



H.B. 141

125th General Assembly
(As Introduced)

Reps. Calvert, Clancy, Hartnett, Hollister, Allen, D. Evans, Price, S. Patton, Perry, Setzer, Carano, C. Evans

BILL SUMMARY

- Specifically authorizes any person who is a victim of "gender violence" to bring against the person who committed the gender violence a civil action for compensatory damages, punitive or exemplary damages if authorized by law, injunctive relief, and any other appropriate remedy.
- For bringing a civil action of that nature, generally provides a period of limitations of three years from the date on which the gender violence occurred.

CONTENT AND OPERATION

Civil cause of action

The bill creates a new civil cause of action in favor of a victim of "gender violence" (see "**Definition**," below). Any person who is a victim of gender violence has, and may bring, against the person who committed the gender violence a civil action for compensatory damages, punitive or exemplary damages if authorized by R.C. 2315.21 (see **COMMENT 1**), injunctive relief, and any other appropriate remedy. A prevailing plaintiff also may recover attorneys' fees and the costs of bringing the action. (See **COMMENT 2**.)

Any person who is a victim of gender violence may bring the civil action described above not more than three years after the date on which the gender violence occurred or, if the victim is a minor when the gender violence occurred, not more than eight years after the date on which the victim attains the age of majority or within three years after the date the victim attains the age of majority and discovers or reasonably should have discovered the injury caused by the gender violence, whichever occurs later. (See **COMMENT 3**.)

The above provisions do not establish civil liability of a person because of that person's status as an employer unless the employer commits an action of gender violence against an employee. (R.C. 2307.65(B), (C), and (D).)

Definition

The bill defines "gender violence" as *both* of the following (R.C. 2307.65(A)) (see **COMMENT 4**):

(1) One or more actions that constitute a criminal offense under Ohio law, that involve causing, attempting to cause, or threatening to cause serious physical harm to the person or property of another person or to another's unborn or causing another person to believe that the person will cause serious physical harm to the person or property of the other person or to the other person's unborn, and that are committed at least in part based on the victim's gender, whether or not the act or acts result in the filing of a criminal complaint or criminal charge, a criminal prosecution, or a conviction;

(2) One or more acts that involve a physical intrusion or physical invasion of a sexual nature under coercive conditions, whether or not the act or acts result in the filing of a criminal complaint or criminal charge, a criminal prosecution, or a conviction.

COMMENT

1. Under R.C. 2315.21 (not in the bill), subject to certain exceptions described below, punitive or exemplary damages are not recoverable from a defendant in question in a tort action (generally, a civil action for damages for injury or loss to person or property) unless both of the following apply:

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

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

In a tort action, the trier of fact (the jury or, in a nonjury action, the court) must determine the liability of any defendant for punitive or exemplary damages and the amount of those damages. The burden of proof is upon a plaintiff in question, by clear and convincing evidence, to establish that the plaintiff is entitled to recover punitive or exemplary damages.

The provisions on punitive or exemplary damages do not apply to tort actions against the state in the Court of Claims or to the extent that another section of the Revised Code expressly provides any of the following:

(1) Punitive or exemplary damages are recoverable from a defendant in question in a tort action on a basis other than that the actions or omissions of that defendant demonstrate malice, aggravated or egregious fraud, oppression, or insult, or on a basis other than that the defendant in question as principal or master authorized, participated in, or ratified actions or omissions of an agent or servant that so demonstrate.

(2) Punitive or exemplary damages are recoverable from a defendant in question in a tort action irrespective of whether the plaintiff in question has adduced proof of actual damages.

(3) The burden of proof upon a plaintiff in question to recover punitive or exemplary damages from a defendant in question in a tort action is one other than clear and convincing evidence.

(4) Punitive or exemplary damages are not recoverable from a defendant in question in a tort action.

R.C. 2315.21(E) requires certain factors to be considered by the trier of fact when determining the amount of an award of punitive or exemplary damages against either a home, as defined in R.C. 3721.10, or a residential facility licensed under R.C. 5123.19.

2. Under continuing law, not affected by the bill, 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 or another section of the Revised Code. No record of a conviction, unless obtained by confession in open court, can be used as evidence in a civil action brought as described above.

Recovery on a claim for relief in a tort action (generally, a civil action for damages for injury, death, or loss to person or property) is barred to any person or the person's legal representative if the person has been convicted of or has pleaded guilty to a felony, or 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 action. This provision does 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--not in the bill.)

3. Under R.C. 2305.111 (not in the bill), an action (civil action) for assault or battery must be brought within one year after the cause of the action accrues. A cause of action for assault or battery accrues upon the later of the following: (1) the date on which the alleged assault or battery occurred or (2) if the plaintiff did not know the identity of the person who allegedly committed the assault or battery on the date on which it allegedly occurred, the earlier of the following dates: (a) the date on which the plaintiff learns the identity of that person or (b) the date on which, by the exercise of reasonable diligence, the plaintiff should have learned the identity of that person.

R.C. 2305.115 (not in the bill), provides that an action for assault or battery must be brought within two years after the cause of action accrues if all of the following apply regarding the action, the cause of the action, and the parties to the action:

(1) The action is brought against a *mental health professional*.

(2) The assault or battery claim asserted in the action is that, while the plaintiff was a mental health client or patient of the mental health professional, the mental health professional engaged in sexual conduct with, had sexual contact with, or caused one or more other persons to have sexual contact with the plaintiff.

(3) At the time of the sexual conduct or sexual contact described in (2), above, the plaintiff was not the spouse of the mental health professional.

If the mental health service relationship between the plaintiff in such an action for assault or battery and the mental health professional continues after the date on which the cause of action accrues, the two-year period specified above does not begin to run until the date on which that mental health service relationship is terminated by either or both of the parties.

Generally, if a person entitled to bring any action described above, among others, is, at the time the cause of action accrues, within the age of minority or of unsound mind, the person may bring it within the respective periods of limitation after that disability is removed (R.C. 2305.16--not in the bill).

4. Any of the acts that constitute "gender violence" under the bill could constitute any of the following offenses if the specific elements of the offense are present: aggravated assault, felonious assault, rape, sexual battery, aggravated menacing, domestic violence, criminal damaging or endangering, or an attempt to commit any of those offenses.



HISTORY

| ACTION | DATE | JOURNAL ENTRY |
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