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Bill Analysis
Legislative Service Commission

H.B. 238

124th General Assembly
(As Introduced)

Reps. Patton, Damschroder, S. Smith, Barrett, Barnes, Allen, Key, Beatty, Ford, Strahorn, Jones, DePiero, Carano, Sferra, Sullivan, D. Miller, Rhine, Krupinski, Lendrum, Flannery, Redfern

BILL SUMMARY

- Prohibits places of public accommodation from restricting access, admission, or use of public accommodations by persons solely because they operate motorcycles or wear clothing that display the name of a motorcycle-related organization or association.
- Excludes from the prohibition the restriction of access, admission, or use of public accommodations to persons who pose a risk to another's health, safety, or property or who wear clothing that is obscene or has the name or symbol of a criminal gang.
- Provides for civil remedies to persons injured by a violation of the prohibition.

CONTENT AND OPERATION

Operation of the bill

Prohibition and exceptions

The bill amends the Civil Rights Law in the following manner. With the exceptions described in the following paragraph, the bill prohibits any *place of public accommodation* from restricting access, admission, or use of a public accommodation by a person solely because that person operates a *motorcycle* or is wearing clothing that displays the name of a motorcycle-related organization or association (R.C. 4112.023(A)).

The bill does not prohibit the restriction of access, admission, or use of a public accommodation to a person if any of the following are true (R.C. 4112.023(B)):

- (1) The person poses a risk to the health, safety, or property of another;
- (2) The person wears clothing that is *obscene* or includes the name or symbol of a *criminal gang*.

(See "**Definitions**," below, for definitions of the italicized terms.)

Remedies

Under the bill, a person injured by a violation of the above described prohibition may bring an action for any one or all of the following remedies: (1) actual damages in an amount not to exceed \$500, (2) punitive damages in an amount not to exceed \$500, (3) injunctive relief, and (4) reasonable attorney's fees in an amount not to exceed \$500 (R.C. 4112.99(B)).

Current law provides that whoever violates R.C. Chapter 4112. (Civil Rights Law, including the bill's prohibition) is subject to a civil action for damages, injunctive relief, or any other appropriate relief. A civil action commenced pursuant to current law and the bill must be brought within two years after the alleged unlawful discriminatory practice occurred. This period of limitation for purposes of a civil action authorized by current law and the bill does not affect any other period of limitation that is specified in another section of R.C. Chapter 4112. for purposes of a distinct civil action authorized by that other section. (R.C. 4112.99(A).)

Definitions

The bill defines the following terms as used in the bill (R.C. 4112.023(C)):

(1) "Criminal gang" means an ongoing formal or informal organization, association, or group of three or more persons to which all of the following apply (R.C. 2923.41(A)--not in the bill):

(a) It has as one of its primary activities the commission of one or more of the offenses listed in R.C. 2923.41(B) (see **COMMENT**).

(b) It has a common name or one or more common, identifying signs, symbols, or colors.

(c) The persons in the organization, association, or group individually or collectively engage in or have engaged in a *pattern of criminal gang activity* (see **COMMENT**).

(2) "Motorcycle" means every motor vehicle, other than a tractor, having a saddle for the use of the operator and designed to travel on not more than three wheels in contact with the ground, including, but not limited to, motor vehicles known as "motor-driven cycle," "motor scooter," or "motorcycle" without regard to weight or brake horsepower (R.C. 4511.01(C))--not in the bill).

(3) When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply (R.C. 2907.01(F))--not in the bill):

(a) Its dominant appeal is to prurient interest.

(b) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite.

(c) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality.

(d) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose.

(e) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

(4) For purposes of the Civil Rights Law, including the bill's provisions, "place of public accommodation" means any inn, restaurant, eating house, barbershop, public conveyance by air, land, or water, theater, store, other place for the sale of merchandise, or any other place of public accommodation or amusement of which the accommodations, advantages, facilities, or privileges are available to the public (R.C. 4112.01(A)(9))--not in the bill).

COMMENT

R.C. 2923.41(B) defines "pattern of criminal gang activity" as follows:

(B)(1) "Pattern of criminal gang activity" means, subject to division (B)(2) of this section, that persons in the criminal gang have committed, attempted to commit, conspired to commit, been complicitors in the commission of, or solicited, coerced, or intimidated another to commit, attempt to commit, conspire to commit, or be in complicity in the commission of two or more of any of the following offenses:

(a) A felony or an act committed by a juvenile that would be a felony if committed by an adult;

(b) An offense of violence or an act committed by a juvenile that would be an offense of violence if committed by an adult;

(c) A violation of section 2907.04 (unlawful sexual conduct with a minor), 2909.06 (criminal damaging or endangering), 2911.211 (aggravated trespass), 2917.04 (failure to disperse), 2919.23 (interference with custody), or 2919.24 (contributing to the unruliness or delinquency of a child) of the Revised Code, section 2921.04 (intimidation of an attorney, victim, or witness in a criminal case) or 2923.16 (improperly handling firearms in a motor vehicle) of the Revised Code, section 2925.03 of the Revised Code if the offense is trafficking in marihuana, or section 2927.12 (ethnic intimidation) of the Revised Code.

(2) There is a "pattern of criminal gang activity" if all of the following apply with respect to the offenses that are listed in division (B)(1)(a), (b), or (c) of this section and that persons in the criminal gang committed, attempted to commit, conspired to commit, were in complicity in committing, or solicited, coerced, or intimidated another to commit, attempt to

commit, conspire to commit, or be in complicity in committing:

(a) At least one of the two or more offenses is a felony.

(b) At least one of those two or more offenses occurs on or after the effective date of this section.

(c) The last of those two or more offenses occurs within five years after at least one of those offenses.

(d) The two or more offenses are committed on separate occasions or by two or more persons.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-01-01	pp. 324-325

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