



Ohio Legislative Service Commission

Bill Analysis

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(As Introduced)

Reps. Murray, Driehaus, Garland, Weddington, Hagan, Pillich, Yuko, Phillips, Clyde

BILL SUMMARY

- Gives to public employees and to employees of private entities that employ 50 or more individuals for at least 20 weeks per year the right to take up to three or five days per year, depending on the length of an employee's employment, for certain legal or medical purposes related to domestic violence.
- Establishes rules and procedures for taking unpaid leave, including requirements for notice to the employer, scheduling leave, and documentation of the need for leave.
- Authorizes an employee whose job is terminated for taking leave under the bill to file a civil action for reinstatement, back pay, and attorney's fees and provides that the civil action is the employee's sole remedy.
- Permits a tenant to terminate a rental agreement or have the tenant's name removed from a rental agreement as a cotenant if the tenant or a member of the tenant's household is a victim of domestic violence.
- Establishes procedures for termination of or removal of a tenant's name from a rental agreement, including notice to the landlord and documentation of the grounds for termination or removal.
- Authorizes a landlord to terminate the rental agreement of a cotenant when a tenant's name is removed from the rental agreement and to charge a prorated share of the rent and the security deposit to a tenant who terminates or is removed from a rental agreement and to terminate the rental agreement of a tenant who is convicted of domestic violence.

- Prohibits a landlord from terminating the tenancy because the tenant is a victim of domestic violence and provides the tenant with a civil remedy for a violation of the prohibition.
- Requires a landlord, on request of a tenant who is the victim of domestic violence or menacing by stalking, to change the tenant's lock.
- Prohibits a landlord who receives a request to change a lock under the bill from allowing the respondent in a protection order proceeding access to the petitioner's dwelling unit except as authorized by the order to retrieve personal property when accompanied by a law enforcement officer.
- Requires a metropolitan housing authority, on request of a tenant who is the victim of domestic violence or menacing by stalking, to move the tenant to another unit as soon as practicable.
- Requires a petitioner who is granted a civil protection order requiring the respondent to vacate or refrain from entering certain premises to serve a copy of the order on the landlord or owner of the premises.
- Prohibits counties, municipal corporations, and townships and their law enforcement agencies from charging a victim of domestic violence or an owner of property where a victim of domestic violence resides for assistance that law enforcement officers provide to a victim of domestic violence.

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CONTENT AND OPERATION

Unpaid leave from work resulting from domestic violence

Eligibility

The bill gives to an eligible employee who is the victim of domestic violence the right to take unpaid leave from work for certain purposes related to the domestic violence. To be eligible, an employee (a person who performs a service for wages or other remuneration for an employer) must work for an employer as defined by the bill. "Employer" includes the state, a municipal corporation, county, township, school district, other political subdivision, an agency or instrumentality of the state or a political subdivision, and any person (an individual, corporation, business trust, estate, trust, partnership, or association) that employs 50 or more employees for each working day during each of 20 or more calendar work weeks in the current or preceding calendar year.¹

The bill defines "domestic violence" (see **COMMENT**) as the occurrence of one or more of the following acts against a family or household member:²

- (1) Attempting to cause or recklessly causing bodily injury;
- (2) Placing another person by the threat of force in fear of imminent serious physical harm or committing menacing by stalking or aggravated trespass;
- (3) Committing any act with respect to a child that would result in the child being an abused child;
- (4) Committing a sexually oriented offense.

Under the bill, a victim of domestic violence who has been employed by his or her employer for 12 months or more may take up to five days per year of unpaid leave, and a person who has been employed for fewer than 12 months may take up to three days of unpaid leave, for domestic violence-related purposes. An employee may elect, or an employer may require the employee to substitute, any accrued paid vacation leave or personal leave the employee may have for the unpaid domestic violence-related leave taken under the bill.³

¹ R.C. 4113.80(B) (incorporating by reference R.C. 4113.51(A)), (C), and (D).

² R.C. 4113.80(A) (incorporating by reference R.C. 3113.31(A)(1)).

³ R.C. 4113.81(A)(1) and (D).

Purposes for which leave may be taken

The bill permits a victim of domestic violence to take unpaid leave for any of the following purposes:⁴

(1) To file a petition for a civil protection order or consent agreement based on the domestic violence, to request a temporary ex parte protection order, to attend a hearing on the petition or request, or to file a petition for a protection order or no-contact order under any law of another state or municipal ordinance of Ohio or another state that is substantially similar to the Ohio statute governing civil domestic-violence protection orders;

(2) To file a motion for or attend a hearing on a protection order that is issued as a pretrial condition of release on bail or to file a motion for a protection order or no-contact order issued under any substantially similar law of another state or a substantially similar municipal ordinance of Ohio or another state;

(3) To seek emergency medical attention related to an incident of domestic violence.

Notice and scheduling

The bill requires an employee to give the employer as much notice as practicable before taking unpaid leave. The employee must also make reasonable efforts when possible to address matters related to domestic violence during nonwork hours. If the employee cannot reasonably schedule appointments outside working hours, the employee may take unpaid leave during working hours for certain purposes after giving notice to the employer as soon as the employee knows of the need for unpaid leave and an appointment necessitating the leave has been scheduled. However, the notice must be given no later than the start of the employee's shift or the beginning of the employee's work day.⁵

An employee may take unpaid leave during working hours to do any of the following:⁶

(1) Seek nonemergency medical attention related to an incident of domestic violence;

⁴ R.C. 4113.81(A)(1).

⁵ R.C. 4113.81(A)(2) and (B).

⁶ R.C. 4113.81(B)(2).

(2) Meet with law enforcement officers with respect to an incident of domestic violence;

(3) Seek legal assistance or other assistance from a counselor, social worker, victim advocate, health care provider, or other professional who assists persons in dealing with an incident of domestic violence;

(4) Attend a court proceeding concerning a civil protection order or other injunctive relief for the employee or the employee's child;

(5) Attend a criminal court proceeding relating to the prosecution of an incident of domestic violence.

Documentation

The bill allows an employer to require an employee who takes unpaid leave to provide documentation of the domestic violence. The employee may satisfy the documentation requirement by providing the employer with any of the following:⁷

(1) If the leave is to file a petition or motion for a protection order, ex parte order, or no-contact order, documentation of the filing from the court;

(2) If the leave is to attend a court proceeding concerning a protection order or no-contact order or the prosecution of an incident of domestic violence, documentation of the proceeding from the court, the docket, pleadings, subpoenas, the prosecutor, the victim's attorney, or a registered victim advocate;

(3) If the leave is for medical purposes, documentation supporting the fact of treatment by the health care provider;

(4) If the leave is to meet with a law enforcement officer or a prosecutor, documentation of that meeting from the officer or prosecutor;

(5) If the leave is to meet with counsel, an attorney, or other person providing assistance or services, documentation of the meeting from the counsel, attorney, or person providing the assistance or services.

An employer who requires documentation must allow the employee a reasonable period of time not exceeding 14 days to provide it. The employer may discharge or otherwise discipline an employee for taking the unpaid leave without the

⁷ R.C. 4113.81(C)(1).

employer's approval if the employee fails to supply the documentation within the time allowed.⁸

Employee's remedy for termination

If an employer terminates the employment of a person who takes unpaid leave pursuant to the bill because the employee took unpaid leave, the employee may file a civil action against the employer in the common pleas court of the county of that employment. The civil action is the employee's sole and exclusive remedy. The only relief that the court may grant is reinstatement of the employee's employment with back pay plus reasonable attorney's fees. The action is barred if not filed within 180 days immediately following the termination.⁹

Landlord-tenant relations when a tenant is a victim of domestic violence

Termination of rental agreement

The bill permits a tenant to terminate a rental agreement or have the tenant's name removed from a rental agreement as a cotenant if the tenant or a member of the tenant's household is a victim of domestic violence. The tenant may request termination not more than twice in any five-year period. To effect the termination or removal, the tenant must notify the landlord in writing that the tenant or household member is a victim of domestic violence and give the landlord either (1) a civil protection order issued after a full hearing or a consent agreement approved by the court on a petition for a civil protection order or (2) a criminal temporary protection order or no-contact order issued under the Revised Code or a substantially similar order issued under the law of any other state or a municipal ordinance of any state.¹⁰

The tenant must give the required notice within 90 days after the incident of domestic violence occurs. The landlord may offer the tenant an opportunity to rent another unit at the location that is sufficiently distant from the tenant's current unit, but the tenant does not have to accept. If the landlord does not offer another unit or the tenant does not accept such an offer, the tenant and landlord must terminate the rental agreement, or the landlord must remove the tenant's name from the rental agreement by a mutually agreed upon date that is not more than 30 days after the tenant gives

⁸ R.C. 4113.81(C)(2).

⁹ R.C. 4113.81(E).

¹⁰ R.C. 5321.171(B)(1) and (G).

notice. If the tenant and landlord do not agree on a date, the termination or removal must take place 30 days after the tenant gives notice.¹¹

At any time within 30 days after a tenant has the tenant's name removed from a rental agreement for which there is at least one cotenant, the landlord may terminate the rental agreement as to any or all cotenants.¹²

A tenant who terminates a rental agreement or has his or her name removed from the agreement is liable for the tenant's share of rent, prorated up to the date of the termination or removal. Except to the extent that existing law penalizes a landlord who fails to comply with statutory requirements concerning security deposits, termination or removal entitles the landlord to retain the tenant's share of any security deposit.¹³

The bill prohibits a landlord from knowingly terminating a tenancy because the tenant or a tenant's household member is a victim of domestic violence or menacing by stalking or has requested emergency services as such a victim or because the tenant previously terminated a rental agreement in accordance with the bill. A tenant who is injured by a violation of the prohibition may recover damages equaling one month's rent, any security deposit allowed under existing law for noncompliance with statutory requirements governing security deposits, and reasonable attorney's fees.¹⁴

A landlord who accommodates a tenant with regard to the termination of or removal of the tenant's name from a rental agreement or with regard to changing the lock to the tenant's dwelling unit (see "**Changing of lock**," below) incurs no additional duty of care towards the tenant or new or additional liability for any third party act that occurs after the landlord makes the accommodation.¹⁵

The bill authorizes a landlord to terminate the rental agreement of a tenant or remove the tenant's name from a rental agreement and to keep the tenant's share of any security deposit if a tenant has been convicted of or pleaded guilty to the offense of domestic violence while the tenant was subject to the rental agreement.¹⁶

¹¹ R.C. 5321.171(B)(2) and (C).

¹² R.C. 5321.171(B)(3).

¹³ R.C. 5321.171(B)(4) and (5).

¹⁴ R.C. 5321.171(D) and (E).

¹⁵ R.C. 5321.171(F).

¹⁶ R.C. 5321.175.

Changing of lock

A tenant who is a victim of domestic violence or menacing by stalking may give the landlord a written request to change the lock to the dwelling unit, accompanied by a copy of a court order or protection order that orders the respondent or defendant named in the order to stay away from the tenant. Within 48 hours after receiving the request and the order, the landlord must change the lock. Within 24 hours after changing the lock, the landlord must make a good faith effort to provide the tenant and any remaining cotenant with a key. The tenant must reimburse the landlord for the actual expense incurred in changing the lock. If the tenant does not reimburse the landlord within 30 days, the landlord may deduct the amount of the expense from the tenant's security deposit or assess that amount as a charge to the tenant. If the landlord fails to change the lock as required, the tenant may replace the lock without the landlord's permission in a competent and workmanlike manner with a lock of at least the same quality as the original. The tenant must make a good faith offer to provide a key to the landlord and any remaining cotenant not more than 24 hours after changing the lock. If a landlord acts to prevent a tenant who has complied with this bill from changing a lock, the tenant may seek a temporary restraining order, preliminary injunction, or permanent injunction ordering the landlord to refrain from preventing the tenant from changing the lock.¹⁷

The bill prohibits a landlord who receives a request to change a lock accompanied by a copy of the appropriate order from providing access to the dwelling unit to a respondent who is a tenant of the unit unless the order allows the respondent to return to retrieve personal possessions and the respondent is accompanied by a law enforcement escort. A landlord who changes a lock in accordance with the bill is not liable for excluding the respondent or for loss of use or damage to the respondent's personal property while that property is in the unit after the lock has been changed. A respondent who is a tenant of the unit remains liable under the rental agreement for rent or any damage to the unit as provided in the rental agreement, unless the respondent can demonstrate that the tenant who had the lock changed intentionally damaged the unit.¹⁸

Relocation of metropolitan housing authority tenant

The bill authorizes a victim of domestic violence or menacing by stalking who is a tenant in a unit owned or operated by a metropolitan housing authority to request transfer to another location. A tenant may make not more than two such requests in any five-year period. The request must be made in writing, must inform the housing

¹⁷ R.C. 5321.172(A) and (D).

¹⁸ R.C. 5321.172(B)(1) and (2) and (C).

authority that the tenant or a household member is a victim of domestic violence or menacing by stalking, and must affirm that the tenant has made not more than one other such request during the previous five years. The tenant must supply the housing authority with one or more of the following as evidence of the need for the transfer:¹⁹

(1) A civil protection order issued after a full hearing or a consent agreement approved by the court on a petition for a civil protection order;

(2) A criminal temporary protection order or no-contact order issued under the Revised Code or a substantially similar order issued under the law of any other state or a municipal ordinance of any state;

(3) Medical documentation describing the incident of domestic violence or menacing by stalking;

(4) A sworn, notarized statement provided by a counselor, social worker, victim advocate, health care provider, or other professional who assists or has assisted the tenant or household member in dealing with the incident of domestic violence or menacing by stalking.

If the tenant has not made more than one other request for a transfer during the previous five years, the housing authority, upon receipt of a request, must move the tenant as soon as practicable to another location if a unit is available. If the housing authority wrongfully fails to comply, the tenant may recover actual damages resulting from the failure to transfer, obtain injunctive relief, and obtain a judgment for reasonable attorney's fees. A housing authority incurs no additional duty of care toward a tenant it transfers or fails to transfer pursuant to the bill and no new or additional liability for any third party act that occurs after a transfer.²⁰

Confidentiality

The bill designates as confidential any information that a landlord receives from a tenant who requests termination of or removal of the tenant's name from a rental agreement, a change of the tenant's lock, or transfer to another metropolitan housing authority unit, except to the extent that a landlord reasonably believes it necessary to share information for the safety of any tenant or other person. The bill prohibits a landlord from sharing with any other past, current, or prospective landlord any confidential information or information with respect to a tenant's status as a victim of domestic violence or menacing by stalking. A tenant's sharing of any such information

¹⁹ R.C. 5321.173(A).

²⁰ R.C. 5321.173(B), (C), and (D).

does not waive the confidentiality of the information or the nature of the privileged communication. A landlord is not liable for any good faith violation of the bill's confidentiality requirement.²¹

If a tenant has been convicted of or pleaded guilty to domestic violence while the tenant was subject to the rental agreement, the landlord may terminate the tenant's rental agreement or remove the tenant's name from a rental agreement and may retain the tenant's share of any security deposit.

Definitions

The definition of "domestic violence" in the landlord-tenant portion of the bill is the same as in the portion dealing with leave from work, except that the landlord-tenant portion has a definition of "household member" that differs from the one incorporated by reference into the leave provisions (see **COMMENT**).²² For purposes of the landlord-tenant provisions, "household member" means either of the following:²³

(1) An individual who is specifically identified in the lease agreement and is one of the following: the tenant's parent, child, spouse, or person living as a spouse; the parent or child of the tenant's spouse or former spouse; the parent or child of a person living as a spouse of the tenant; or an individual otherwise related by consanguinity or affinity to the tenant;

(2) An adult individual who notifies the landlord within 14 days after entering the tenant's household that the individual is occupying the tenant's housing unit as the individual's usual place of residence.

Application of landlord-tenant provisions

The landlord-tenant provisions of the bill apply to rental agreements entered into or renewed on or after the bill's effective date.²⁴

Service of civil protection order on landlord

Under existing law, a civil protection order may require that the respondent vacate or refrain from entering the residence of the petitioner or of a family or household member of the petitioner. The bill requires the petitioner to submit a copy of

²¹ R.C. 5321.174.

²² R.C. 5321.171(A)(1).

²³ R.C. 5321.171(A)(2).

²⁴ Section 3 of the bill.

the order to the landlord or owner of the property where the "resident" resides (see **COMMENT**).²⁵

Charges for assistance to a victim of domestic violence

The bill prohibits a county, municipal corporation, township, or law enforcement agency of a county, municipal corporation, or township from charging a victim of domestic violence or an owner of property where a victim of domestic violence resides for any assistance that law enforcement officers provide to a victim of domestic violence.²⁶

COMMENT

Both the leave provisions and the landlord-tenant provisions of the bill define "domestic violence" by incorporating the definition set forth in R.C. 3113.31. That section defines "domestic violence" in terms of acts against a "family or household member." However, the landlord-tenant portion of the bill includes a definition of "household member" that differs from the definition of "family or household member" in R.C. 3113.31. To avoid ambiguity, the bill probably should set forth its own definition of domestic violence for purposes of the landlord-tenant provisions rather than incorporate the definition used in R.C. 3113.31.

The bill's amendment to R.C. 3113.31(E)(7)(a) literally requires a petitioner for a civil protection order to serve a copy of *any* order issued under R.C. 3113.31 on the landlord or owner of the property where the "resident" resides. However, the amendment is to a paragraph that deals specifically with orders requiring a respondent to vacate or refrain from entering a residence, school, business, or place of employment. The amendment may be intended to require service only of those types of orders, not of *any* order issued under the section. In addition, the meaning of "resident" is not clear. If it is intended to mean the petitioner or other person protected by the order, the bill probably should be amended to say that explicitly.

HISTORY

ACTION	DATE
Introduced	02-16-11

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²⁵ R.C. 3113.31(E)(7)(a).

²⁶ R.C. 9.131.

