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Bill Analysis
Legislative Service Commission

H.B. 558

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(As Introduced)

Reps. Austria, Goodman, Gardner, Vesper, Netzley, Widener, Schuring, Patton, Hartnett, Hollister, Allen, Roberts, Peterson, Hoops

BILL SUMMARY

- Grants two distinct qualified immunities from tort liability under specific circumstances to shelters for victims of domestic violence and an owner, trustee, officer, employee, or volunteer of the shelter for harm allegedly sustained by a victim of domestic violence as a result of tortious conduct of a family or household member of the victim committed either (a) *on* the shelter's premises or (b) on premises *other than* the shelter's premises.
- Provides that either immunity from tort liability is not available if the tortious conduct was contributed to by an action or omission of an owner, trustee, officer, employee, or volunteer of the shelter that involves malicious purpose, bad faith, or wanton or reckless conduct.
- Specifies that its provisions, if enacted, apply only to causes of action for harm allegedly sustained on or off the shelter's premises by victims of domestic violence on or after the act's effective date.

CONTENT AND OPERATION

Immunity of domestic violence victims' shelters and shelter personnel from tort liability for harm caused on the shelter premises by the victim's family or household member

Immunity granted under specific circumstances

The bill provides that, generally, a *shelter for victims of domestic violence* and an owner, trustee, officer, employee, or *volunteer* of the shelter are not liable in damages in a *tort action* for *harm* that a victim of *domestic violence* allegedly sustains as a result of tortious *conduct* of a *family or household member* of the victim (see "**Definitions**," below, for the definitions of the italicized terms) if the

tortious conduct is committed on the shelter's premises, if the family or household member is not an "owner, trustee, officer, employee, or volunteer of the shelter" (hereafter, "shelter person" or "shelter personnel"), and if any of the following situations apply (R.C. 2305.237(A)):

(1) The family or household member illegally entered and illegally remained on the shelter's premises at the time the family or household member's tortious conduct allegedly caused the harm that the victim of domestic violence sustained on the shelter's premises.

(2) The family or household member legally entered the shelter's premises; any of the shelter personnel informed the family or household member to leave the shelter's premises, and took *reasonable steps* (see "Definitions," below) under the circumstances to cause the family or household member to leave the shelter's premises, prior to the family or household member allegedly causing the harm that the victim of domestic violence sustained on the shelter's premises; and, despite those reasonable steps, the family or household member remained on the shelter's premises and committed the tortious conduct that allegedly caused that harm.

(3) The family or household member legally entered the shelter's premises; any of the shelter personnel granted the family or household member permission to remain on the shelter's premises after taking either of the following precautionary steps; and, despite taking either of those steps, the family or household member committed the tortious conduct that allegedly caused the harm that the victim of domestic violence sustained on the shelter's premises:

(a) Any of the shelter personnel inquires, at the time of the entry of the shelter's premises, whether the individual so entering is a family or household member of a victim of domestic violence on the shelter's premises; the individual responds that the individual is *not* a family or household member of that nature; and the shelter person, in exercising the reasonable judgment and discretion of a prudent person under similar circumstances, determines that the individual is *not* a family or household member of that nature.

(b) Any of the shelter personnel inquires, at the time of the entry of the shelter's premises, whether the individual so entering is a family or household member of a victim of domestic violence on the shelter's premises; the individual responds that the individual is a family or household member of that nature; and the shelter person, in exercising the reasonable judgment and discretion of a prudent person under similar circumstances, determines that granting the individual permission to remain on the shelter's premises does not appear to pose a threat of harm to the victim of domestic violence.

Unavailability of immunity

The immunity from tort liability conferred by the bill as described above is not available to a shelter for victims of domestic violence or any of the shelter personnel if the plaintiff in a tort action establishes, by a preponderance of the evidence, that the harm that a victim of domestic violence sustains on the shelter's premises as a result of a family or household member's tortious conduct was contributed to by an action or omission of any of the shelter personnel that involves malicious purpose, bad faith, or wanton or reckless conduct. The bill specifies that it is a rebuttable presumption that a shelter for victims of domestic violence and any of the shelter personnel engaged in wanton or reckless conduct if, upon the legal entry of an individual onto the shelter's premises, none of the shelter personnel makes the type of inquiry and determination as described above in paragraph (3)(a) or (b) in "**Immunity granted under specific circumstances.**" (R.C. 2305.237(B).)

Immunity of domestic violence victims' shelters and shelter personnel from tort liability for harm caused off the shelter premises by the victim's family or household member

Immunity granted under specific circumstances

The bill provides that, generally, a shelter for victims of domestic violence and any of the specified shelter personnel are not liable in damages in a tort action for harm that a victim of domestic violence allegedly sustains as a result of tortious conduct of a family or household member of the victim that is committed on premises other than the shelter's premises if the family or household member is not any of the shelter personnel and if both of the following apply at the time the family or household member's tortious conduct allegedly causes the harm that the victim sustains on premises other than the shelter's premises (R.C. 2305.238(A)):

(1) Any of the shelter personnel is providing assistance to the victim, including, but not limited to, accompanying the victim to a health care practitioner's or an attorney's office.

(2) The particular shelter person is engaged in the course of that person's employment, official responsibilities, or authorized services for the shelter.

Unavailability of immunity

Under the bill, the immunity from tort liability conferred as described above is not available to a shelter for victims of domestic violence or any of the shelter personnel if the plaintiff in a tort action establishes, by a preponderance of the evidence, that the harm that a victim of domestic violence sustains on premises other than the shelter's premises as a result of a family or household member's tortious

conduct was contributed to by an action or omission of any of the shelter personnel that involves malicious purpose, bad faith, or wanton or reckless conduct (R.C. 2305.238(B)).

Miscellaneous provisions

The bill provides that its provisions do not create a new cause of action or substantive legal right against a shelter for victims of domestic violence or an owner, trustee, officer, employee, or volunteer of the shelter (R.C. 2305.239(A)).

The bill specifies that its provisions do not affect any immunities from civil liability or defenses established under the law granting immunity for volunteer health care workers, professionals, and facilities (see **COMMENT 1**), the Political Subdivision Sovereign Immunity Law (see **COMMENT 2**), or another section of the Revised Code or available at common law to which a shelter for victims of domestic violence, an owner, trustee, officer, employee, or volunteer of the shelter, or a *political subdivision* (see "**Definitions**," below) associated with the shelter may be entitled in connection with alleged tort liability based upon the tortious conduct of third parties or in connection with circumstances not covered by the bill's provisions (R.C. 2305.239(B)).

Prospective application

The bill provides that its provisions, as enacted, apply only to causes of action for harm that victims of domestic violence allegedly sustain on or after the act's effective date on or off the premises of a shelter for victims of domestic violence. With respect to causes of action that are not barred by a statute of limitations and that are for harm that victims of domestic violence allegedly sustained prior to the act's effective date on or off the premises of a shelter for victims of domestic violence, the bill specifies that the liability or immunity from liability of, and defenses available to, the shelter or the owner, trustee, officer, employee, or volunteer of the shelter are to be determined as if the act had not been enacted. (Section 2.)

Definitions

For purposes of its provisions, the bill defines the following terms (R.C. 2305.236(A) to (G)):

- (1) "Conduct" means actions or omissions.
- (2) "Harm" means injury, death, or loss to person or property.
- (3) "Domestic violence" means attempting to cause or causing bodily injury to a family or household member, or placing a family or household member by

threat of force in fear of imminent physical harm (R.C. 3113.33(A)--not in the bill but referred to in the bill).

(4) "Family or household member" means any of the following (R.C. 3113.33(B)):

(a) Any of the following who is residing or has resided with the person committing the domestic violence: (i) a spouse, a *person living as a spouse*,¹ or a former spouse of the person committing the domestic violence, (ii) a parent or child of the person committing the domestic violence, or another person related by consanguinity or affinity to the person committing the domestic violence, (iii) a parent or a child of a spouse, person living as a spouse, or former spouse of the person committing the domestic violence, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the person committing the domestic violence, or (iv) the dependents of any person listed in clause (i), (ii), or (iii) above;

(b) The natural parent of any child of whom the person committing the domestic violence is the other natural parent or is the putative other natural parent.

(5) "Shelter for victims of domestic violence" or "shelter" means a facility that provides temporary residential service or facilities to family or household members who are victims of domestic violence (R.C. 3113.33(C)).

(6) "Reasonable steps" include, but are not limited to, contacting the appropriate law enforcement agency to request the assistance of a law enforcement officer in removing a family or household member of a victim of domestic violence from a shelter's premises.

(7) "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.

(8) "Volunteer" means an individual who provides any service at a shelter for victims of domestic violence without the expectation of receiving and without

¹ *"Person living as a spouse" is defined in R.C. 3113.33(D) as a person who is living or has lived with the person committing the domestic violence in a common law marital relationship, who otherwise is cohabiting with the person committing the domestic violence, or who otherwise has cohabited with the person committing the domestic violence within five years prior to the date of the alleged occurrence of the act in question.*

receiving any compensation or other form of remuneration, either directly or indirectly, for the provision of the service.

(9) "Political subdivision" has the same meaning as in the Political Subdivision Sovereign Immunity Law (see **COMMENT 3**).

COMMENT

1. Under the law granting immunity for volunteer health care workers, professionals, and facilities, subject to specified circumstances in which the immunity is not available, (a) a health care professional who is a volunteer and who complies with specific requirements prior to providing diagnosis, care, or treatment, (b) a health care worker who is a volunteer, or (c) a nonprofit shelter or health care facility associated with a health care professional or a health care worker described above in (a) or (b) is *not liable* in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the health care professional or health care worker in the provision at a nonprofit shelter or health care facility to an indigent and uninsured person of medical, dental, or other health-related diagnosis, care, or treatment, unless the action or omission constitutes willful or wanton misconduct (R.C. 2305.234--not in the bill but referred to in the bill).

2. Under the Political Subdivision Sovereign Immunity Law, subject to specified exceptions, a political subdivision is *not liable* in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental function (R.C. 2744.02--not in the bill but referred to in the bill).

In a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to person or property allegedly caused by any act or omission in connection with a governmental or proprietary function, the following defenses or immunities may be asserted to establish nonliability (R.C. 2744.03(A)--not in the bill but referred to in the bill):

(1) The political subdivision is immune from liability if the employee involved was engaged in the performance of a judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative function.

(2) The political subdivision is immune from liability if the conduct of the employee involved, other than negligent conduct, that gave rise to the claim of liability was required by law or authorized by law, or if the conduct of the employee involved that gave rise to the claim of liability was necessary or essential to the exercise of powers of the political subdivision or employee.

(3) The political subdivision is immune from liability if the action or failure to act by the employee involved that gave rise to the claim of liability was within the discretion of the employee with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee.

(4) The political subdivision is immune from liability if the action or failure to act by the political subdivision or employee involved that gave rise to the claim of liability resulted in injury or death to a person who had been convicted of or pleaded guilty to a criminal offense and who, at the time of the injury or death, was serving any portion of the person's sentence by performing community service work for or in the political subdivision whether pursuant to section 2951.02 of the Revised Code [*probation*] or otherwise, or resulted in injury or death to a child who was found to be a delinquent child and who, at the time of the injury or death, was performing community service or community work for or in a political subdivision in accordance with the order of a juvenile court entered pursuant to section 2151.355 of the Revised Code, and if, at the time of the person's or child's injury or death, the person or child was covered for purposes of Chapter 4123. of the Revised Code [*Workers' Compensation Law*] in connection with the community service or community work for or in the political subdivision.

(5) The political subdivision is immune from liability if the injury, death, or loss to persons or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to

use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.

(6) In addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division or sections 3314.07 [*certain immunities from tort liability of a sponsor of a community school and the sponsor's officers, directors, or employees*] and 3746.24 of the Revised Code [*certain immunities from tort liability for voluntary cleanup of contaminated property*], the employee is immune from liability unless one of the following applies:

(a) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;

(b) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;

(c) Liability is expressly imposed upon the employee by a section of the Revised Code. Liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon an employee, because of a general authorization in that section that an employee may sue and be sued, or because the section uses the term "shall" in a provision pertaining to an employee.

(7) The political subdivision, and an employee who is a county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a political subdivision, an assistant of any such person, or a judge of a court of this state is entitled to any defense or immunity available at common law or established by the Revised Code.

3. Under R.C. 2744.01, not in the bill, "political subdivision" means a municipal corporation, township, county, school district, or other body corporate



and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission, regional planning commission, county planning commission, joint planning council, interstate regional planning commission, port authority, regional council established by political subdivisions, designated emergency planning district and joint emergency planning district, joint emergency medical services district, fire and ambulance district, joint interstate emergency planning district, county solid waste management district and joint solid waste management district, and community school.

HISTORY

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Introduced	01-25-00	p. 1543

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