



Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 421

129th General Assembly
(As Reported by H. Criminal Justice)

Reps. Slaby and O'Brien, Johnson, Combs, Stebelton, Anielski, McGregor, Maag, Garland

BILL SUMMARY

- Exempts a physician from liability for damages in a civil action for harm that allegedly is incurred by a patient of the physician as a result of the physician making a report to the Registrar of Motor Vehicles, or to another physician, a police or other law enforcement entity, a family member or other individual involved in the medical treatment of the patient, a court official, an employer of the patient, or any other governmental body that is reasonably able to prevent or lessen the potential risk of injury, death, or loss to person or property arising from the patient's operation of a motor vehicle of any of the following:
 - The physician has determined that the patient is using a drug of abuse dispensed pursuant to a prescription and that the patient's use of the drug of abuse represents a potential risk of injury, death, or loss to person or property arising from the patient's operation of a motor vehicle.
 - The physician has determined that the patient is using a drug of abuse otherwise than pursuant to a prescription and that the patient's use of the drug of abuse represents a potential risk of injury, death, or loss to person or property arising from the patient's operation of a motor vehicle.
 - The physician has determined that the patient has a condition, other than one involving the use of a drug of abuse, that represents a potential risk of injury, death, or loss to person or property arising from the patient's operation of a motor vehicle.
- Specifies that the bill does not create a new cause of action or substantive legal right against a physician and in favor of a patient of the physician who was the subject of a report described in the preceding dot point and who allegedly sustained harm as a

result of the report or in favor of any other person who allegedly sustained harm as a result of the report.

- Specifies that the bill does not impose a duty upon a physician to make a report as described in the second preceding dot point.
- Specifies that the bill does not affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to which a physician may be entitled.
- Specifies that any report submitted by a physician to a governmental body as described in the first dot point is confidential, is not a public record, and is not subject to disclosure under Ohio's Public Records Law.
- Expands the existing exemption of a physician for liability for damages in a civil action that allegedly is incurred by an employee as a result of the physician reporting any of the following to the employer of the employee so that it applies to damages caused as a result of a violation of a patient's privacy or confidentiality rights under state or federal law:

--The physician has determined that the employee is using a drug of abuse dispensed pursuant to a prescription and that the employee's use of the drug of abuse represents a potential risk of injury, death, or loss to person or property of passengers on any aircraft, railroad train, school or other bus, taxicab, or other type of common carrier operated by the employee.

--The physician has determined that the employee is using a drug of abuse otherwise than pursuant to a prescription *and that the employee's use of the drug of abuse represents a potential risk of injury, death, or loss to person or property of passengers on any aircraft, railroad train, school or other bus, taxicab, or other type of common carrier operated by the employer.*

--The physician has determined that the employee has a condition, other than one involving the use of a drug of abuse, that represents a potential risk of injury, death, or loss to person or property of passengers on any aircraft, railroad train, school or other bus, taxicab, or other type of common carrier operated by the employee.

- Specifies that the immunity from civil liability described in the first dot point is not affected by, and must not be construed as being affected by, R.C. 2317.02(B)(1) to (6), which create the testimonial privilege of a physician or dentist and confer certain exemptions from that privilege.

- Provides that "willfully betraying a professional confidence" does not include making a report described in the first dot point with the result that the State Medical Board cannot limit, revoke, or suspend a physician's certificate to practice, refuse to register a physician, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate as a result of making such a report.

CONTENT AND OPERATION

Physician liability for reporting of patient condition

The bill exempts a physician from liability for damages in a civil action for harm (see "**Definitions**," below) that allegedly is incurred by a patient of the physician as a result of the physician making a report to the Registrar of Motor Vehicles or to another physician, a police or other law enforcement entity, a family member or other individual involved in the medical treatment of the patient, a court official, an employer of the patient, or any other governmental body that is reasonably able to prevent or lessen the potential risk of injury, death, or loss to person or property arising from the patient's operation of a motor vehicle of any of the following:¹

(1) The physician has determined that the patient is using a drug of abuse dispensed pursuant to a prescription and that the patient's use of the drug of abuse represents a potential risk of injury, death, or loss to person or property arising from the patient's operation of a motor vehicle.

(2) The physician has determined that the patient is using a drug of abuse otherwise than pursuant to a prescription and that the patient's use of the drug of abuse represents a potential risk of injury, death, or loss to person or property arising from the patient's operation of a motor vehicle.

(3) The physician has determined that the patient has a condition, other than one involving the use of a drug of abuse, that represents a potential risk of injury, death, or loss to person or property arising from the patient's operation of a motor vehicle.

The bill does not create, and must not be construed as creating, a new cause of action or substantive legal right against a physician and in favor of a patient of the physician who was the subject of a report described in the preceding paragraph and who allegedly sustained harm as a result of the report or in favor of any other person who allegedly sustained harm as a result of the report. Additionally, the bill does not impose, and must not be construed as imposing, a duty upon a physician to make a report as described in the preceding paragraph to any person or entity regarding a

¹ R.C. 2305.331(B).

patient who the physician determines is using a drug of abuse dispensed pursuant to a prescription or is using a drug of abuse other than pursuant to a prescription or who the physician determines has a condition, other than one involving the use of a drug of abuse, that represents a potential risk of injury, death, or loss to person or property arising from the patient's operation of a motor vehicle. Finally, the bill does not affect and must not be construed as affecting any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to which a physician may be entitled.²

If a physician makes a report described in the second preceding paragraph, the physician must also make a report to the patient who was the subject of the report. If the report to a person or entity described in the second preceding paragraph is in writing, the report to the patient must be in writing.³

The bill specifies that any report submitted by a physician to a governmental body as described in the third preceding paragraph is confidential, is not a public record, and is not subject to disclosure under Ohio's Public Records Law.⁴

Physician liability for reports to a patient's employer

Existing law exempts a physician from liability for damages in a civil action for harm (injury, death, or loss to person or property) that allegedly is incurred by an employee as a result of the physician reporting any of the following to the employer of the employee:⁵

(1) The physician has determined that the employee is using a drug of abuse dispensed pursuant to a prescription and that the employee's use of the drug of abuse represents a potential risk of harm to passengers on any aircraft, railroad train, school or other bus, taxicab, or other type of common carrier operated by the employee.

(2) The physician has determined that the employee is using a drug of abuse otherwise than pursuant to a prescription.

(3) The physician has determined that the employee has a condition, other than one involving the use of a drug of abuse, that represents a potential risk of harm to

² R.C. 2305.331(C).

³ R.C. 2305.331(D).

⁴ R.C. 2305.331(E).

⁵ R.C. 2305.33(B).

passengers on any aircraft, railroad train, school or other bus, taxicab, or other type of common carrier operated by the employee.

"Harm" as used in the above provisions means injury, death, or loss to person or property.⁶

The bill expands the definition of "harm" as used in the above-described provisions to mean *any* injury, death, or loss to person or property *or any violation of a patient's privacy or confidentiality rights under federal or state law.*⁷ It continues to use the term "harm" in the introductory sentence above but replaces "harm" in (1) and (3) above with "injury, death, or loss to person or property." As a result of these changes, the physician is exempted from liability for damages in a civil action for harm (injury, death, or loss to person or property *or any violation of a patient's privacy or constitutional rights under federal or state law*) that allegedly is incurred by an employee as a result of the physician reporting the information described in (1), (2), or (3) above.

Additionally, the bill specifies that a physician is only exempt from liability for damages in a civil action for harm that allegedly is incurred by an employee as a result of the physician reporting to the employee's employer that the physician has determined that the employee is using a drug of abuse otherwise than pursuant to a prescription if the physician also determines that the employee's use of the drug of abuse represents a potential risk of injury, death, or loss to person or property of passengers on any aircraft, railroad train, school or other bus, taxicab, or other type of common carrier operated by the employer.⁸

Existing law defines "tort action," as used in R.C. 2305.33 as a civil action for damages for injury, death, or loss to person or property, other than a civil action for damages for a breach of contract or another agreement between persons. "Tort action" includes, but is not limited to, a civil action for damages against a physician on the ground of a breach of the confidentiality of the physician-patient relationship. The bill removes this definition of "tort action."⁹ Tort action is used once in R.C. 2305.33. It is used in the definition of "civil action," and "civil action" is used once in R.C. 2305.33.¹⁰

⁶ R.C. 2305.33(A)(6).

⁷ R.C. 2305.33(A)(6).

⁸ R.C. 2305.33(B)(2).

⁹ R.C. 2305.33(A)(11).

¹⁰ R.C. 2305.33(A)(3) and (B).

Definitions

As used in the above two discussed provisions of the bill:

"Civil action" means a tort or contract action for damages for harm.¹¹

"Harm" means any injury, death, or loss to person or property or any violation of a patient's privacy or confidentiality rights under federal or state law.¹²

"Motor vehicle" means every vehicle propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, except motorized bicycles, road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, hole-digging machinery, well-drilling machinery, ditch-digging machinery, farm machinery, and trailers designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and at a speed of 25 miles per hour or less.¹³

"Physician" means a person who is licensed pursuant to Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.¹⁴

"Prescription" means a written, electronic, or oral order for drugs or combinations or mixtures of drugs to be used by a particular individual or for treating a particular animal, issued by a licensed health professional authorized to prescribe drugs.¹⁵

Testimonial privilege

The bill specifies that the immunity from civil liability described above under **"Physician liability for reporting of patient condition"** for physicians who report a patient's use of a drug of abuse or a condition of a patient other than one involving the use of a drug of abuse to any of the specified persons or entities is not affected by, and must not be construed as being affected by, R.C. 2317.02(B)(1) to (6), which create the

¹¹ R.C. 2305.33(A)(3) and 2305.331(A)(1).

¹² R.C. 2305.33(A)(6) and 2305.331(A)(2).

¹³ R.C. 2305.331(A)(3), by reference to R.C. 4511.01(B) (not in the bill).

¹⁴ R.C. 2305.33(A)(8) and 2305.331(A)(4).

¹⁵ R.C. 2305.33(A)(9) and 2305.331(A)(5), by reference to R.C. 4729.01(H) (not in the bill).

testimonial privilege of a physician or dentist and confer certain exemptions from that privilege.¹⁶

Revocation of physician's license by State Medical Board

Existing law provides a procedure by which the State Medical Board must, to the extent permitted by law, limit, revoke, or suspend an individual's (including a physician's) certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more specified reasons, including either of the following:

(1) That the individual "willfully betrayed a professional confidence." The bill specifies that "willfully betraying a professional confidence" does not include the making of a report of a patient's use of a drug of abuse or a report of a condition of a patient other than one involving the use of a drug of abuse to any of the persons or entities described above under "**Physician liability for reporting of patient condition.**" As a result of this exclusion from the definition of "willfully betraying a professional confidence," the State Medical Board does not have the authority to take any of the above-described actions against an individual for making the report described above in "**Physician liability for reporting of patient condition.**"¹⁷

(2) Generally, that the individual violated any provision of a code of ethics of certain specified national professional organizations or any other national professional organization that the Board specifies by rule. The bill specifies that a "provision of a code of ethics of a national professional organization" does not include any provision that would preclude a physician from making a report of the information described under "**Physician liability for reporting of patient condition,**" above. Therefore, the State Medical Board does not have the authority under this provision to take any of the above-described actions against an individual for making any report described above in "**Physician liability for reporting of patient condition.**"¹⁸

The bill also states that nothing in the above two provisions found in R.C. 4731.22(B)(4)(c) or (18) affects the immunity from civil liability conferred upon a physician who makes such a report.¹⁹

¹⁶ R.C. 2317.02(B)(7).

¹⁷ R.C. 4731.22(B)(4)(c).

¹⁸ R.C. 4731.22(B)(18).

¹⁹ R.C. 4731.22(B)(4)(c) and (18).

Additionally, existing law requires the State Medical Board, to the extent permitted by law, to limit, revoke, or suspend an individual's (including a physician's) certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate if the individual violates or attempts to violate, directly or indirectly, or assists in or abets the violation of, or conspires to violate, any provision of Chapter 4731. or any rule promulgated by the Board. The bill provides that this requirement does not apply to a violation or attempted violation of, assisting in or abetting the violation of, or a conspiracy to violate, any provision of Chapter 4731. or any rule adopted by the Board that would preclude a physician from making a report of the information described under "**Physician liability for reporting of patient condition.**" The bill also states that nothing in R.C. 4731.22(B)(20) (the provision described in the previous sentence) affects the immunity from civil liability conferred upon a physician who makes such a report.²⁰

HISTORY

ACTION	DATE
Introduced	01-24-12
Reported, H. Criminal Justice	05-23-12

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²⁰ R.C. 4731.22(B)(20).

