



Sub. S.B. 117

126th General Assembly
(As Passed by the Senate)

Sens. Mallory, Dann, Fedor, Jacobson, Miller, Schuler, Amstutz, Zurz, Armbruster, Brady, Clancy, Fingerhut, Goodman, Hagan, Jordan, Mumper, Niehaus, Padgett, Schuring, Wachtmann, Wilson, Harris, Spada, Cates

BILL SUMMARY

- Removes the prohibition against the use of a record of a conviction, unless obtained by confession in open court, as evidence in certain civil actions.
- Provides that a final judgment entered after a trial or upon a plea of guilty in certain criminal actions generally precludes the offender from denying any fact essential to sustain that judgment when entered as evidence in a civil proceeding that is based on the criminal act.

CONTENT AND OPERATION

Record of criminal conviction as evidence in a subsequent civil action

Current law provides that anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law, may recover the costs of maintaining the civil action and attorney's fees if authorized by any provision of the Rules of Civil Procedure or another section of the Revised Code or under common law of this state, and may recover punitive or exemplary damages if authorized by law. Current law prohibits the use of a record of a conviction, unless obtained by confession in open court, to be used as evidence in a civil action brought pursuant to the provisions described above. (R.C. 2307.60(A)(1).)

The bill removes this prohibition and provides that a final judgment of a trial court that has not been reversed on appeal or otherwise set aside, nullified, or vacated, entered after a trial or upon a plea of guilty, but not upon a plea of no contest or the equivalent plea from another jurisdiction, that adjudges an offender

guilty of a crime punishable by death or imprisonment in excess of one year, when entered as evidence in any subsequent civil proceeding based on the criminal act, precludes the offender from denying in the subsequent civil proceeding any fact essential to sustaining that judgment, unless the offender did not have a full and fair opportunity to litigate the issue in the criminal proceeding or other extraordinary circumstances justify affording the offender an opportunity to relitigate the issue. The offender may introduce evidence of the offender's pending appeal of the final judgment of the trial court, if applicable, and the court may consider that evidence in determining the liability of the offender. (R.C. 2307.60(A)(2).)

COMMENT

Rule 803(21) of the Rules of Evidence provides that the following is not excluded by the hearsay rule: evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of no contest or the equivalent plea from another jurisdiction), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

Under the doctrine of collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. The collateral estoppel bar is inapplicable when the claimant did not have a "full and fair opportunity to litigate" the issue decided by the other court.

HISTORY

ACTION	DATE
Introduced	04-01-05
Reported, S. Judiciary on Civil Justice	10-26-05
Passed Senate (31-0)	10-26-05

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