

As Introduced

133rd General Assembly

Regular Session

2019-2020

H. B. No. 27

Representative Ingram

Cosponsors: Representatives Becker, Kent, Miller, A., Riedel, Weinstein

A BILL

To amend sections 2744.02 and 2744.05 of the 1
Revised Code to modify political subdivision 2
liability for an employee's negligent operation 3
of a motor vehicle. 4

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

Section 1. That sections 2744.02 and 2744.05 of the 5
Revised Code be amended to read as follows: 6

Sec. 2744.02. (A) (1) For the purposes of this chapter, the 7
functions of political subdivisions are hereby classified as 8
governmental functions and proprietary functions. Except as 9
provided in division (B) of this section, a political 10
subdivision is not liable in damages in a civil action for 11
injury, death, or loss to person or property allegedly caused by 12
any act or omission of the political subdivision or an employee 13
of the political subdivision in connection with a governmental 14
or proprietary function. 15

(2) The defenses and immunities conferred under this 16
chapter apply in connection with all governmental and 17
proprietary functions performed by a political subdivision and 18

its employees, whether performed on behalf of that political 19
subdivision or on behalf of another political subdivision. 20

(3) Subject to statutory limitations upon their monetary 21
jurisdiction, the courts of common pleas, the municipal courts, 22
and the county courts have jurisdiction to hear and determine 23
civil actions governed by or brought pursuant to this chapter. 24

(B) Subject to sections 2744.03 and 2744.05 of the Revised 25
Code, a political subdivision is liable in damages in a civil 26
action for injury, death, or loss to person or property 27
allegedly caused by an act or omission of the political 28
subdivision or of any of its employees in connection with a 29
governmental or proprietary function, as follows: 30

(1) Except as otherwise provided in this division, 31
political subdivisions are liable for injury, death, or loss to 32
person or property caused by the negligent operation of any 33
motor vehicle by their employees when the employees are engaged 34
within the scope of their employment and authority. ~~The~~ 35
~~following are full defenses to that liability:~~ 36

~~(a) A member of a municipal corporation police department~~ 37
~~or any other police agency was operating a motor vehicle while~~ 38
~~responding to an emergency call and the operation of the vehicle~~ 39
~~did not constitute willful or wanton misconduct;~~ 40

~~(b) A member of a municipal corporation fire department or~~ 41
~~any other firefighting agency was operating a motor vehicle~~ 42
~~while engaged in duty at a fire, proceeding toward a place where~~ 43
~~a fire is in progress or is believed to be in progress, or~~ 44
~~answering any other emergency alarm and the operation of the~~ 45
~~vehicle did not constitute willful or wanton misconduct;~~ 46

~~(c) A member of an emergency medical service owned or~~ 47

~~operated by a political subdivision was operating a motor~~ 48
~~vehicle while responding to or completing a call for emergency~~ 49
~~medical care or treatment, the member was holding a valid~~ 50
~~commercial driver's license issued pursuant to Chapter 4506. or~~ 51
~~a driver's license issued pursuant to Chapter 4507. of the~~ 52
~~Revised Code, the operation of the vehicle did not constitute~~ 53
~~willful or wanton misconduct, and the operation complies with~~ 54
~~the precautions of section 4511.03 of the Revised Code.~~ 55
political subdivision is not liable in damages for injury, 56
death, or loss to person or property caused by an employee's 57
negligent operation of a motor vehicle if the plaintiff, at the 58
time of the alleged negligence, was attempting to flee from a 59
law enforcement officer so as to avoid apprehension for a 60
criminal offense. 61

(2) Except as otherwise provided in sections 3314.07 and 62
3746.24 of the Revised Code, political subdivisions are liable 63
for injury, death, or loss to person or property caused by the 64
negligent performance of acts by their employees with respect to 65
proprietary functions of the political subdivisions. 66

(3) Except as otherwise provided in section 3746.24 of the 67
Revised Code, political subdivisions are liable for injury, 68
death, or loss to person or property caused by their negligent 69
failure to keep public roads in repair and other negligent 70
failure to remove obstructions from public roads, except that it 71
is a full defense to that liability, when a bridge within a 72
municipal corporation is involved, that the municipal 73
corporation does not have the responsibility for maintaining or 74
inspecting the bridge. 75

(4) Except as otherwise provided in section 3746.24 of the 76
Revised Code, political subdivisions are liable for injury, 77

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

(5) In addition to the circumstances described in 87
divisions (B) (1) to (4) of this section, a political subdivision 88
is liable for injury, death, or loss to person or property when 89
civil liability is expressly imposed upon the political 90
subdivision by a section of the Revised Code, including, but not 91
limited to, sections 2743.02 and 5591.37 of the Revised Code. 92
Civil liability shall not be construed to exist under another 93
section of the Revised Code merely because that section imposes 94
a responsibility or mandatory duty upon a political subdivision, 95
because that section provides for a criminal penalty, because of 96
a general authorization in that section that a political 97
subdivision may sue and be sued, or because that section uses 98
the term "shall" in a provision pertaining to a political 99
subdivision. 100

(C) An order that denies a political subdivision or an 101
employee of a political subdivision the benefit of an alleged 102
immunity from liability as provided in this chapter or any other 103
provision of the law is a final order. 104

Sec. 2744.05. Notwithstanding any other provisions of the 105
Revised Code or rules of a court to the contrary, in an action 106
against a political subdivision to recover damages for injury, 107

death, or loss to person or property caused by an act or 108
omission in connection with a governmental or proprietary 109
function: 110

(A) Punitive or exemplary damages shall not be awarded. 111

(B) (1) If a claimant receives or is entitled to receive 112
benefits for injuries or loss allegedly incurred from a policy 113
or policies of insurance or any other source, the benefits shall 114
be disclosed to the court, and the amount of the benefits shall 115
be deducted from any award against a political subdivision 116
recovered by that claimant. No insurer or other person is 117
entitled to bring an action under a subrogation provision in an 118
insurance or other contract against a political subdivision with 119
respect to those benefits. 120

The amount of the benefits shall be deducted from an award 121
against a political subdivision under division (B) (1) of this 122
section regardless of whether the claimant may be under an 123
obligation to pay back the benefits upon recovery, in whole or 124
in part, for the claim. A claimant whose benefits have been 125
deducted from an award under division (B) (1) of this section is 126
not considered fully compensated and shall not be required to 127
reimburse a subrogated claim for benefits deducted from an award 128
pursuant to division (B) (1) of this section. 129

(2) Nothing in division (B) (1) of this section shall be 130
construed to do either of the following: 131

(a) Limit the rights of a beneficiary under a life 132
insurance policy or the rights of sureties under fidelity or 133
surety bonds; 134

(b) Prohibit the department of medicaid from recovering 135
from the political subdivision, pursuant to section 5160.37 of 136

the Revised Code, the cost of medical assistance provided under 137
a medical assistance program. 138

(C) (1) There shall not be any limitation on compensatory 139
damages that represent the actual loss of the person who is 140
awarded the damages. However, except in wrongful death actions 141
brought pursuant to Chapter 2125. of the Revised Code, damages 142
that arise from the same cause of action, transaction or 143
occurrence, or series of transactions or occurrences and that do 144
not represent the actual loss of the person who is awarded the 145
damages shall not exceed two hundred fifty thousand dollars in 146
favor of any one person. The limitation on damages that do not 147
represent the actual loss of the person who is awarded the 148
damages provided in this division does not apply to court costs 149
that are awarded to a plaintiff, or to interest on a judgment 150
rendered in favor of a plaintiff, in an action against a 151
political subdivision. 152

(2) Any compensatory damages recoverable against a 153
political subdivision for an employee's negligent operation of a 154
motor vehicle shall be reduced by the percentage of contributory 155
fault attributable to the plaintiff or any other parties, 156
subject to sections 2307.22, 2307.23, and 2315.32 to 2315.36 of 157
the Revised Code. 158

(3) As used in this division, "the actual loss of the 159
person who is awarded the damages" includes all of the 160
following: 161

(a) All wages, salaries, or other compensation lost by the 162
person injured as a result of the injury, including wages, 163
salaries, or other compensation lost as of the date of a 164
judgment and future expected lost earnings of the person 165
injured; 166

(b) All expenditures of the person injured or another person on behalf of the person injured for medical care or treatment, for rehabilitation services, or for other care, treatment, services, products, or accommodations that were necessary because of the injury;

(c) All expenditures to be incurred in the future, as determined by the court, by the person injured or another person on behalf of the person injured for medical care or treatment, for rehabilitation services, or for other care, treatment, services, products, or accommodations that will be necessary because of the injury;

(d) All expenditures of a person whose property was injured or destroyed or of another person on behalf of the person whose property was injured or destroyed in order to repair or replace the property that was injured or destroyed;

(e) All expenditures of the person injured or of the person whose property was injured or destroyed or of another person on behalf of the person injured or of the person whose property was injured or destroyed in relation to the actual preparation or presentation of the claim involved;

(f) Any other expenditures of the person injured or of the person whose property was injured or destroyed or of another person on behalf of the person injured or of the person whose property was injured or destroyed that the court determines represent an actual loss experienced because of the personal or property injury or property loss.

"The actual loss of the person who is awarded the damages" does not include any fees paid or owed to an attorney for any services rendered in relation to a personal or property injury

or property loss, and does not include any damages awarded for 196
pain and suffering, for the loss of society, consortium, 197
companionship, care, assistance, attention, protection, advice, 198
guidance, counsel, instruction, training, or education of the 199
person injured, for mental anguish, or for any other intangible 200
loss. 201

Section 2. That existing sections 2744.02 and 2744.05 of 202
the Revised Code are hereby repealed. 203