



H.B. 315

124th General Assembly
(As Introduced)

Reps. Seitz, Widowfield, Gilb, Niehaus, Britton, Latta, Sullivan, Seaver, Patton, Schmidt, Otterman, Hartnett, G. Smith, White, Rhine, Williams, Lendrum, Schaffer, Roman, Collier, Carmichael, Perry, Reidelbach

BILL SUMMARY

- Prohibits a person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense from establishing a residence within 500 feet of any school premises.
- Prohibits a person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense from entering into a rental agreement to reside in residential premises that are located within 500 feet of any school premises.
- Authorizes the landlord for the residential premises that are the subject of a rental agreement to terminate the rental agreement if a person enters into a rental agreement in violation of the prohibition described in the preceding dotpoint.
- If a tenant resides in residential premises located within 500 feet of any school premises and is on the State Registry of Sexual Offenders, authorizes the landlord for those residential premises, upon discovery that the tenant is on the Registry, to terminate the rental agreement for those residential premises by notifying the tenant, in a statutorily prescribed manner, to leave the premises.
- Authorizes a landlord to commence proceedings under the Forcible Entry and Detainer Law for possession of the premises against tenants who reside pursuant to a rental agreement in residential premises that are located within 500 feet of any school premises and whose names are on the State Registry of Sexual Offenders.

CONTENT AND OPERATION

Prohibition against sexually oriented offender establishing a residence near school premises

The bill provides that no person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense is permitted to establish a residence within 500 feet of any school premises (R.C. 2950.031). (See COMMENT 2.)

Prohibition against sexually oriented offender entering into a rental agreement to reside in residential premises near school premises

The bill also provides that no person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense is permitted to enter into a rental agreement to reside in residential premises that are located within 500 feet of any school premises. If a person enters into a rental agreement in violation of this prohibition, the landlord for the residential premises that are the subject of the rental agreement may terminate the rental agreement. (R.C. 5321.051.) (See COMMENT 2.)

The bill authorizes a landlord to commence proceedings under the Forcible Entry and Detainer Law for possession of the premises against tenants who reside pursuant to a rental agreement in residential premises that are located within 500 feet of any school premises and whose names are on the State Registry of Sexual Offenders (see "*Background--other grounds for forcible entry and detainer actions*," below, for other circumstances in which a Forcible Entry and Detainer Action may be had). If a tenant resides in residential premises located within 500 feet of any school premises and is on the State Registry of Sexual Offenders, the landlord for those residential premises, upon discovery that the tenant is on the Registry, may terminate the rental agreement for those residential premises by notifying the tenant, as provided in R.C. 1923.04, to leave the premises. (R.C. 1923.02(A)(13) and (C) and 5321.03(A)(5).)

Under R.C. 1923.04(A), a party desiring to commence an action under the Forcible Entry and Detainer Law must notify the adverse party to leave the premises, for the possession of which the action is about to be brought, three or more days before beginning the action, by certified mail, return receipt requested, or by handing a written copy of the notice to the defendant in person, or by leaving it at his usual place of abode or at the premises from which the defendant is sought to be evicted. Every notice of this nature given by a landlord to recover residential premises must contain the following language printed or written in a conspicuous manner: "You are being asked to leave the premises. If you do not leave, an

eviction action may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, it is recommended that you seek legal assistance."

Background--other grounds for forcible entry and detainer actions

Proceedings under the Forcible Entry and Detainer Law also may be had as follows (R.C. 1923.02(A)):

(1) Against tenants or manufactured home park residents holding over their terms;

(2) Against tenants or manufactured home park residents in possession under an oral tenancy, who are in default in the payment of rent;

(3) In sales of real estate, on executions, orders, or other judicial process, when the judgment debtor was in possession at the time of the rendition of the judgment or decree, by virtue of which such sale was made;

(4) In sales by executors, administrators, or guardians, and on partition, when any of the parties to the complaint were in possession at the commencement of the action, after such sales, so made on execution or otherwise, have been examined by the proper court and adjudged legal;

(5) When the defendant is an occupier of lands or tenements, without color of title, and the complainant has the right of possession to them;

(6) In any other case of the unlawful and forcible detention of lands or tenements. For purposes of this provision, in addition to any other type of unlawful and forcible detention of lands or tenements, such a detention may be determined to exist when both of the following apply:

(a) A tenant fails to vacate residential premises within three days after both of the following occur:

(i) The tenant's landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation of the Drug Laws or the Controlled Substances Laws, or of a municipal ordinance that is substantially similar to any section in either of those Laws, which involves a controlled substance and which occurred in, is occurring in, or otherwise was or is connected with the premises, whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be a violation as described in this division.

(ii) The landlord gives the tenant the notice required by R.C. 5321.17(C) (termination of periodic tenancies);

(b) The court determines, by a preponderance of the evidence, that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation as described in provision (A)(6)(a)(i).

(7) In cases arising out of the Land Installment Contract Law;

(8) Against tenants who have breached certain obligations that are imposed by the Landlord and Tenant Law and that materially affect health and safety;

(9) Against tenants who have breached an obligation imposed upon them by a written rental agreement;

(10) Against manufactured home park residents who have defaulted in the payment of rent or breached the terms of a rental agreement with a manufactured home park operator;

(11) Against manufactured home park residents who have committed two material violations of the rules of the manufactured home park, of the Public Health Council, or of applicable state and local health and safety codes and who have been notified of the violations;

(12) Against occupants of self-service storage facilities who have breached the terms of a rental agreement or violated R.C. 5322.04 (using a self-service storage facility for residential purposes).

Background--procedure in forcible entry and detainer cases

As described above, a party desiring to commence a Forcible Entry and Detainer Action (the landlord) generally must notify the adverse party (the tenant) to leave the premises, for the possession of which the action is about to be brought, three or more days before beginning the action, by certified mail, return receipt requested, or by handing a written copy of the notice to the defendant in person, or by leaving it at his usual place of abode or at the premises from which the defendant is sought to be evicted. The notice must contain specified language. (R.C. 1923.04(A)--not in the bill.)

The landlord then must file a complaint in the appropriate court. The complaint must particularly describe the premises so entered upon and detained, and set forth either an unlawful and forcible entry and detention, or an unlawful and forcible detention after a peaceable or lawful entry of the described premises.

Once this is done, the court issues a summons to the tenant. (R.C. 1923.05--not in the bill.)

The summons must be in a statutorily prescribed form and must be served at least seven days before the day set for trial. The clerk of the court in which a complaint to evict is filed mails the summons by ordinary mail, along with a copy of the complaint, document, or other process to be served, to the defendant tenant at the address set forth in the caption of the summons and to any address set forth in any written instructions furnished to the clerk. In addition to this ordinary mail service, the clerk also must cause service of that process to be completed under one or two other forms of service.

The claim for restitution of the premises must be scheduled for hearing in accordance with local court rules, but in no event sooner than the seventh day from the date service is complete. But, answer day for any other claims filed with the claim for possession is 28 days from the date service is deemed complete. If the defendant does not appear in the action and the summons was properly served, the court must try the cause as though the defendant were present. Also, continuances in the action may not be granted for a period longer than eight days. (R.C. 1923.06, 1923.07, and 1923.08--not in the bill.)

The defendant may assert any defense in the action at trial. Also, in an action for possession of residential premises based upon nonpayment of the rent or in an action for rent when the tenant or manufactured home park resident is in possession, the tenant or resident may counterclaim for any amount he may recover under the rental agreement or under the Manufactured Home Park Law or the Landlord and Tenant Law.¹ (R.C. 1923.061--not in the bill.)

Generally, a judge tries the case. After hearing the evidence, if the judge concludes that the complaint is not true, the judge enters judgment against the plaintiff for costs. If the judge finds the complaint to be true, the judge shall render a general judgment against the defendant, in favor of the plaintiff, for restitution of the premises, and costs. If the judge finds the complaint true in part, the judge must render a judgment for restitution of that part only, and the judge must tax the costs as the judge deems just. Either party may demand a jury, in

¹ *In that event, the court from time to time may order the tenant or resident to escrow with the court all or part of the past due rent and rent becoming due during the pendency of the action. After judgment, the party to whom a net judgment is owed is paid first from the money escrowed, and any balance must be satisfied as any other judgment. If the tenant or resident has escrowed an amount greater than that necessary to satisfy a judgment obtained by the landlord, the balance must be returned by the court to the tenant or resident. (R.C. 1923.061(B).)*

which case, the jury determines whether the complaint is true. (R.C. 1923.09 and 1923.10--not in the bill.)

If the court enters a judgment of restitution, at the request of the plaintiff or the plaintiff's agent or attorney, the court must issue a writ of execution on the judgment, in a statutorily prescribed form. Generally, within ten days after receiving the writ of execution, the sheriff, police officer, constable, or bailiff must execute it by restoring the plaintiff to the possession of the premises and must levy and collect the costs and make return, as upon other executions. The writ of execution may be stayed in certain circumstances. (R.C. 1923.13 and 1923.14--not in the bill.)

Definitions

School premises

As used in the bill, "school premises" means either of the following (R.C. 1923.01(C)(7), 2950.01(J), and 5321.01(I) by reference to R.C. 2925.01(R)--not in the bill):

(1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed;²

(2) Any other parcel of real property that is owned or leased by a board of education of a school or the governing body of a school for which the State Board of Education prescribes minimum standards and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.

Sexually oriented offense

Existing law defines "sexually oriented offense" as any of the following offenses (R.C. 2950.01(D)--not in the bill):

(1) Regardless of the age of the victim of the offense, rape, sexual battery, or gross sexual imposition;

² "School" means any school operated by a board of education or any school for which the State Board of Education prescribes minimum standards, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed (R.C. 2925.01(R)).

(2) Any of the following offenses involving a minor, in the circumstances specified: (a) kidnapping, abduction, unlawful restraint, criminal child enticement, or unlawful sexual conduct with a minor when the victim of the offense is under 18 years of age, (b) compelling prostitution when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under 18 years of age, (c) certain pandering obscenity or pandering sexually oriented matter involving minors violations, (d) certain illegal use of a minor in nudity oriented material or performance violations, and (e) certain endangering children violations when the child who is involved in the offense is under 18 years of age.

(3) Regardless of the age of the victim of the offense, the offense of aggravated murder, murder, felonious assault, kidnapping, or felony-based involuntary manslaughter, when the offense is committed with a purpose to gratify the sexual needs or desires of the offender;

(4) A sexually violent offense;³

(5) A violation of any former Ohio law that was substantially equivalent to any offense listed in (1), (2), (3), or (4), above;

(6) A violation of an existing or former municipal ordinance or law of another state or the United States, a violation under the law applicable in a military court, or a violation under the law applicable in an Indian tribal court that is or was substantially equivalent to any offense listed in (1), (2), (3), or (4), above;

³ *"Sexually violent offense" means a violent sex offense, or a designated homicide, assault, or kidnapping offense for which the offender also was convicted of or pleaded guilty to a sexual motivation specification.*

"Violent sex offense" means any of the following: (1) the offenses of rape, sexual battery, or the former offense of felonious sexual penetration, or gross sexual imposition when the victim is less than 13 years of age, (2) a felony violation of a former Ohio law that is substantially equivalent to an offense listed in (1) or of an existing or former law of the United States or of another state that is substantially equivalent to such an offense, (3) an attempt to commit or complicity in committing an offense listed in (1) or (2), if the attempt or complicity is a felony.

"Designated homicide, assault, or kidnapping offense" means any of the following: (1) aggravated murder, murder, felonious assault, or kidnapping or involuntary manslaughter committed as a proximate result of the offender's committing or attempting to commit a felony, (2) an attempt to commit or complicity in committing an offense listed in (1), if the attempt or complicity is a felony. (R.C. 2971.01(B), (G), and (L).)

(7) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (1), (2), (3), (4), (5), or (6), above.

COMMENT

1. In restricting where sexually oriented offenders may reside, this bill raises constitutional questions under the Due Process Clause of the United States Constitution and under Section 1, Article I of the Ohio Constitution regarding infringement on the liberty interest of these offenders.

2. The bill establishes no criminal penalty for violating either of these prohibitions. But these provisions appear to make any contracts for the sale or lease of real estate in violation of the provision void and unenforceable. (See, e.g., *Bell v. Northern Ohio Tel. Co.* (1948), 149 Ohio St. 157, 158; *Deal v. Garaux Bros. Co.* (App. 5 Dist. 1930), 42 Ohio App. 191, 197.)

HISTORY

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Introduced	06-26-01	p. 710

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