforce regulations for the prevention of such
acts;

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(C) Prevent injury and annoyance from any nuisance;

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(D) Regulate and prohibit the use of steam whistles;	19
(E) Provide for the regulation of the installation and	20
inspection of steam boilers and steam boiler plants.	21
Sec. 2307.71. (A) As used in sections 2307.71 to 2307.80	22
<u>2307.801</u> of the Revised Code:	23
(1) "Claimant" means either of the following:	24
(a) A person who asserts a product liability claim or on	25
whose behalf such a claim is asserted;	26
(b) If a product liability claim is asserted on behalf of	27
the surviving spouse, children, parents, or other next of kin of	28
a decedent or on behalf of the estate of a decedent, whether as	29
a claim in a wrongful death action under Chapter 2125. of the	30
Revised Code or as a survivorship claim, whichever of the	31
following is appropriate:	32
(i) The decedent, if the reference is to the person who	33
allegedly sustained harm or economic loss for which, or in	34
connection with which, compensatory damages or punitive or	35
exemplary damages are sought to be recovered;	36
(ii) The personal representative of the decedent or the	37
estate of the decedent, if the reference is to the person who is	38
asserting or has asserted the product liability claim.	39
(2) "Economic loss" means direct, incidental, or	40
consequential pecuniary loss, including, but not limited to,	41
damage to the product in question, and nonphysical damage to	42
property other than that product. Harm is not "economic loss."	43
(3) "Environment" means only navigable waters, surface	44
water, ground water, drinking water supplies, land surface,	45
subsurface strata, and air.	46

(4) "Ethical drug" means a prescription drug that is 47
prescribed or dispensed by a physician or any other person who 48
is legally authorized to prescribe or dispense a prescription 49
drug. 50

(5) "Ethical medical device" means a medical device that 51
is prescribed, dispensed, or implanted by a physician or any 52
other person who is legally authorized to prescribe, dispense, 53
or implant a medical device and that is regulated under the 54
"Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040, 21 U.S.C. 55
301-392, as amended. 56

(6) "Foreseeable risk" means a risk of harm that satisfies 57
both of the following: 58

(a) It is associated with an intended or reasonably 59
foreseeable use, modification, or alteration of a product in 60
question. 61

(b) It is a risk that the manufacturer in question should 62
recognize while exercising both of the following: 63

(i) The attention, perception, memory, knowledge, and 64
intelligence that a reasonable manufacturer should possess; 65

(ii) Any superior attention, perception, memory, 66
knowledge, or intelligence that the manufacturer in question 67
possesses. 68

(7) "Harm" means death, physical injury to person, serious 69
emotional distress, or physical damage to property other than 70
the product in question. Economic loss is not "harm." 71

(8) "Hazardous or toxic substances" include, but are not 72
limited to, hazardous waste as defined in section 3734.01 of the 73
Revised Code, hazardous waste as specified in the rules of the 74

director of environmental protection pursuant to division (A) of 75
section 3734.12 of the Revised Code, hazardous substances as 76
defined in section 3716.01 of the Revised Code, and hazardous 77
substances, pollutants, and contaminants as defined in or by 78
regulations adopted pursuant to the "Comprehensive Environmental 79
Response, Compensation, and Liability Act of 1980," 94 Stat. 80
2767, 42 U.S.C. 9601, as amended. 81

(9) "Manufacturer" means a person engaged in a business to 82
design, formulate, produce, create, make, construct, assemble, 83
or rebuild a product or a component of a product. 84

(10) "Person" has the same meaning as in division (C) of 85
section 1.59 of the Revised Code and also includes governmental 86
entities. 87

(11) "Physician" means a person who is licensed to 88
practice medicine and surgery or osteopathic medicine and 89
surgery by the state medical board. 90

(12) (a) "Product" means, subject to division (A) (12) (b) of 91
this section, any object, substance, mixture, or raw material 92
that constitutes tangible personal property and that satisfies 93
all of the following: 94

(i) It is capable of delivery itself, or as an assembled 95
whole in a mixed or combined state, or as a component or 96
ingredient. 97

(ii) It is produced, manufactured, or supplied for 98
introduction into trade or commerce. 99

(iii) It is intended for sale or lease to persons for 100
commercial or personal use. 101

(b) "Product" does not include human tissue, blood, or 102

organs. 103

(13) "Product liability claim" means a claim or cause of 104
action that is asserted in a civil action pursuant to sections 105
2307.71 to ~~2307.80~~ 2307.801 of the Revised Code and that seeks 106
to recover compensatory damages from a manufacturer or supplier 107
for death, physical injury to person, emotional distress, or 108
physical damage to property other than the product in question, 109
that allegedly arose from any of the following: 110

(a) The design, formulation, production, construction, 111
creation, assembly, rebuilding, testing, or marketing of that 112
product; 113

(b) Any warning or instruction, or lack of warning or 114
instruction, associated with that product; 115

(c) Any failure of that product to conform to any relevant 116
representation or warranty. 117

"Product liability claim" also includes any public 118
nuisance claim or cause of action at common law in which it is 119
alleged that the design, manufacture, supply, marketing, 120
distribution, promotion, advertising, labeling, or sale of a 121
product unreasonably interferes with a right common to the 122
general public. 123

(14) "Representation" means an express representation of a 124
material fact concerning the character, quality, or safety of a 125
product. 126

(15) (a) "Supplier" means, subject to division (A) (15) (b) 127
of this section, either of the following: 128

(i) A person that, in the course of a business conducted 129
for the purpose, sells, distributes, leases, prepares, blends, 130

packages, labels, or otherwise participates in the placing of a 131
product in the stream of commerce; 132

(ii) A person that, in the course of a business conducted 133
for the purpose, installs, repairs, or maintains any aspect of a 134
product that allegedly causes harm. 135

(b) "Supplier" does not include any of the following: 136

(i) A manufacturer; 137

(ii) A seller of real property; 138

(iii) A provider of professional services who, incidental 139
to a professional transaction the essence of which is the 140
furnishing of judgment, skill, or services, sells or uses a 141
product; 142

(iv) Any person who acts only in a financial capacity with 143
respect to the sale of a product, or who leases a product under 144
a lease arrangement in which the selection, possession, 145
maintenance, and operation of the product are controlled by a 146
person other than the lessor. 147

(16) "Unavoidably unsafe" means that, in the state of 148
technical, scientific, and medical knowledge at the time a 149
product in question left the control of its manufacturer, an 150
aspect of that product was incapable of being made safe. 151

(B) Sections 2307.71 to ~~2307.80~~ 2307.801 of the Revised 152
Code are intended to abrogate all common law product liability 153
claims or causes of action. 154

Sec. 2307.72. (A) Any recovery of compensatory damages 155
based on a product liability claim is subject to sections 156
2307.71 to 2307.79 of the Revised Code. 157

(B) Any recovery of punitive or exemplary damages in 158
connection with a product liability claim is subject to sections 159
2307.71 to 2307.80 of the Revised Code. 160

(C) Any recovery of compensatory damages for economic loss 161
based on a claim that is asserted in a civil action, other than 162
a product liability claim, is not subject to sections 2307.71 to 163
2307.79 of the Revised Code, but may occur under the common law 164
of this state or other applicable sections of the Revised Code. 165

(D) (1) Sections 2307.71 to ~~2307.80~~ 2307.801 of the Revised 166
Code do not supersede, modify, or otherwise affect any statute, 167
regulation, or rule of this state or of the United States, or 168
the common law of this state or of the United States, that 169
relates to liability in compensatory damages or punitive or 170
exemplary damages for injury, death, or loss to person or 171
property, or to relief in the form of the abatement of a 172
nuisance, civil penalties, cleanup costs, cost recovery, an 173
injunction or temporary restraining order, or restitution, that 174
arises, in whole or in part, from contamination or pollution of 175
the environment or a threat of contamination or pollution of the 176
environment, including contamination or pollution or a threat of 177
contamination or pollution from hazardous or toxic substances. 178

(2) Consistent with the Rules of Civil Procedure, in the 179
same civil action against the same defendant or different 180
defendants, a claimant may assert both of the following: 181

(a) A product liability claim, including a claim for the 182
recovery of punitive or exemplary damages in connection with a 183
product liability claim; 184

(b) A claim for the recovery of compensatory damages or 185
punitive or exemplary damages for injury, death, or loss to 186

person or property, or for relief in the form of the abatement 187
of a nuisance, civil penalties, cleanup costs, cost recovery, an 188
injunction or temporary restraining order, or restitution, that 189
arises, in whole or in part, from contamination or pollution of 190
the environment or a threat of contamination or pollution of the 191
environment, including contamination or pollution or a threat of 192
contamination or pollution from hazardous or toxic substances. 193

Sec. 2307.801. (A) No person shall bring any public 194
nuisance claim or cause of action at common law in which it is 195
alleged that the design, manufacture, supply, marketing, 196
distribution, promotion, advertising, labeling, or sale of a 197
product unreasonably interferes with a right common to the 198
general public. 199

(B) The general assembly, in enacting this section, hereby 200
declares its intent to expressly codify the holding of the Ohio 201
Supreme Court in *In re National Prescription Opiate Litigation;* 202
Trumbull County, Ohio et al. v. Purdue Pharma, L.P., et al., 203
Slip Opinion No. 2024-Ohio-5744, regarding the abrogation of 204
public nuisance claims at common law under divisions (A) (13) and 205
(B) of section 2307.71 of the Revised Code. Nothing in division 206
(A) of this section, including the omission of any word or 207
phrase from the listing and description of abrogated public 208
nuisance claims, shall be construed to limit or minimize that 209
holding. 210

Section 2. That existing sections 715.44, 2307.71, and 211
2307.72 of the Revised Code are hereby repealed. 212