



## **Sub. H.B. 161**

125th General Assembly

(As Reported by S. Judiciary on Civil Justice)

**Reps. Seitz, Willamowski, Widowfield, Grendell, Oelslager, Harwood, DePiero, Driehaus, Allen, Barrett, Beatty, Boccieri, Book, Buehrer, Cates, Cirelli, Clancy, Daniels, DeBose, Distel, Domenick, C. Evans, Faber, Gilb, Hartnett, Hughes, Jerse, Key, Mason, Niehaus, T. Patton, Price, Raga, Raussen, Schmidt, Schneider, Sferra, Skindell, G. Smith, D. Stewart, J. Stewart, Strahorn, Yates**

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### **BILL SUMMARY**

- Modifies the period within which a plaintiff may commence a new action after the reversal of a judgment for the plaintiff or the plaintiff's failure otherwise than upon the merits.
- Includes within the four-year statute of limitations for certain actions an action for relief on the grounds of a physical or regulatory taking of real property.
- Amends uncodified language from Am. Sub. H.B. 51 of the 125th General Assembly to specify which provisions of that act apply to pending decedents' estates and which provisions of that act apply to estates of decedents who die on or after the effective date of that act.
- Declares an emergency.

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### **CONTENT AND OPERATION**

#### **Savings statute after a reversal**

##### **Current law**

R.C. 2305.19 provides that, in an action commenced, or attempted to be commenced, if in due time a judgment for the plaintiff is reversed, or if the plaintiff fails otherwise than on the merits, and the time limited for the commencement of such action at the date of reversal or failure has expired, the plaintiff, or if the plaintiff dies and the cause of action survives, the plaintiff's

representative may commence a new action within one year after such date. This provision applies to any claim asserted in any pleading by a defendant.

If the defendant is a foreign or domestic corporation, and whether its charter prescribes the manner and place, or either, of service of process, and it passes into the hands of a receiver before the expiration of a year, then service to be made within the year following the original service or attempt to begin the action may be made upon the receiver or the receiver's cashier, treasurer, secretary, clerk, or managing agent, or by a copy left at the office or the usual place of business. (R.C. 2305.19.)

### **Operation of the bill**

Under the bill, the period in which a plaintiff or the plaintiff's representative may commence a new action following a reversal of a judgment for the plaintiff or the plaintiff's failure other than on the merits is modified. The new action may be commenced within one year after the date of the reversal of the judgment or the plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later. The bill also eliminates the existing language that limits the application of the provision to circumstances in which the time limited for the commencement of the action at the date of reversal or failure has expired. (R.C. 2305.19(A).)

Also, the bill modifies the provision regarding service of process upon a foreign or domestic corporation. Under the bill, if the defendant is a foreign or domestic corporation, and whether its charter prescribes the manner or place of service of process on the defendant, and if it passes into the hands of a receiver before the expiration of the one-year period or the period of the original applicable statute of limitations described in the preceding paragraph, whichever is applicable, then service to be made within one year following the original service or attempt to begin the action may be made upon that receiver or the receiver's cashier, treasurer, secretary, clerk, managing agent, or by a copy left at the office or the usual place of business. (R.C. 2305.19(B).)

### **Statute of limitations for certain actions**

#### **Current law**

Current law provides that an action for any of the following causes must be brought within four years after the cause accrued (R.C. 2305.09):

- (A) For trespassing upon real property;
- (B) For the recovery of personal property, or for taking or detaining it;

(C) For relief on the ground of fraud;

(D) For injury to the rights of the plaintiff not arising on contract nor enumerated in R.C. 2305.10 to 2305.12, 2305.14, or 1304.35.

**Operation of the bill**

The bill includes among the above listed actions an action for relief on the grounds of a physical or regulatory taking of real property. Therefore, an action for relief on the grounds of a physical or regulatory taking of real property must be brought within four years after the cause accrued. (R.C. 2305.09(E).)

**Uncodified provision of Am. Sub. H.B. 51**

Am. Sub. H.B. 51 of the 125th General Assembly, regarding probate law, included an uncodified provision (Section 3) that specified that certain sections of that act apply to estates that are in existence or are initiated on or after the effective date of that act. The bill amends that uncodified provision of Am. Sub. H.B. 51 to specify that R.C. 2107.19, 2109.301, 2113.53, 2117.06, 2117.07, 2117.11, and 2117.12, as amended by Am. Sub. H.B. 51, apply to estates of decedents who die on or after April 8, 2004 (the effective date of Am. Sub. H.B. 51). (Sections 3, 4, and 5.)

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	04-08-03	p. 331
Reported, H. Judiciary	06-19-03	p. 939
Passed House (99-0)	06-25-03	pp. 972-973
Reported, S. Judiciary on Civil Justice	01-15-04	p. 1403

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