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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 179  
135<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Mathews and Stewart

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### SUMMARY

#### Tolling of limitations period

- Provides that the tolling of the limitations period during the defendant's absence or concealment does not apply to statutes of repose.

#### Vicarious liability

- Provides that if tort liability arises against both a principal and agent, master and servant, employer and employee, or other persons having a vicarious liability relationship, the injured party may sue either the primarily liable agent, servant, employee, or person or the secondarily liable principal, master, employer, or person, or both.
- Stipulates that for the injured party to prevail in a tort action alleging vicarious liability against a secondarily liable person, both of the following apply:
  - A primarily liable person committed the tortious act in the course of, and within the scope of, that person's agency or servant relationship with, or employment by, the secondarily liable person.
  - A primarily liable person is not a necessary party to the tort action alleging vicarious liability against a secondarily liable person, with certain exceptions.

### DETAILED ANALYSIS

#### Tolling of limitations period

The bill modifies current law by providing exceptions to the tolling of the limitations period for the commencement of certain actions when the person against whom a cause of action accrues is out of the state, has absconded, or conceals self, until the person comes into

the state or while the person is so absconded or concealed.<sup>1</sup> Under the bill, the limitations periods for statutes of repose, including, but not limited to, statutes of repose on the following claims or actions are not tolled when the person against whom a cause of action accrues is out of the state, has absconded, or conceals self:<sup>2</sup>

- Product liability claims against the product manufacturer or supplier;
- Medical, dental, optometric, or chiropractic claims;
- Assault or battery actions against a mental health professional;
- Legal malpractice claims;
- Actions arising out of a defective and unsafe condition of an improvement to real property.

## **Declaration**

The bill states that the General Assembly, in amending R.C. 2305.15, declares that its purpose is to expressly overrule the decision of the Ohio Supreme Court in the case of *Elliot v. Durrani*.<sup>3</sup>

## **Vicarious liability**

### **Background**

Under the doctrine of *respondeat superior*, a master becomes liable in damages for injuries caused solely by the negligent act of the master's servant while acting for the master, the servant is primarily liable and the master is secondarily liable to the injured party. If the master is obliged to respond in damages by reason of such liability, the master will be subrogated to the right of the injured party and may recover the master's loss from the servant, the one primarily liable.<sup>4</sup>

### **Tort action alleging vicarious liability**

In a tort action alleging *respondeat superior* or vicarious liability, the bill provides that the following apply:

- If liability arises against both a principal and agent, master and servant, employer and employee, or other persons having a vicarious liability relationship, the injured party

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<sup>1</sup> R.C. 2305.15(A)(1).

<sup>2</sup> R.C. 2305.15(A)(2).

<sup>3</sup> Section 3. In *Elliot v. Durrani*, Slip Opinion No. 2022-Ohio-4190, the Ohio Supreme Court, in the case involving a medical claim, held that the legislature has made clear in the unambiguous language of R.C. 2305.15 that an absconding defendant is not entitled to a four-year statute of repose that is not tolled.

<sup>4</sup> *Losito v. Kruse*, 136 Ohio St. 183 (1940).

may sue either the primarily liable agent, servant, employee, or person (primarily liable person) or the secondarily liable principal, master, employer, or person (secondarily liable person), or both.<sup>5</sup>

- For the injured party to prevail in a tort action alleging *respondeat superior* or vicarious liability against a secondarily liable person, both of the following apply:<sup>6</sup>
  - A primarily liable person committed the act or omission on which the tort action is based, while in the course of, and within the scope of, that person’s agency or servant relationship with, or employment by, the secondarily liable person.
  - A primarily liable person is not a necessary party to the tort action alleging *respondeat superior* or vicarious liability against a secondarily liable person, unless the tort action is any of the following: (a) an action upon a medical claim against a physician, podiatrist, or physical therapist, (b) an action upon a dental claim against a dentist, (c) an action upon an optometric claim against an optometrist, (d) an action upon a chiropractic claim against a chiropractor, or (e) an action upon a legal malpractice claim against an attorney.

The bill provides that nothing in its provisions precludes the injured party in a tort action from satisfying the necessary standard of proof for the liability of the primarily liable agent, servant, employee, or person or the liability of the secondarily liable principal, master, employer, or person, in a vicarious liability relationship.<sup>7</sup>

## Definitions

The bill defines “chiropractic claim,” “chiropractor,” “dental claim,” “dentist,” “medical claim,” “optometric claim,” “optometrist,” “physical therapist,” “physician,” and “podiatrist” as having the same meanings as in continuing law on medical, dental, chiropractic, and optometric claims.<sup>8</sup>

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## HISTORY

Action	Date
Introduced	05-22-23

ANHB0179IN-135/ts

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<sup>5</sup> R.C. 2307.241(B)(1).

<sup>6</sup> R.C. 2307.241(B)(2).

<sup>7</sup> R.C. 2307.241(C).

<sup>8</sup> R.C. 2307.241(A).