



Ohio Legislative Service Commission

Bill Analysis

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S.B. 16

130th General Assembly
(As Introduced)

Sens. Schiavoni, Tavares, Kearney, Skindell, Smith, Brown, Gentile, Sawyer, Cafaro, Seitz, Beagle, Turner

BILL SUMMARY

- Provides that no owner of abandoned land or a place of public amusement that is abandoned land has a civil action against or may receive civil damages from a person who knowingly enters or remains on the land or place to remediate it and before entering the land or place knew or had reasonable cause to believe that the land or place was in one of those categories.
- Provides that no person who is a trespasser and who enters or remains on abandoned land or a place of public amusement that is abandoned land in order to remediate that land or place of public amusement has a civil action against or may receive civil damages from the owner of the land or place except to the extent that another section of statutory law or the common law of Ohio provides for or governs civil liability with respect to the situation.
- Provides that a person who enters or remains on land or a place 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 abandoned land or a place of public amusement that was abandoned land, that the person did so to remediate the land or place, and that the person knew or had reasonable cause to believe that the land or place was in one of those categories.
- Specifies that the denial of a civil action and of a right to receive an award of damages described in the first dot point and the affirmative defense described in the preceding dot point do not apply with respect to any land 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 land to remediate the land and a general immunity from civil damage liability in specified circumstances for owners of abandoned 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" or a "place of public amusement" (see "**Definitions**," below) that is abandoned land 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 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 or place of public amusement in order to "remediate" (see "**Definitions**," below) that land or place of public amusement.

(2) Before entering upon that land 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 that the place of public amusement was a place of public amusement that was abandoned land.

Notwithstanding the provisions described in (1) and (2) above, any individual who enters upon any land or place of public amusement for the purposes described in (1) and (2) above does not have a right to possession of that land or place of public amusement and any individual who remains on that land or place of public amusement is subject to R.C. Chapter 1923. (law regarding forcible entry and detainer).

The denial of a civil action and of a right to an award of damages described above does not apply with respect to any land that is owned by a railroad.²

¹ R.C. 2305.117(B).

² R.C. 2305.117(D).



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 abandoned land or a place of public amusement that is abandoned land in order to remediate that land 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 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 or a place of public amusement that is abandoned land to the extent that another section of the Revised Code or the common law of this state 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 or place of public amusement that is abandoned land in order to remediate that land 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 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 or place of public amusement has entered into an agreement with the owner of the land 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**."

³ R.C. 2305.117(E).

⁴ R.C. 2305.117(F).



Affirmative defense

The bill specifies that, except with respect to any land 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" or a "place of public amusement" that is abandoned land without privilege to do so and that both of the following apply:⁵

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

(2) Before entering upon that land 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 that the place of public amusement was a place of public amusement that was abandoned land.

The affirmative defense described above does not apply with respect to any land 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 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.

⁵ R.C. 2911.21(F) to (H).

⁶ R.C. 2911.21(G).



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, 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. 321.241, and "delinquent vacant lands" means all lands that are delinquent lands and that are unimproved by any structure.⁹

"Cost or expense of remediation" means any cost or expense associated with any effort to remediate any abandoned land or place of public amusement that is abandoned land, including, but not limited to, any cost or expense of any material, equipment, product, or labor used in or otherwise associated with the effort.¹⁰

"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

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).



for entertainment of the public and to which access is made available to the public, regardless of whether admission is charged.¹¹

"Railroad" includes any corporation, company, individual, or association of individuals, or its lessees, trustees, or receivers appointed by a court, that owns, 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.¹²

"Remediate" means to improve the landscaping, clean up litter, or repair dilapidated conditions on abandoned land or a place of public amusement that is abandoned land or to board up windows and doors on any building or structure that is located on the abandoned land 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 or a place of public amusement that is abandoned land, (b) act or conduct that results in any additional damage to abandoned land or a place of public amusement that is abandoned land or to any building or structure that is located on any such land or place, or (c) any act or conduct that would require the individual entering the abandoned land or the place of public amusement that is abandoned land to enter into the interior of any building or structure on that abandoned land or place of public amusement that is abandoned land.¹³

"Trespasser" means an individual who, without express or implied authorization, invitation, or inducement, enters abandoned land or a place of public amusement that is abandoned land purely for the individual's own purposes and convenience.¹⁴

¹¹ R.C. 2305.117(A) and 2911.21(H), by reference to R.C. 2911.23, which is not in the bill.

¹² R.C. 2305.117(A) and 2911.21(H), by reference to R.C. 4907.02, which is not in the bill.

¹³ R.C. 2305.117(A) and 2911.21(H).

¹⁴ R.C. 2305.117(A).

HISTORY

ACTION

DATE

Introduced

02-12-13

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