Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

Sub. S.B. 109

129th General Assembly
(As Passed by the Senate)

Sens. Schiavoni, Smith, Turner, Sawyer, Skindell, Beagle, Tavares, Cafaro, Bacon, Brown, Gentile, Hughes, Jones, Kearney, LaRose, Manning, Niehaus, Patton, Peterson, Wagoner, Widener

BILL SUMMARY

- Provides that a person is not civilly liable for trespassing on certain abandoned land, blighted parcels, or places of public amusement that are similar in nature if the person enters or remains on the land or parcel to remediate it and knows or has reasonable cause to believe that the land or parcel is in one of those categories.

- Provides that the owner of land or a parcel that a person trespasses upon to remediate, as described in the preceding dot point, is not civilly liable to the trespasser subject to general rules governing liability to trespassers.

- Provides that a person who trespasses on land or a parcel to remediate it, as described in the second preceding dot point, is not entitled to any reimbursement for any cost of the remediation unless agreed to by the property owner.

- Provides that it is an affirmative defense to the offense of "criminal trespass" that the person charged entered or remained on certain abandoned land, blighted parcels, or places of public amusement that are similar in nature, that the person did so to remediate the land or parcel, and that the person knew or had reasonable cause to believe that the land or parcel was in one of those categories.

- Specifies that the immunity from liability described in the first dot point and the affirmative defense described in the preceding dot point do not apply with respect to any land or parcel owned by a railroad.

CONTENT AND OPERATION

Immunity from liability in a civil action

The bill provides a general immunity from civil damage liability in specified circumstances for persons who enter or remain on abandoned, unoccupied, or blighted land to remediate the land and a general immunity from civil damage liability in specified circumstances for owners of abandoned, unoccupied, or blighted land that a person enters or remains upon to remediate.

Immunity for person who enters or remains upon land to remediate

The bill provides that, subject to an exception for land or a parcel owned by a "railroad," no owner of "abandoned land," abandoned land that is "unoccupied," a "blighted parcel," or a "place of public amusement" (see "**Definitions**," below) that is abandoned land, abandoned land that is unoccupied, or a blighted parcel has a civil action, or may receive an award of damages in a civil action, against another person for the other person knowingly entering or remaining upon that land, parcel, or place of public amusement if the other person proves both of the following:[1]

(1) The other person knowingly entered or remained on that land, parcel, or place of public amusement in order to "remediate" (see "**Definitions**," below) that land, parcel, or place of public amusement.

(2) Before entering upon that land, parcel, or place of public amusement, the other person knew, or after duly investigating the matter had reasonable cause to believe, that the land was abandoned land or abandoned land that was unoccupied, that the parcel was a blighted parcel, or that the place of public amusement was a place of public amusement that was abandoned land, abandoned land that was unoccupied, or a blighted parcel.

The immunity described above does not apply with respect to any land or parcel that is owned by a railroad.[2]

Immunity for person who owns land that a person enters or remains upon to remediate

The bill provides that, except as described in the next paragraph, no person who is a "trespasser" (see "**Definitions**," below) and who enters or remains on any

[1] R.C. 2305.117(A) to (C).

[2] R.C. 2305.117(C).

abandoned land, abandoned land that is unoccupied, a blighted parcel, or a place of public amusement that is abandoned land, abandoned land that is unoccupied, or a blighted parcel in order to remediate that land, parcel, or place of public amusement has a civil action, or may receive an award of damages in a civil action, against the owner of that land, parcel, or place of public amusement.

The immunity described in the preceding paragraph does not apply with respect to any injury, death, or loss to person or property of a trespasser that occurred while the trespasser entered or remained on any abandoned land, abandoned land that is unoccupied, a blighted parcel, or a place of public amusement that is abandoned land, abandoned land that is unoccupied, or a blighted parcel, to the extent that another Revised Code section or the Ohio common law provides for or governs civil liability with respect to the injury, death, or loss.[3]

Generally, no reimbursement for costs of remediation

The bill specifies that, except as described in the next paragraph, no person who enters or remains on any abandoned land, abandoned land that is unoccupied, blighted parcel, or place of public amusement that is abandoned land, abandoned land that is unoccupied, or a blighted parcel in order to remediate that land, parcel, or place of public amusement has a civil action, or may receive an award of damages in a civil action, against the owner of that land, parcel, or place of public amusement for reimbursement of any "cost or expense of remediation" (see "**Definitions**," below).

The restriction described in the preceding paragraph does not apply to a cost or expense of remediation to the extent that the person who enters on or remains on the land, parcel, or place of public amusement has entered into an agreement with the owner of the land, parcel, or place of public amusement for reimbursement of that cost or expense of remediation.[4]

Affirmative defense to the offense of criminal trespass

The bill provides an affirmative defense in specified circumstances to a charge of a violation of any of the prohibitions within the offense of "criminal trespass." The prohibitions and the effect of an affirmative defense are described below in "**Criminal trespass and affirmative defense background**."

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[3] R.C. 2305.117(D).

[4] R.C. 2305.117(E).

Affirmative defense

The bill specifies that , except with respect to any land or parcel that is owned by a "railroad," it is an affirmative defense to a charge of a violation of any of the prohibitions within the offense of "criminal trespass" that the person charged knowingly entered or remained on "abandoned land," abandoned land that is "unoccupied," or a "blighted parcel," or a "place of public amusement" that is abandoned land, abandoned land that is unoccupied, or a blighted parcel, without privilege to do so and that both of the following apply[5] (see **COMMENT**):

(1) The person knowingly entered or remained on that land, parcel, or place of public amusement in order to "remediate" that land, parcel, or place of public amusement.

(2) Before entering upon that land, parcel, or place of public amusement, the person knew, or after duly investigating the matter had reasonable cause to believe, that the land was abandoned land or abandoned land that was unoccupied, that the parcel was a blighted parcel, or that the place of public amusement was a place of public amusement that was abandoned land, abandoned land that was unoccupied, or a blighted parcel.

The affirmative defense described above does not apply with respect to any land or parcel that is owned by a railroad.[6]

Criminal trespass and affirmative defense background

The prohibitions within the offense of "criminal trespass," unchanged by the bill, prohibit a person, without privilege to do so, from doing any of the following: (1) knowingly entering or remaining on the land or premises of another, (2) knowingly entering or remaining on the land or premises of another, the use of which is lawfully restricted to certain persons, purposes, modes, or hours, when the offender knows the offender is in violation of any such restriction or is reckless in that regard, (3) recklessly entering or remaining on the land or premises of another, as to which notice against unauthorized access or presence is given by actual communication to the offender, or in a manner prescribed by law, or by posting in a manner reasonably calculated to come to the attention of potential intruders, or by fencing or other enclosure manifestly designed to restrict access, or (4) being on the land or premises of another, negligently failing or refusing to leave upon being notified by signage posted in a conspicuous place or otherwise being notified to do so by the owner or occupant, or the agent or

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[5] R.C. 2911.21(F) to (H).

[6] R.C. 2911.21(G).

servant of either. A violation of the prohibition is the offense of "criminal trespass," a fourth degree misdemeanor. Special fine and registration impoundment sanctions apply in limited, specified circumstances.

Under existing law, unchanged by the bill, it is no defense to a charge of a violation of any of the prohibitions within the offense that the land or premises involved was owned, controlled, or in custody of a public agency or that the offender was authorized to enter or remain on the land or premises involved, when the authorization was secured by deception.[7]

An existing provision of the Criminal Code, unchanged by the bill, specifies that the burden of going forward with the evidence of an affirmative defense, and the burden of proof, by a preponderance of the evidence, for an affirmative defense, is upon the accused.[8]

Definitions

As used in the bill's provisions:

"**Abandoned land**" means "delinquent lands" or "delinquent vacant lands," including any improvements on the lands, that are unoccupied and that first appeared on the list compiled under R.C. 323.67(C), or the delinquent tax list or delinquent vacant land tax list compiled under R.C. 5721.03, at whichever of the following times is applicable: (1) in the case of lands other than agricultural lands, at any time after the county auditor makes the certification of the delinquent land list under R.C. 5721.011, or (2) in the case of agricultural lands, at any time after two years after the county auditor makes the certification of the delinquent land list under R.C. 5721.011. As used in this definition, "delinquent lands" means all lands upon which delinquent taxes, as defined in R.C. 323.01, remain unpaid at the time a settlement is made between the county treasurer and auditor pursuant to R.C. 321.24(C), and "delinquent vacant lands" means all lands that are delinquent lands and that are unimproved by any structure.[9]

"**Blighted parcel**" means either of the following:[10]

(1) A parcel that has one or more of the following conditions: (a) a structure that is dilapidated, unsanitary, unsafe, or vermin infested and that because of its condition

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[7] R.C. 2911.21(A) to (E).

[8] R.C. 2901.05, not in the bill.

[9] R.C. 2305.117(A) and 2911.21(H), by reference to R.C. 323.65 and 5721.01, which are not in the bill.

[10] R.C. 2305.117(A) and 2911.21(H), by reference to R.C. 1.08, which is not in the bill.

has been designated by an agency that is responsible for the enforcement of housing, building, or fire codes as unfit for human habitation or use, (b) the property poses a direct threat to public health or safety in its present condition by reason of environmentally hazardous conditions, solid waste pollution, or contamination, or (c) tax or special assessment delinquencies exceeding the fair value of the land that remain unpaid 35 days after notice to pay has been mailed.

(2) A parcel that has two or more of the following conditions that, collectively considered, adversely affect surrounding or community property values or entail land use relationships that cannot reasonably be corrected through existing zoning codes or other land use regulations: (a) dilapidation and deterioration, (b) age and obsolescence, (c) inadequate provision for ventilation, light, air, sanitation, or open spaces, (d) unsafe and unsanitary conditions, (e) hazards that endanger lives or properties by fire or other causes, (f) noncompliance with building, housing, or other codes, (g) nonworking or disconnected utilities, (h) is vacant or contains an abandoned structure, (i) excessive dwelling unit density, (j) is located in an area of defective or inadequate street layout, (k) overcrowding of buildings on the land, (l) faulty lot layout in relation to size, adequacy, accessibility, or usefulness, (m) vermin infestation, (n) extensive damage or destruction caused by a major disaster when the damage has not been remediated within a reasonable time, (o) identified hazards to health and safety that are conducive to ill health, transmission of disease, juvenile delinquency, or crime, (p) ownership or multiple ownership of a single parcel when the owner, or a majority of the owners of a parcel in the case of multiple ownership, cannot be located.

When determining whether a property is a blighted parcel or whether an area is a blighted area or slum for the purposes of this section, no person may consider whether there is a comparatively better use for any premises, property, structure, area, or portion of an area, or whether the property could generate more tax revenues if put to another use. Absent any environmental or public health hazard that cannot be corrected under its current use or ownership, a property is not a blighted parcel because of any condition listed in the preceding paragraph if the condition is consistent with conditions that are normally incident to generally accepted agricultural practices and the land is used for agricultural purposes as defined in R.C. 303.01 or 519.01, or the county auditor of the county in which the land is located has determined under R.C. 5713.31 that the land is "land devoted exclusively to agricultural use" as defined in R.C. 5713.30.

"**Cost or expense of remediation**" means any cost or expense associated with any effort to remediate any abandoned land, abandoned land that is unoccupied, blighted parcel, or place of public amusement that is abandoned land, abandoned land that is unoccupied, or a blighted parcel, including, but not limited to, any cost or expense of

any material, equipment, product, or labor used in or otherwise associated with the effort.[11]

"**Place of public amusement**" means a stadium, theater, or other facility, whether licensed or not, at which a live performance, sporting event, or other activity takes place for entertainment of the public and to which access is made available to the public, regardless of whether admission is charged.[12]

"**Unoccupied**" with respect to a parcel of abandoned land, means any of the following: (1) no building, structure, land, or other improvement that is subject to taxation and that is located on the parcel is physically inhabited as a dwelling, (2) no trade or business is actively being conducted on the parcel by the owner, a tenant, or another party occupying the parcel pursuant to a lease or other legal authority, or in a building, structure, or other improvement that is subject to taxation and that is located on the parcel, (3) the parcel is uninhabited and there are no signs that it is undergoing a change in tenancy and remains legally habitable, or that it is undergoing improvements, as indicated by an application for a building permit or other facts indicating that the parcel is experiencing ongoing improvements, or (4) in the case of delinquent vacant land, there is no permanent structure or improvement affixed on the land.

For purposes of the definition set forth in the preceding paragraph, it is *prima-facie* evidence and a rebuttable presumption that may be rebutted to the county board of revision that abandoned land is unoccupied if, at the time the county auditor makes the certification under R.C. 5721.011, the abandoned land is not agricultural land, and two or more of the following apply: (1) at the time of the inspection of the abandoned land by a county, municipal corporation, or township in which the abandoned land is located, no person, trade, or business inhabits, or is visibly present from an exterior inspection of, the abandoned land, (2) no utility connections, including, but not limited to, water, sewer, natural gas, or electric connections, service the abandoned land, or no such utility connections are actively being billed by any utility provider regarding the abandoned land, or (3) the abandoned land is boarded up or otherwise sealed because, immediately prior to being boarded up or sealed, it was deemed by a political subdivision pursuant to its municipal, county, state, or federal authority to be open, vacant, or vandalized.[13]

"**Railroad**" includes any corporation, company, individual, or association of individuals, or its lessees, trustees, or receivers appointed by a court, that owns,

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[11] R.C. 2305.117(A).

[12] R.C. 2305.117(A) and 2911.21(H), by reference to R.C. 2911.23, which is not in the bill.

[13] R.C. 2305.117(A) and 2911.21(H), by reference to R.C. 323.65, which is not in the bill.

operates, manages, or controls a railroad or part of a railroad as a common carrier in Ohio, or that owns, operates, manages, or controls any cars or other equipment used on such a railroad, or that owns, operates, manages, or controls any bridges, terminals, union depots, sidetracks, docks, wharves, or storage elevators used in connection with such a railroad, whether owned by the railroad or otherwise, and means and includes express companies, water transportation companies, freight-line companies, sleeping car companies, and interurban railroad companies, and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within Ohio. All duties required of, and penalties imposed upon, a railroad or an officer or agent thereof insofar as they are applicable, are required and imposed upon express companies, water transportation companies, and interurban railroad companies, and upon their officers and agents.[14]

"**Remediate**" means to improve the landscaping, clean up litter, or repair dilapidated conditions on abandoned land, abandoned land that is unoccupied, a blighted parcel, or a place of public amusement that is abandoned land, abandoned land that is unoccupied, or a blighted parcel or to board up windows and doors on any building or structure that is located on the abandoned land, abandoned land that is unoccupied, blighted parcel, or place of public amusement. "**Remediate**" does not include any: (a) cosmetic improvement, including painting of any kind, to any building or structure that is located on abandoned land, abandoned land that is unoccupied, a blighted parcel, or a place of public amusement that is abandoned land, abandoned land that is unoccupied, or a blighted parcel, or (b) act or conduct that results in any additional damage to abandoned land, abandoned land that is unoccupied, a blighted parcel, or a place of public amusement that is abandoned land, abandoned land that is unoccupied, or a blighted parcel or to any building or structure that is located on any such land, parcel, or place.[15]

"**Trespasser**" means an individual who, without express or implied authorization, invitation, or inducement, enters abandoned land, abandoned land that is unoccupied, a blighted parcel, or a place of public amusement that is abandoned land, abandoned land that is unoccupied, or a blighted parcel purely for the individual's own purposes and convenience.[16]

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[14] R.C. 2305.117(A) and 2911.21(H), by reference to R.C. 4907.02, which is not in the bill.

[15] R.C. 2305.117(A) and 2911.21(H).

[16] R.C. 2305.117(A).

COMMENT

A few existing criminal offenses other than "criminal trespass" arguably could apply, depending upon the circumstances present, to a person who enters or remains on property of a type identified in the bill, without privilege to do so, in order to remediate the property. Based on the definitions of the terms used in the bill, it seems unlikely that the offenses could apply when the property involved is "abandoned land," abandoned land that is "unoccupied," or a "place of public amusement" that is abandoned land or abandoned land that is unoccupied, but in unique, limited circumstances, the offenses arguably could apply when the property involved is a "blighted parcel" or a "place of public amusement" that is a blighted parcel. The existing criminal offenses that arguably could apply, depending upon the circumstances present, are "vandalism" (R.C. 2909.05), "criminal damaging or endangering" (R.C. 2909.06), "criminal mischief" (R.C. 2909.07), and "unauthorized use of property" (R.C. 2913.04).

HISTORY

ACTION	DATE
Introduced	03-08-11
Reported, S. Judiciary	03-14-12
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