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H.B. 179
135th General Assembly

Final Analysis

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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.
- Declares that the General Assembly's purpose is to expressly overrule the decision of the Ohio Supreme Court in the case of *Elliot v. Durrani*.

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.
- Provides that for a principal, master, or employer to be found liable for the tortious act, an agent, servant, or employee must have committed such tortious act in the course of, or within the scope of, the agent's, servant's, or employee's agency or servant relationship with, or employment by, the principal, master, or employer.

DETAILED ANALYSIS

Tolling of limitations period

The act modifies the law on the tolling of statutes of limitations 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.¹ Under the act, 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:²

- 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 act 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*.³

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.⁴

¹ R.C. 2305.15(A)(1).

² R.C. 2305.15(A)(2).

³ 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.

⁴ *Losito v. Kruse*, 136 Ohio St. 183 (1940).

Tort action alleging vicarious liability

In a tort action alleging *respondeat superior* or vicarious liability, the act 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 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.⁵
- 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:⁶
 - 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 act provides that nothing in its provisions modifies the legal principle that the *respondeat superior* or vicarious liability of a principal, master, employer, or person is derivative of the liability of an agent, servant, employee, or person. In order for a principal, master, employer, or person to be found liable for the act or omission on which a tort action is based, an agent, servant, employee, or person must have committed such act or omission while in the course of, or within the scope of, the agent's, servant's, employee's, or person's agency or servant relationship with, or employment by, the principal, master, employer, or other person.⁷

Definitions

The act 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.⁸

⁵ R.C. 2307.241(B)(1).

⁶ R.C. 2307.241(B)(2).

⁷ R.C. 2307.241(C).

⁸ R.C. 2307.241(A).

HISTORY

Action	Date
Introduced	05-22-23
Reported, H. Civil Justice	06-20-23
Passed House (92-0)	01-10-24
Reported, S. Judiciary	06-26-24
Passed Senate (31-0)	06-26-24
