



Sub. S.B. 309*

127th General Assembly
(As Reported by H. Judiciary)

Sens. Seitz, Faber, Buehrer, Coughlin, Goodman, Grendell, Harris, Mumper,
Niehaus, Shaffer, Spada, Stivers

BILL SUMMARY

- Requires that statutes enacted in Ohio that create a private right of action contain express language providing for that right.
- Provides that this requirement applies to all statutes enacted by the General Assembly on or after the effective date of the bill and requires that any bill that creates a private right of action and is pending in the General Assembly on the effective date of the bill contain express language providing for that right of action.
- Prohibits a court from construing the bill to affect a private right of action that before July 1, 2009, an Ohio court recognized as arising under an Ohio statute, including a statute that is amended after July 1, 2009, unless the amendment expressly bars the private right of action.
- Provides that the bill takes effect on July 1, 2009.

CONTENT AND OPERATION

Private right of action

The bill requires that any statute enacted in Ohio that creates a private right of action contain express language providing for that right of action. A court of this state cannot construe any statute enacted in this state to imply the creation of a private right of action in the absence of express language providing for that right of action. (R.C. 1.472(A).)

* This analysis was prepared before the report of the House Judiciary Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

The bill prohibits any Ohio court from construing the bill's provisions discussed in the prior paragraph to affect a private right of action that before July 1, 2009 (effective date of the bill), an Ohio court recognized as arising under an Ohio statute, including a statute that is amended after July 1, 2009, unless the amendment expressly bars the private right of action (R.C. 1.472(B)).

Application of the bill

The above-described requirement applies to all statutes enacted by the General Assembly on or after the effective date of the bill. Any bill that creates a private right of action and is pending in the General Assembly on the effective date of this bill must contain express language providing for that right of action. (Section 2.)

Effective date

The bill provides that it takes effect on July 1, 2009 (Section 3).

COMMENT

In determining whether statutes may create a private cause of action for enforcement, the Ohio Supreme Court has held that a "statutory policy" may not be implemented by the Ohio courts in a private civil action absent a clear implication that such a remedy was intended by the Ohio General Assembly. *501 Fawcett v. G.C. Murphy and Co.* (1976), 46 Ohio St.2d 245, 249. Ohio courts apply a three-part test adopted from *Cort v. Ash* (1975), 422 U.S. 66, for determining when a private cause of action arises by implication under a particular statute. The three prongs of the test ask the following questions: (1) are the plaintiffs in a class for whose special benefit the statute was enacted, (2) is there any indication of legislative intent, explicit or implicit, either to create or deny a private cause of action, and (3) is it consistent with the underlying purposes of the legislative scheme to infer such a remedy for the plaintiffs? *Nielson v. Ford Motor Co.* (1996), 113 Ohio App.3d 495.

HISTORY

ACTION	DATE
Introduced	03-20-08
Reported, S. Judiciary - Civil Justice	05-14-08
Passed Senate (22-11)	05-20-08
Reported, H. Judiciary	---

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