



## **Sub. S.B. 131**

124th General Assembly  
(As Passed by the General Assembly)

**Sens. Austria, Spada, Robert Gardner, White, Furney, McLin, Mumper, Amstutz, Armbruster, Blessing, Carnes, DiDonato, Espy, Fingerhut, Randy Gardner, Hagan, Harris, Jacobson, Mallory, Nein, Oelslager, Prentiss, Ryan, Shoemaker**

**Reps. Willamowski, Grendell, Latta, Manning, Seitz, Sulzer, Jones, Womer Benjamin, Kearns, Hagan, Buehrer, Evans, Faber, Cates, Niehaus, Coates, Salerno, Lendrum, Schuring, Hollister, Roman, Flowers, Sferra, Distel, Rhine, Krupinski, Metzger, Wolpert, Cirelli, Schaffer, DeBose, Woodard, Key, Collier, Brown, Damschroder, Redfern, Reidelbach, McGregor, Calvert, Clancy, Jerse, Patton, Hartnett, Otterman, S. Smith, Allen, Fedor, Britton, Perry, Barrett, Oakar, Sullivan**

Effective date: \*

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### **ACT SUMMARY**

- Grants domestic violence shelters and associated individuals two distinct qualified immunities from tort liability for harm caused to shelter clients or certain other persons by certain members of the clients' families or households.
- Makes the immunities available for harm sustained under certain circumstances on or off the premises of a shelter, but subject to certain qualifications.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

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## CONTENT AND OPERATION

### *Qualified immunities from tort liability for domestic violence shelters and their personnel*

#### *Overview*

The act grants domestic violence shelters and associated individuals two immunities from liability in "tort actions" seeking to recover damages for injury, death, or loss to person or property ("harm") allegedly sustained by a "shelter client" or certain other persons. The immunities apply to harm sustained on or off the premises of a domestic violence shelter and caused by "conduct" (actions or omissions) of certain family or household members of any shelter client ("perpetrators"). (See "*Definitions*," below, and R.C. 2305.236(A), (C), (D), (F), and (H).) Whether the harm is sustained on or off the premises of a shelter, the availability of the corresponding immunity is qualified by various circumstances specified in the act, and can be forfeited by certain conduct of shelter personnel, as explained below.

#### *Immunity for harm caused on a shelter's premises*

The act provides that, with the exception described below and under specified circumstances, a shelter for victims of domestic violence is not liable in damages in a tort action for harm allegedly sustained by a shelter client or other person who is on the shelter's premises as a result of tortious conduct committed on the shelter's premises by a perpetrator (a family or household member of any shelter client who allegedly has committed domestic violence). Similarly, none of the shelter's directors, owners, trustees, officers, employees, victim advocates, or volunteers is liable in damages for the harm.<sup>1</sup> (R.C. 2305.237(A).) The immunity applies under any of the following circumstances (R.C. 2305.237(A)(1) to (3)):

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<sup>1</sup> *The immunity applies to a shelter and to these individuals only if the perpetrator is not one of these individuals. The act defines a "volunteer" as an individual who provides any service to a shelter without the expectation of receiving and without receiving any compensation or other form of remuneration, either directly or indirectly, for the provision of the service (R.C. 2305.236(G)). The act defines "victim advocate" as a person from a "crime victim service organization" (defined as any organization that is not organized for profit and that is organized and operated to provide, or to contribute to the support of organizations or institutions organized and operated to provide, services and assistance for victims of crime) who provides support and assistance for a victim of a crime during court proceedings and recovery efforts related to the crime (R.C. 2305.236(I) and (J)).*

(1) The perpetrator entered the premises illegally and remained there illegally at the time the perpetrator's tortious conduct allegedly caused the harm.

(2) The perpetrator legally entered the premises, and--before that person allegedly caused the harm--a shelter director, owner, trustee, officer, employee, victim advocate, or volunteer instructed the person to leave the premises and took reasonable steps under the circumstances to cause the person to leave; but, despite those steps, the person remained on the premises and committed the tortious conduct that allegedly caused the harm.

(3) The perpetrator legally entered the premises, and a shelter director, owner, trustee, officer, employee, victim advocate, or volunteer permitted that person to remain on the premises after taking either of the following precautionary steps; but, despite the steps taken, the perpetrator committed the tortious conduct that allegedly caused the harm:

(a) The shelter director, owner, trustee, officer, employee, victim advocate, or volunteer asks the person entering the premises whether the person is related by consanguinity or affinity to or has resided with a shelter client; the person responds by denying that he or she is so related or has so resided; and the director, owner, trustee, officer, employee, victim advocate, or volunteer--in exercising "the reasonable judgment and discretion of a prudent person under similar circumstances"--believes the person's response.

(b) The shelter director, owner, trustee, officer, employee, victim advocate, or volunteer asks the person entering the premises whether the person is related by consanguinity or affinity to or has resided with a shelter client; the person responds that he or she is so related or has so resided; and the director, owner, trustee, officer, employee, victim advocate, or volunteer--in exercising "the reasonable judgment and discretion of a prudent person under similar circumstances"--determines that permitting the person to remain on the premises does not appear to pose a threat of harm to a shelter client or other person who is on the premises.

### **Immunity for harm caused off a shelter's premises**

The act provides that, with the exception described below and under specified circumstances, a shelter for victims of domestic violence is not liable in damages in a tort action for harm allegedly sustained by a shelter client or other person who is on the premises as a result of tortious conduct committed off the shelter's premises by a perpetrator. Similarly, none of the shelter's directors, owners, trustees, officers, employees, victim advocates, or volunteers is liable in

damages for the harm.<sup>2</sup> (R.C. 2305.238(A).) The immunity applies only if both of the following circumstances apply when the harm is caused (R.C. 2305.238(A)(1) and (2)):

(1) A shelter director, owner, trustee, officer, employee, victim advocate, or volunteer is assisting the shelter client (which, among other unspecified things, may include accompanying the client to a health care practitioner's or attorney's office).

(2) The director, owner, trustee, officer, employee, victim advocate, or volunteer is engaged in the course of his or her employment, official responsibilities, or authorized services for the shelter.

### **Exceptions or "forfeiture" of either immunity**

Neither immunity from tort liability for harm caused to a shelter client or other person who is on the premises is available if the plaintiff in a tort action establishes by clear and convincing evidence that (1) a shelter director, owner, trustee, officer, employee, victim advocate, or volunteer contributed to the harm sustained by a shelter client or other person who is on the premises by an action or omission and (2) that action or omission involved malicious purpose, bad faith, or wanton or reckless conduct. "Reckless conduct," for the purposes of this provision, specifically includes the release of confidential information pertaining to a shelter client. (R.C. 2305.237(B) and 2305.238(B).)

### **Definitions**

For the purposes of the act, a "shelter for victims of domestic violence" is a facility that provides temporary residential services or facilities to family or household members who are victims of domestic violence. "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. 2305.236(B) by cross-reference to R.C. 3113.33, not in the act.)

"Shelter client" is a person who is a victim of domestic violence and is seeking to use or is using the services or facilities of a shelter for victims of domestic violence (R.C. 2305.236(H)).

"Perpetrator" means a person who allegedly has committed domestic violence and who bears one of the following relationships to a victim of domestic

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<sup>2</sup> Again, the immunity applies to a shelter and to these individuals only if the perpetrator is not one of these individuals.

violence who is a shelter client with whom the perpetrator resides or has resided: a spouse, a person living as a spouse, or a former spouse of a shelter client; a parent or child of a shelter client, or another person related by blood or marriage to a shelter client; a parent or a child of a spouse, person living as a spouse, or former spouse of a shelter client, or another person related by blood or marriage to a spouse, person living as a spouse, or former spouse of a shelter client; and a dependent of any of the foregoing persons.<sup>3</sup> "Perpetrator" also includes the natural parent of any child of whom the shelter client is the other natural parent or is the putative other natural parent. (R.C. 2305.236(C), and R.C. 3113.33(B), not in the act.)

"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 (R.C. 2305.236(F)).

### **Effect of act on existing rights and liabilities**

The act does not create any new cause of action or substantive legal right against a shelter for victims of domestic violence or a director, owner, trustee, officer, employee, victim advocate, or volunteer of the shelter. It also does not affect any immunities from civil liability or defenses available under common law or established under current statutes (including those covering political subdivision tort liability and volunteer health care professionals who provide care at nonprofit shelters to persons who are indigent or not insured) to which a shelter, any of its above described personnel, or an associated political subdivision may be entitled in connection with alleged tort liability of a third party or circumstances not covered by the act's immunities. (R.C. 2305.236(E) and 2305.239.)

### **Prospective application**

The act's immunities and other provisions apply only to causes of action for harm that shelter clients or other persons allegedly sustain on or after its effective date on or off the premises of a shelter for victims of domestic violence (Section 2).

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<sup>3</sup> A "person living as a spouse" is a person who resides or has resided with a shelter client in a common law marital relationship, who otherwise is cohabiting with a shelter client, or who otherwise has cohabited with a shelter client within five years before the date of the alleged occurrence of a domestic violence act (R.C. 3113.33(D), not in the act).

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-13-01	p. 659
Reported, S. State & Local Gov't & Veterans Affairs	10-04-01	p. 941
Passed Senate (32-0)	10-04-01	pp. 943-944
Reported, H. Civil and Commercial Law	01-16-02	p. 1239
Passed House (94-0)	04-24-02	pp. 1712-1713
Senate concurred in House amendments (31-0)	04-25-02	pp. 1726-1727

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