



Am. H.B. 498

125th General Assembly
(As Passed by the General Assembly)

Reps. Faber, Buehrer, Young, Gibbs, Wagner, Seitz, Brinkman, Aslanides, Setzer, Reinhard, Combs, Hagan, Niehaus, Collier, Clancy, D. Evans, Schaffer, Fessler, Webster, Cates, Blasdel, Calvert, Carmichael, Core, Daniels, DeWine, C. Evans, Flowers, Gilb, Hollister, Hoops, Kearns, Martin, Peterson, Reidelbach, Schlichter, Schmidt, Schneider, Taylor, Widowfield, Wolpert

Sens. Mumper, Wachtmann, Amstutz, Hottinger, Jordan, Spada

Effective date: *

ACT SUMMARY

- Creates a statutory cause of action for an employment intentional tort.

CONTENT AND OPERATION

Operation of the act

The act repeals a statute declared unconstitutional by the Ohio Supreme Court and creates a new statutory cause of action for intentional torts in employment (*Johnson v. BP Chemicals, Inc.* (1999), 85 Ohio St.3d 298). It also specifies the burden of proof of an injured employee. Under the act, an employer is not liable in an action brought against the employer by an employee or by the dependent survivors of a deceased employee for damages resulting from an intentional tort committed by the employer during the course of employment unless the plaintiff proves that the employer committed the tortious act with the intent to injure another or with the belief that the injury was substantially certain to occur. Under the act "substantially certain" means that an employer acts with deliberate intent to cause an employee to suffer an injury, a disease, a condition, or death. This burden of proof differs from the burden established by the previous statute that required the employee to prove, by clear and convincing evidence, that

* *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.*

the employer deliberately committed all of the elements of an intentional tort (sec. 2745.01(B), as repealed by the act). An employment intentional tort was defined by that statute to mean "an act committed by an employer in which the employer deliberately and intentionally injures, causes an occupational disease of, or causes the death of an employee."

The act specifies that the deliberate removal by an employer of an equipment safety guard or deliberate misrepresentation of a toxic or hazardous substance creates a rebuttable presumption that the removal or misrepresentation was committed with intent to injure another if an injury or an occupational disease or condition occurs as a direct result. The act also specifies that its provisions do not apply to claims arising during the course of employment involving discrimination, civil rights, retaliation, harassment in violation of Chapter 4112. of the Revised Code, intentional infliction of emotional distress not compensable under Chapters 4121. and 4123. of the Revised Code, contract, promissory estoppel, or defamation. (Sec. 2745.01.)

The act eliminates the requirement, declared "null and void" by the Court (*Funk v. Rent-All Mart, Inc.* (2001), 91 Ohio St.3d 78, 79, *citing Mullins v. Rio Algom* (1999), 85 Ohio St.3d 361), that a cause of action for an intentional tort be brought within one year of the employee's death or the date on which the employee knew or through the exercise of reasonable diligence should have known of the injury, condition, or disease (sec. 2305.112, repealed by the act). The act does not specify a time limit to file a cause of action. It appears, then, that the statute of limitations for an employment intentional tort is two years, unless a battery or any other enumerated intentional tort occurs (sec. 2305.10, not in the act, and *Funk* at 81).

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|--|----------|---------------|
| Introduced | 05-13-04 | p. 1931 |
| Reported, H. Commerce & Labor | 11-09-04 | p. 2202 |
| Passed House (60-34) | 11-10-04 | pp. 2250-2253 |
| Reported, S. Insurance, Commerce & Labor | 12-07-04 | p. 2383 |
| Passed Senate (18-10) | 12-07-04 | pp. 2415-2416 |
| House concurred in Senate amendments (70-24) | 12-08-04 | p. 2390 |

04-hb498-125.doc/kl

