



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. S.B. 16

130th General Assembly  
(As Passed by the Senate)

**Sens.** Schiavoni, Tavares, Kearney, Skindell, Smith, Brown, Gentile, Sawyer, Cafaro, Seitz, Beagle, Turner, Bacon, Burke, Gardner, Hughes, LaRose, Lehner, Manning, Obhof, Oelslager, Patton, Peterson

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## BILL SUMMARY

- Permits a person who wishes to enter abandoned land or a place of public amusement that is abandoned land in order to remediate that abandoned land or place of public amusement that is abandoned land to file a motion with a specified court requesting to enter that land in order to remediate that land and requires the court to set a date for a hearing.
- 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 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 second dot point and the affirmative defense described in the preceding dot point do not apply with respect to any land owned by a railroad.
- Specifies that the provisions of the bill do not affect a municipality's ability to remove, repair, or secure insecure, unsafe, structurally defective, abandoned, deserted, or open and vacant buildings or other structures; to make emergency corrections of hazardous conditions; or to abate any nuisance or any municipal ordinance that allows a municipal corporation to remediate abandoned land or a place of public amusement that is abandoned land.

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## **CONTENT AND OPERATION**

### **Court hearing to enter abandoned land in order to remediate**

Under the bill, if a person wishes to enter abandoned land or a place of public amusement that is abandoned land during the daylight hours from sunrise to sunset in order to remediate that abandoned land or place of public amusement that is abandoned land, that person may file a motion in the county court or municipal court that has jurisdiction over the abandoned land or place of public amusement that is abandoned land requesting to enter the abandoned land or place of public amusement that is abandoned land in order to remediate that abandoned land or place of public amusement that is abandoned land. The motion must be accompanied by a filing fee of not more than \$20.00.<sup>1</sup>

On receiving the motion, the court must set a date for a hearing on the motion within two weeks of the filing of the motion and send a notice of the hearing to the person who filed the motion and to the address of the owner of the abandoned land or place of public amusement that is abandoned land that is on file in the office of the county auditor in the county where the abandoned land or place of public amusement that is abandoned land is located, unless the person filing the motion is aware of a different address and notifies the court of that address.<sup>2</sup>

The person who filed the motion must present evidence to the court at the hearing indicating the necessity to remediate the abandoned land or place of public

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<sup>1</sup> R.C. 2305.117(B).

<sup>2</sup> R.C. 2305.117(C).

amusement that is abandoned land. The owner of the abandoned land or place of public amusement that is abandoned land may also present evidence to rebut the person's assertion that the abandoned land or place of public amusement that is abandoned land must be remediated.<sup>3</sup>

If the court finds that the abandoned land or place of public amusement that is abandoned land is in need of remediation, then the court may issue an order permitting the person who filed the motion to enter the abandoned land or place of public amusement that is abandoned land to remediate that land.<sup>4</sup>

The provisions described above do not apply to a manufactured home, mobile home, travel trailer, or park trailer located on abandoned land or a place of public amusement that is abandoned land or to any land that is owned by a railroad.<sup>5</sup>

### **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 during the daylight hours from sunrise to sunset if the other person received an order from the court permitting the person to enter the abandoned land or place of public amusement that is abandoned land in order to remediate that land or proves both of the following:<sup>6</sup>

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

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<sup>3</sup> R.C. 2305.117(D).

<sup>4</sup> R.C. 2305.117(E).

<sup>5</sup> R.C. 2305.117(F).

<sup>6</sup> R.C. 2305.118(B).



(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.<sup>7</sup>

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

The bill generally provides that no person who is a "trespasser" 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.<sup>8</sup>

### **Generally, no reimbursement for costs of remediation**

The bill generally specifies that 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."

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<sup>7</sup> R.C. 2305.118(E).

<sup>8</sup> R.C. 2305.118(F).



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.<sup>9</sup>

### **No requirement of remediation on continuing basis**

The bill specifies that a 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 is not required to remediate that land or place of public amusement on a continuing basis.<sup>10</sup>

### **Municipality's ability to make repairs or abate any nuisance on abandoned land**

The provisions described above do not affect a municipality's ability to remove, repair, or secure insecure, unsafe, structurally defective, abandoned, deserted, or open and vacant buildings or other structures; to make emergency corrections of hazardous conditions; or to abate any nuisance pursuant to the law permitting a municipal corporation to perform those actions or any municipal ordinance that allows a municipal corporation to remediate abandoned land or a place of public amusement that is abandoned land.<sup>11</sup>

### **Prohibition against remediation or cosmetic improvements to a manufactured home, mobile home, travel trailer, or park trailer located on abandoned land**

The bill prohibits an individual who enters upon abandoned land or a place of public amusement that is abandoned land for the purpose of remediating that land or place of public amusement from remediating or making any cosmetic improvement to a manufactured home, mobile home, travel trailer, or park trailer located on the abandoned land or place of public amusement that is abandoned land, engaging in any act or conduct that results in any additional damage to a manufactured home, mobile home, travel trailer, or park trailer located on the abandoned land or place of public amusement that is abandoned land, or engaging in any act or conduct that would require the individual to enter the interior of a manufactured home, mobile home, travel trailer, or park trailer that is located on the abandoned land or place of public amusement that is abandoned land. The bill also provides that the affirmative defense

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<sup>9</sup> R.C. 2305.118(G).

<sup>10</sup> R.C. 2305.118(H).

<sup>11</sup> R.C. 2305.118(I).



described under "**Affirmative defense to the offense of criminal trespass**" does not apply if an individual who enters upon abandoned land or a place of public amusement that is abandoned land for the purpose of remediating that land or place of public amusement engages in any of the actions described above.<sup>12</sup>

### **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.**"

#### **Affirmative defense**

The bill specifies that 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 during the daylight hours from sunrise to sunset without privilege to do so and that the person received an order from the court permitting the person to enter the abandoned land or place of public amusement that is abandoned land in order to remediate that land or both of the following apply:<sup>13</sup>

(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.<sup>14</sup>

#### **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

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<sup>12</sup> R.C. 2305.118(D) and 2911.21(G).

<sup>13</sup> R.C. 2911.21(F) to (H).

<sup>14</sup> R.C. 2911.21(G).



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.

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.<sup>15</sup>

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.<sup>16</sup>

## 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

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<sup>15</sup> R.C. 2911.21(A) to (E).

<sup>16</sup> R.C. 2901.05, not in the bill.



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.<sup>17</sup>

**"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.<sup>18</sup>

**"Manufactured home"** means a building unit or assembly of closed construction that is fabricated in an off-site facility and constructed in conformance with the federal construction and safety standards established by the Secretary of Housing and Urban Development pursuant to the "Manufactured Housing Construction and Safety Standards Act of 1974," 88 Stat. 700, 42 U.S.C.A. 5401, 5403, and that has a permanent label or tag affixed to it, as specified in 42 U.S.C.A. 5415, certifying compliance with all applicable federal construction and safety standards.<sup>19</sup>

**"Mobile home"** means a building unit or assembly of closed construction that is fabricated in an off-site facility, is more than 35 body feet in length or, when erected on site, is 320 or more square feet, is built on a permanent chassis, is transportable in one or more sections, and does not qualify as a manufactured home as defined in R.C. 3781.06(C)(4) or as an industrialized unit as defined in R.C. 3781.06(C)(3).<sup>20</sup>

**"Park trailer"** means a vehicle that is commonly known as a park model recreational vehicle, meets the American National Standards Institute standard A119.5 (1988) for park trailers, is built on a single chassis, has a gross trailer area of 400 square feet or less when set up, is designed for seasonal or temporary living quarters, and may be connected to utilities necessary for the operation of installed features and appliances.<sup>21</sup>

**"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

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<sup>17</sup> 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.

<sup>18</sup> R.C. 2305.118(A).

<sup>19</sup> R.C. 2305.117(A) and 2911.21(H), by reference to R.C. 3781.06, which is not in the bill.

<sup>20</sup> R.C. 2305.117(A) and 2911.21(H), by reference to R.C. 4501.01, which is not in the bill.

<sup>21</sup> R.C. 2305.117(A) and 2911.21(H), by reference to R.C. 4501.01, which is not in the bill.

for entertainment of the public and to which access is made available to the public, regardless of whether admission is charged.<sup>22</sup>

**"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.<sup>23</sup>

**"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, other than painting a board for boarding up a window or door 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 unless it is necessary for the individual to enter into the interior of the building or structure on that abandoned land or place of public amusement that is abandoned land in order to board up the windows and doors in the building or structure.<sup>24</sup>

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<sup>22</sup> R.C. 2305.117(A) and 2911.21(H), by reference to R.C. 2911.23, which is not in the bill.

<sup>23</sup> R.C. 2305.117(A) and 2911.21(H), by reference to R.C. 4907.02, which is not in the bill.

<sup>24</sup> R.C. 2305.117(A) and 2911.21(H).

**"Travel trailer"** means a nonself-propelled recreational vehicle that does not exceed an overall length of 35 feet, exclusive of bumper and tongue or coupling, and contains less than 320 square feet of space when erected on site. "Travel trailer" includes a tent-type fold-out camping trailer as defined in R.C. 4517.01.<sup>25</sup>

**"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.<sup>26</sup>

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## HISTORY

ACTION	DATE
Introduced	02-12-13
Reported, S. Civil Justice	11-13-13
Passed Senate (33-0)	11-20-13

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<sup>25</sup> R.C. 2305.117(A) and 2911.21(H), by reference to R.C. 4501.01, which is not in the bill.

<sup>26</sup> R.C. 2305.118(A).

