

HB 27 - Fairness in Sovereign Immunity  
Proponent Testimony of Richard D. Topper  
Before the House Civil Justice Committee  
March 12, 2019

Good afternoon Chairman Hambley, Vice Chair Patton, Ranking Member Brown and Members of the Ohio Civil Justice Committee. My name is Richard Topper. I am a past Trustee of the Ohio Association for Justice and have been a practicing attorney in Ohio for nearly 40 years. I practice in the field of negligence law.

The Ohio Association for Justice supports the provisions in Ohio HB 27 which closes a loophole in Ohio's sovereign immunity law thereby protecting Ohioans from uncompensated damages due to police, fire and emergency medical motor vehicle negligence.

Ronald Reagan once said that it is an American precept that each individual is accountable for his or her own actions. It is also true that an employer is responsible for the acts of their employees whether the employer is a corporation or a government entity. This is the basis for negligence law. And it makes perfect sense. If someone is careless and causes damage to another, they should take responsibility for their actions.

When Ohio passed its sovereign immunity act in 1985, the legislature set forth that municipalities were not responsible for police, firefighters and EMT's negligence if they were responding to an emergency call. This led to a significant amount of litigation over what was considered an emergency.

In 2003, the Ohio Supreme Court decided in *Colbert vs. the City of Cleveland* that almost any time a police, fire, or emergency vehicle is in use, it could be considered an emergency. In the *Colbert* case, a police officer responded to a crime scene for a crime that was not in progress and failed to activate the emergency lights or siren. The police car collided with an innocent person who had the right of way at an intersection. In holding the City of Cleveland not responsible for the innocent person's loss, the Supreme court held: an "emergency call" involves a situation to which a response by a peace officer is required by the officer's professional obligation."

That's most likely why the City of Cincinnati took a hard line in the case referred to by the sponsor and refused to pay the gentleman for his car damage, medical expenses, and wage loss, even though the police office was obviously

negligent in the operation of the city vehicle.

<https://www.youtube.com/watch?v=ihZpsAV8Y4k>)

HB 27 does not set forth any new obligations. Ohio law requires every operator of a motor vehicle to use ordinary care to avoid injury to others. Failure to use ordinary care is negligence. HB 27 requires police and fire personnel to use ordinary care when they are operating a municipal corporation's vehicle or an EMT is operating a political subdivision's vehicle. Ordinary care is defined as the care reasonable emergency personnel would use under like or similar circumstances. In the case of a true emergency, a municipality would not be liable for injuries caused when a police or fire vehicle exceeds the speed limit or proceeds through a red light. Those actions would be justified under emergency circumstances unless the actions are undertaken negligently or carelessly or if the run was not a true emergency.

A question was asked as to whether HB 27 would make police officers personally liable for their negligence. The answer is NO. Under RC 2744.03 (A) (6) an employee, which includes a police officer, fire fighter or EMT, is NOT liable for negligence unless "the employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities." And, HB 27 does nothing to alter that.

HB 27 preserves immunity in situations where the driver is fleeing a law enforcement officer at the time an accident occurs. In addition, HB 27 provides that a person's damages are reduced or taken away if the person is partially at fault or if a third party is at fault.

HB 27 solely takes away the emergency call exception from RC 2744. That's it. Municipalities are still protected under the current Revised Code 2744.05 by a damage cap on non-economic damages and a ban against recovery for punitive damages and collateral sources. This includes all amounts paid for by insurance companies or employers for wage loss. Under 2744.05, insurance companies may still not subrogate against municipal corporations.

What HB 27 does is protect innocent drivers from uninsured losses caused by emergency vehicle negligence. Losses such as property damage not covered by an insurance policy; their deductible and rental car expenses, medical expenses not covered by insurance coverage including deductibles and out of pocket expenses which under many insurance policies can be quite high; uncompensated wage loss or disability; and funeral expenses. And HB 27 brings Ohio in line with all of its neighboring states.

Mr. Chairman, this concludes my remarks. If you or members of the committee have questions, I would be pleased to answer to the best of my ability.