

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 419

Representative Henne

Cosponsors: Representatives Lang, Riedel, Sprague

A BILL

To amend section 2744.02 of the Revised Code to
modify the defense to the liability of a member
of a police or fire department or emergency
medical service of a political subdivision for
the negligent operation of a motor vehicle in
response to an emergency by requiring that the
vehicle has its lights and sirens simultaneously
activated.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2744.02 of the Revised Code be
amended to read as follows:

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Sec. 2744.02. (A) (1) For the purposes of this chapter, the
functions of political subdivisions are hereby classified as
governmental functions and proprietary functions. Except as
provided in division (B) of this section, a political
subdivision is not liable in damages in a civil action for
injury, death, or loss to person or property allegedly caused by
any act or omission of the political subdivision or an employee
of the political subdivision in connection with a governmental

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or proprietary function. 19

(2) The defenses and immunities conferred under this 20
chapter apply in connection with all governmental and 21
proprietary functions performed by a political subdivision and 22
its employees, whether performed on behalf of that political 23
subdivision or on behalf of another political subdivision. 24

(3) Subject to statutory limitations upon their monetary 25
jurisdiction, the courts of common pleas, the municipal courts, 26
and the county courts have jurisdiction to hear and determine 27
civil actions governed by or brought pursuant to this chapter. 28

(B) Subject to sections 2744.03 and 2744.05 of the Revised 29
Code, a political subdivision is liable in damages in a civil 30
action for injury, death, or loss to person or property 31
allegedly caused by an act or omission of the political 32
subdivision or of any of its employees in connection with a 33
governmental or proprietary function, as follows: 34

(1) Except as otherwise provided in this division, 35
political subdivisions are liable for injury, death, or loss to 36
person or property caused by the negligent operation of any 37
motor vehicle by their employees when the employees are engaged 38
within the scope of their employment and authority. The 39
following are full defenses to that liability: 40

(a) A member of a municipal corporation police department 41
or any other police agency was operating a motor vehicle with 42
the vehicle's lights and sirens simultaneously activated while 43
responding to an emergency call and the operation of the vehicle 44
did not constitute willful or wanton misconduct; 45

(b) A member of a municipal corporation fire department or 46
any other firefighting agency was operating a motor vehicle with 47

the vehicle's lights and sirens simultaneously activated while 48
engaged in duty at a fire, proceeding toward a place where a 49
fire is in progress or is believed to be in progress, or 50
answering any other emergency alarm and the operation of the 51
vehicle did not constitute willful or wanton misconduct; 52

(c) A member of an emergency medical service owned or 53
operated by a political subdivision was operating a motor 54
vehicle with the vehicle's lights and sirens simultaneously 55
activated while responding to or completing a call for emergency 56
medical care or treatment, the member was holding a valid 57
commercial driver's license issued pursuant to Chapter 4506. or 58
a driver's license issued pursuant to Chapter 4507. of the 59
Revised Code, the operation of the vehicle did not constitute 60
willful or wanton misconduct, and the operation complies with 61
the precautions of section 4511.03 of the Revised Code. 62

(2) Except as otherwise provided in sections 3314.07 and 63
3746.24 of the Revised Code, political subdivisions are liable 64
for injury, death, or loss to person or property caused by the 65
negligent performance of acts by their employees with respect to 66
proprietary functions of the political subdivisions. 67

(3) Except as otherwise provided in section 3746.24 of the 68
Revised Code, political subdivisions are liable for injury, 69
death, or loss to person or property caused by their negligent 70
failure to keep public roads in repair and other negligent 71
failure to remove obstructions from public roads, except that it 72
is a full defense to that liability, when a bridge within a 73
municipal corporation is involved, that the municipal 74
corporation does not have the responsibility for maintaining or 75
inspecting the bridge. 76

(4) Except as otherwise provided in section 3746.24 of the 77

Revised Code, political subdivisions are liable for injury, 78
death, or loss to person or property that is caused by the 79
negligence of their employees and that occurs within or on the 80
grounds of, and is due to physical defects within or on the 81
grounds of, buildings that are used in connection with the 82
performance of a governmental function, including, but not 83
limited to, office buildings and courthouses, but not including 84
jails, places of juvenile detention, workhouses, or any other 85
detention facility, as defined in section 2921.01 of the Revised 86
Code. 87

(5) In addition to the circumstances described in 88
divisions (B) (1) to (4) of this section, a political subdivision 89
is liable for injury, death, or loss to person or property when 90
civil liability is expressly imposed upon the political 91
subdivision by a section of the Revised Code, including, but not 92
limited to, sections 2743.02 and 5591.37 of the Revised Code. 93
Civil liability shall not be construed to exist under another 94
section of the Revised Code merely because that section imposes 95
a responsibility or mandatory duty upon a political subdivision, 96
because that section provides for a criminal penalty, because of 97
a general authorization in that section that a political 98
subdivision may sue and be sued, or because that section uses 99
the term "shall" in a provision pertaining to a political 100
subdivision. 101

(C) An order that denies a political subdivision or an 102
employee of a political subdivision the benefit of an alleged 103
immunity from liability as provided in this chapter or any other 104
provision of the law is a final order. 105

Section 2. That existing section 2744.02 of the Revised 106
Code is hereby repealed. 107