



Aida S. Montano

*Bill Analysis*  
Legislative Service Commission

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

124th General Assembly  
(As Passed by the Senate)

**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**

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### **BILL SUMMARY**

- Grants domestic violence shelters and associated individuals two distinct qualified immunities from tort liability for harm caused to shelter clients 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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### **CONTENT AND OPERATION**

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

##### **Overview**

The bill 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." 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 sec. 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 bill, and can be forfeited by certain conduct of shelter personnel, as explained below.

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

The bill 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 as a result of tortious conduct committed on the shelter's premises by a perpetrator (a family or household member of any client who allegedly has committed domestic violence). Similarly, none of the shelter's directors, owners, trustees, officers, employees, or volunteers is liable in damages for the harm.<sup>1</sup> (Sec. 2305.237(A).) The immunity applies under any of the following circumstances (sec. 2305.237(A)(1) to (3)):

- The perpetrator entered the premises illegally and remained there illegally at the time the perpetrator's tortious conduct allegedly caused the harm.
- The perpetrator legally entered the premises, and--before that person allegedly caused the harm--a shelter director, owner, trustee, officer, employee, 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.
- The perpetrator legally entered the premises, and a shelter director, owner, trustee, officer, employee, or volunteer--after asking the person entering the premises whether the person is related by blood or marriage to or has resided with a shelter client--permitted that person to remain on the premises; but, despite the steps taken as described in this paragraph, the perpetrator committed the tortious conduct that allegedly caused the harm. The immunity applies under this circumstance only if either of two conditions is satisfied: (1) the person responds by denying that he or she is so related or has so resided with a shelter client, and the director, owner, trustee, officer, employee, or volunteer--in exercising "the reasonable judgment and discretion of a prudent person under similar circumstances"--believes the person's response, or (2) the person responds that he or she is so related or has so resided with a shelter client, and the director, owner, trustee, officer, employee, or volunteer--

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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 bill 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 (sec. 2305.236(G)).*

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.

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

The bill 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 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, or volunteers is liable in damages for the harm.<sup>2</sup> (Sec. 2305.238(A).) The immunity applies only if both of the following circumstances apply when the harm is caused (sec. 2305.238(A)(1) and (2)):

- A shelter director, owner, trustee, officer, employee, 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),
- The director, owner, trustee, officer, employee, 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 proposed immunity from tort liability for harm caused to a shelter client is available if the plaintiff in a tort action establishes by clear and convincing evidence that (1) a shelter director, owner, trustee, officer, employee, or volunteer contributed to the harm sustained by a shelter client 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 the bill, specifically includes the release of confidential information pertaining to a shelter client. (Secs. 2305.237(B) and 2305.238(B).)

### **Definitions**

For the purposes of the bill, 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"

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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.

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. (Sec. 2305.236(B) by cross-reference to sec. 3113.33, not in the bill.)

"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 (sec. 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 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. (Sec. 2305.236(C); and sec. 3113.33(B), not 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 (sec. 2305.236(F)).

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

The bill 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, 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

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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 (sec. 3113.33(D), not in the bill).

in connection with alleged tort liability of a third party or circumstances not covered by the bill's immunities. (Secs. 2305.236(E) and 2305.239.)

**Prospective application**

The bill's immunities and other provisions apply only to causes of action for harm allegedly sustained by a shelter client on or after its effective date (Section 2).

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced Reported, S. State & Local Gov't & Veterans Affairs	06-13-01	p. 659
Passed Senate (32-0)	10-04-01	p. 941
	10-04-01	pp. 943-944

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