



S.B. 107

124th General Assembly
(As Introduced)

Sen. Armbruster

BILL SUMMARY

- Bars the recovery of damages in a tort action commenced by a criminal offender or the offender's personal representative if the offender has been convicted of or pleaded guilty to a felony that was the proximate cause of the injury or loss for which relief is claimed in the action (reenactment of Am. Sub. H.B. 350 of the 121st General Assembly language) or if the offender has been convicted of or pleaded guilty to a misdemeanor offense of violence that was the proximate cause of the injury or loss for which relief is claimed in the action (reenactment of Sub. H.B. 547 of the 122nd General Assembly language).
- Reenacts the changes to R.C. 2307.61 (civil action to recover damages for willful damage or theft of property) that were enacted by Am. Sub. H.B. 350 of the 121st General Assembly and retains the amendments to that section as made by Sub. H.B. 294 of the 123rd General Assembly.
- Declares that the reenactment is in conformity with the Ohio Supreme Court's decisions in *State ex rel. Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, and *Stevens v. Ackman* (2001), 91 Ohio St.3d 182, and is intended to clarify the status of the law.

CONTENT AND OPERATION

Background law

The laws governing an injured person's recovery of damages in a civil action for a criminal act (R.C. 2307.60) and a property owner's recovery of damages in a civil action for willful damage or theft of property (R.C. 2307.61) were amended by Am. Sub. H.B. 350 (Tort Reform Act) of the 121st General Assembly, effective January 27, 1997. In *State ex rel. Academy of Trial Lawyers*

v. Sheward (1999), 86 Ohio St.3d 451, the Ohio Supreme Court held Am. Sub. H.B. 350 unconstitutional *in toto* as violating the one-subject provision of Section 15(D), Article II of the Ohio Constitution. Subsequent to the Tort Reform Act, Sub. H.B. 547 of the 122nd General Assembly, effective August 5, 1998, amended R.C. 2307.60, and Sub. H.B. 294 of the 123rd General Assembly, effective August 29, 2000, amended R.C. 2307.61.

In *Stevens v. Ackman* (2001), 91 Ohio St.3d 182, the Ohio Supreme Court discussed the issue of whether provisions in sections in Am. Sub. H.B. 350 could be "reenacted" in subsequent Acts. The Court in *Stevens* held that R.C. 2744.02(C), as purportedly enacted in Am. Sub. H.B. 350, was invalid and was neither enacted nor reenacted in 1997 by Am. Sub. H.B. 215. Based upon the *Stevens* rationale, it appears that the changes in R.C. 2307.60 that were purportedly enacted in Am. Sub. H.B. 350 are invalid and were not reenacted by Sub. H.B. 547 and that the changes to that invalid language purportedly made by Sub. H.B. 547 probably were not effective. Similarly, it appears that the changes in R.C. 2307.61 that were purportedly enacted in Am. Sub. H.B. 350 are invalid and were not reenacted by Sub. H.B. 294.

Operation of the bill

Reenactment of R.C. 2307.60 and 2307.61 changes

The bill reenacts the substance of the changes to R.C. 2307.60 that were enacted by Am. Sub. H.B. 350 of the 121st General Assembly and amended by Sub. H.B. 547 of the 122nd General Assembly. The bill also reenacts the changes to R.C. 2307.61 that were enacted by Am. Sub. H.B. 350 of the 121st General Assembly, and retains the amendments to R.C. 2307.61 as made by Sub. H.B. 294 of the 123rd General Assembly. The bill declares the above reenactments to be the intent of the General Assembly and that this action is in conformity with the Supreme Court of Ohio's decisions in *State, ex rel. Ohio Academy of Trial Lawyers v. Sheward, supra*, and *Stevens v. Ackman, supra*, and is intended to clarify the status of the law. (Section 3.)

Recovery of damages for a criminal act

Under continuing law, anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law, may recover the costs of maintaining the civil action and attorney's fees if authorized by any provision of the Rules of Civil Procedure or another section of the Revised Code or under the common law of Ohio, and may recover punitive or exemplary damages if authorized by R.C. 2315.21 (see **COMMENT**) or another section of the Revised Code. A record of a conviction,

unless obtained by confession in open court, cannot be used as evidence in that civil action. (R.C. 2307.60(A).)

The bill bars a recovery of damages on a claim for relief in a *tort action* (see "*Definitions*," below) by any person or the person's representative if either of the following apply (R.C. 2307.60(B)(2)):

(1) The person has been convicted of or has pleaded guilty to a felony arising out of criminal conduct that was a proximate cause of the injury or loss for which relief is claimed in the tort action. (Am. Sub. H.B. 350 provision reenacted.)

(2) The person has been convicted of or has pleaded guilty to a misdemeanor that is an offense of violence arising out of criminal conduct that was a proximate cause of the injury or loss for which relief is claimed in the tort action. (Sub. H.B. 547 provision reenacted.)

The above provisions barring recovery on a claim for relief in a tort action do not apply to civil claims based upon alleged intentionally tortious conduct, alleged violations of the United States Constitution, or alleged violations of statutes of the United States pertaining to civil rights (R.C. 2307.60(B)(3)--reenactment of Sub. H.B. 350 and Sub. H.B. 547 provisions with respect to paragraphs (1) and (2), above).

Definitions

The bill defines the following terms for purposes of the provisions barring recovery on a claim for relief in a tort action as described above (R.C. 2307.60(B)(1)):

"Harm" means injury, death, or loss to person or property. (This term is not used in R.C. 2307.60(B) in the bill.)

"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. "Tort action" includes, but is not limited to, a product liability claim, an action for wrongful death under R.C. Chapter 2125., and an action based on derivative claims for relief. (Am. Sub. H.B. 350 and Sub. H.B. 547 provisions reenacted.)

Recovery of damages for willful damage or theft of property

Under continuing law, if a property owner brings a civil action as described above in "*Recovery of damages for a criminal act*" to recover damages from any person who willfully damages the owner's property or who commits a theft offense

involving the owner's property, the property owner may recover compensatory damages or liquidated damages based upon the value of the property involved, and under certain conditions if the action involves property valued at less than \$5,000, additionally may recover reasonable administrative costs incurred in connection with the action, the cost of maintaining the civil action, and reasonable attorney's fees (R.C. 2307.61(A)).

The bill continues the above provisions of law and related provisions, reenacts nonsubstantive changes to those provisions made by Am. Sub. H.B. 350, and retains the amendment to those provisions made by Sub. H.B. 294.

COMMENT

Under R.C. 2315.21, not in the bill, subject to certain exclusions and limitations, punitive or exemplary damages are *not* recoverable from a defendant in question in a tort action unless *both* of the following apply:

(1) The actions or omissions of the defendant demonstrate malice, aggravated or egregious fraud, oppression, or insult, or the defendant as principal or master authorized, participated in, or ratified actions or omissions of an agent or servant that so demonstrate.

(2) The plaintiff has adduced proof of actual damages that resulted from actions or omissions as described in (1), above.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-08-01	p. 351

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