



*BEFORE THE HOUSE CIVIL JUSTICE COMMITTEE
PROPONENT TESTIMONY ON HOUSE BILL 281*

Chairman Hillyer, Vice Chair Mathews, Ranking Member Isaacsohn, and members of the House Civil Justice Committee, thank you for the opportunity to provide proponent testimony on House Bill 281 (HB 281). My name is Kevin Shimp and I am an associate attorney at the law firm Dickinson Wright testifying on behalf of the Ohio Chamber of Commerce.

The Ohio Chamber is the state's leading business advocate. The organization represents over 8,000 companies that do business in Ohio and their mission is to aggressively champion free enterprise, economic competitiveness and growth for the benefit of all Ohioans.

In our efforts to foster economic competitiveness through a better legal climate in the Buckeye State, the Ohio Chamber supports HB 281 because it will bring greater certainty and predictability to our state's civil justice system.

In 2008, Ohio's General Assembly enacted Ohio Revised Code section 2307.60 which enables the recovery of attorney fees and full civil damages against a person if the individual engages in a criminal act. The statute does not define a criminal act nor does it specify an individual must have a criminal conviction before the statute applies. Accordingly, the mere allegation or pleading of a criminal act can be sufficient to trigger the law's applicability.

Moreover, as presently drafted, the statute essentially creates strict civil liability for any undefined criminal act. The statutory cause of action does not require a plaintiff to show any elements that are traditionally a prerequisite for finding civil liability when pursuing common law remedies including duty, breach, or causation. Instead, a party only need to plead that a criminal act occurred and a judge may determine there is liability.

The Ohio Supreme Court's decision in *Buddenberg v. Weisdack* compounds that risk. When answering a certified question of state law from Ohio's Northern District Court, the

court applied the current statute on civil damages for criminal acts (R.C. 2307.60) and found it does not require proof of an underlying criminal conviction for civil liability to attach. To come to this decision, the court correctly points out that a conviction requirement is absent from the statutory language.

House Bill 281 seeks to update the statute on civil damages for criminal acts by mandating a conviction or guilty plea before the law may serve as the basis for civil liability. Requiring a criminal conviction will ameliorate the present risks of unpredictable and potentially expansive civil liability that arises from today's statute because no longer will a mere allegation of criminal conduct be sufficient to bring an action under R.C. 2307.60.

House Bill 281 stands to benefit Ohio's legal climate because the conviction requirement makes liability more predictable. Without the necessity of a conviction prior to finding civil liability under R.C. 2307.60, it becomes difficult for employers to foresee potential liability because any person has the ability to bring an allegation of criminal conduct regardless of its validity. Whereas, if the statute requires a criminal conviction, then an employer knows their lawful conduct cannot create liability under the law.

The legislation also balances the needs of plaintiffs because it does not impinge upon a party's ability to hold wrongdoers in the workplace accountable. Ohio's civil rights laws, wage and hour laws, and intentional tort statutes all hold wrongdoers accountable when there is unlawful conduct in the workplace, but the conduct is not criminal since each of these statutes already prohibit employers and their employees from harassing, discriminating, or intentionally harming individuals. HB 281 leaves these laws unchanged.

Similarly, HB 281 does not change any common law remedies that currently exist, so even absent a statutory remedy a person may still seek recovery using judge-made laws.

In closing, the Ohio Chamber urges your support of House Bill 281 because it brings greater predictably and certainty to our state's legal climate, which in turn will benefit our state's business climate.

Thank you for the opportunity to provide testimony today, and I welcome any questions from the committee.