

As Introduced

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S. B. No. 56

Senator Eklund

Cosponsors: Senators Seitz, Patton, Hite

A BILL

To amend sections 2743.02 and 3345.40 of the
Revised Code relative to the set-off of
collateral recoveries against damages awarded in
certain civil actions against state universities
or colleges.

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

Section 1. That sections 2743.02 and 3345.40 of the
Revised Code be amended to read as follows:

Sec. 2743.02. (A) (1) The state hereby waives its immunity
from liability, except as provided for the office of the state
fire marshal in division (G) (1) of section 9.60 and division (B)
of section 3737.221 of the Revised Code and subject to division
(H) of this section, and consents to be sued, and have its
liability determined, in the court of claims created in this
chapter in accordance with the same rules of law applicable to
suits between private parties, except that the determination of
liability is subject to the limitations set forth in this
chapter and, in the case of state universities or colleges, in
section 3345.40 of the Revised Code, and except as provided in
division (A) (2) or (3) of this section. To the extent that the

state has previously consented to be sued, this chapter has no applicability.

Except in the case of a civil action filed by the state, filing a civil action in the court of claims results in a complete waiver of any cause of action, based on the same act or omission, that the filing party has against any officer or employee, as defined in section 109.36 of the Revised Code. The waiver shall be void if the court determines that the act or omission was manifestly outside the scope of the officer's or employee's office or employment or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

(2) If a claimant proves in the court of claims that an officer or employee, as defined in section 109.36 of the Revised Code, would have personal liability for the officer's or employee's acts or omissions but for the fact that the officer or employee has personal immunity under section 9.86 of the Revised Code, the state shall be held liable in the court of claims in any action that is timely filed pursuant to section 2743.16 of the Revised Code and that is based upon the acts or omissions.

(3) (a) Except as provided in division (A) (3) (b) of this section, the state is immune from liability in any civil action or proceeding involving the performance or nonperformance of a public duty, including the performance or nonperformance of a public duty that is owed by the state in relation to any action of an individual who is committed to the custody of the state.

(b) The state immunity provided in division (A) (3) (a) of this section does not apply to any action of the state under circumstances in which a special relationship can be established

between the state and an injured party. A special relationship 50
under this division is demonstrated if all of the following 51
elements exist: 52

(i) An assumption by the state, by means of promises or 53
actions, of an affirmative duty to act on behalf of the party 54
who was allegedly injured; 55

(ii) Knowledge on the part of the state's agents that 56
inaction of the state could lead to harm; 57

(iii) Some form of direct contact between the state's 58
agents and the injured party; 59

(iv) The injured party's justifiable reliance on the 60
state's affirmative undertaking. 61

(B) The state hereby waives the immunity from liability of 62
all hospitals owned or operated by one or more political 63
subdivisions and consents for them to be sued, and to have their 64
liability determined, in the court of common pleas, in 65
accordance with the same rules of law applicable to suits 66
between private parties, subject to the limitations set forth in 67
this chapter. This division is also applicable to hospitals 68
owned or operated by political subdivisions that have been 69
determined by the supreme court to be subject to suit prior to 70
July 28, 1975. 71

(C) Any hospital, as defined in section 2305.113 of the 72
Revised Code, may purchase liability insurance covering its 73
operations and activities and its agents, employees, nurses, 74
interns, residents, staff, and members of the governing board 75
and committees, and, whether or not such insurance is purchased, 76
may, to the extent that its governing board considers 77
appropriate, indemnify or agree to indemnify and hold harmless 78

any such person against expense, including attorney's fees, 79
damage, loss, or other liability arising out of, or claimed to 80
have arisen out of, the death, disease, or injury of any person 81
as a result of the negligence, malpractice, or other action or 82
inaction of the indemnified person while acting within the scope 83
of the indemnified person's duties or engaged in activities at 84
the request or direction, or for the benefit, of the hospital. 85
Any hospital electing to indemnify those persons, or to agree to 86
so indemnify, shall reserve any funds that are necessary, in the 87
exercise of sound and prudent actuarial judgment, to cover the 88
potential expense, fees, damage, loss, or other liability. The 89
superintendent of insurance may recommend, or, if the hospital 90
requests the superintendent to do so, the superintendent shall 91
recommend, a specific amount for any period that, in the 92
superintendent's opinion, represents such a judgment. This 93
authority is in addition to any authorization otherwise provided 94
or permitted by law. 95

(D) Recoveries against the state shall be reduced by the 96
aggregate of insurance proceeds, disability award, or other 97
collateral recovery received by the claimant. This division does 98
not apply to civil actions in the court of claims against a 99
state university or college under the circumstances described in 100
section 3345.40 of the Revised Code. The collateral ~~benefits-~~ 101
recovery provisions of division (B) (2) of that section apply 102
under those circumstances. 103

(E) The only defendant in original actions in the court of 104
claims is the state. The state may file a third-party complaint 105
or counterclaim in any civil action, except a civil action for 106
ten thousand dollars or less, that is filed in the court of 107
claims. 108

(F) A civil action against an officer or employee, as 109
defined in section 109.36 of the Revised Code, that alleges that 110
the officer's or employee's conduct was manifestly outside the 111
scope of the officer's or employee's employment or official 112
responsibilities, or that the officer or employee acted with 113
malicious purpose, in bad faith, or in a wanton or reckless 114
manner shall first be filed against the state in the court of 115
claims that has exclusive, original jurisdiction to determine, 116
initially, whether the officer or employee is entitled to 117
personal immunity under section 9.86 of the Revised Code and 118
whether the courts of common pleas have jurisdiction over the 119
civil action. The officer or employee may participate in the 120
immunity determination proceeding before the court of claims to 121
determine whether the officer or employee is entitled to 122
personal immunity under section 9.86 of the Revised Code. 123

The filing of a claim against an officer or employee under 124
this division tolls the running of the applicable statute of 125
limitations until the court of claims determines whether the 126
officer or employee is entitled to personal immunity under 127
section 9.86 of the Revised Code. 128

(G) If a claim lies against an officer or employee who is 129
a member of the Ohio national guard, and the officer or employee 130
was, at the time of the act or omission complained of, subject 131
to the "Federal Tort Claims Act," 60 Stat. 842 (1946), 28 U.S.C. 132
2671, et seq., the Federal Tort Claims Act is the exclusive 133
remedy of the claimant and the state has no liability under this 134
section. 135

(H) If an inmate of a state correctional institution has a 136
claim against the state for the loss of or damage to property 137
and the amount claimed does not exceed three hundred dollars, 138

before commencing an action against the state in the court of 139
claims, the inmate shall file a claim for the loss or damage 140
under the rules adopted by the director of rehabilitation and 141
correction pursuant to this division. The inmate shall file the 142
claim within the time allowed for commencement of a civil action 143
under section 2743.16 of the Revised Code. If the state admits 144
or compromises the claim, the director shall make payment from a 145
fund designated by the director for that purpose. If the state 146
denies the claim or does not compromise the claim at least sixty 147
days prior to expiration of the time allowed for commencement of 148
a civil action based upon the loss or damage under section 149
2743.16 of the Revised Code, the inmate may commence an action 150
in the court of claims under this chapter to recover damages for 151
the loss or damage. 152

The director of rehabilitation and correction shall adopt 153
rules pursuant to Chapter 119. of the Revised Code to implement 154
this division. 155

Sec. 3345.40. (A) As used in this section: 156

(1) "State university or college" has the same meaning as 157
in division (A) (1) of section 3345.12 of the Revised Code. 158

(2) (a) "The actual loss of the person who is awarded the 159
damages" includes all of the following: 160

(i) All wages, salaries, or other compensation lost by an 161
injured person as a result of the injury, including wages, 162
salaries, or other compensation lost as of the date of a 163
judgment and future expected lost earnings of the injured 164
person; 165

(ii) All expenditures of an injured person or of another 166
person on behalf of an injured person for medical care or 167

treatment, for rehabilitation services, or for other care, 168
treatment, services, products, or accommodations that were 169
necessary because of the injury; 170

(iii) All expenditures to be incurred in the future, as 171
determined by the court, by an injured person or by another 172
person on behalf of an injured person for medical care or 173
treatment, for rehabilitation services, or for other care, 174
treatment, services, products, or accommodations that will be 175
necessary because of the injury; 176

(iv) All expenditures of a person whose property was 177
injured or destroyed, or of another person on behalf of such a 178
person, in order to repair or replace the property that was 179
injured or destroyed; 180

(v) All expenditures of an injured person, of a person 181
whose property was injured or destroyed, or of another person on 182
behalf of an injured person or a person whose property was 183
injured or destroyed, in relation to the actual preparation or 184
presentation of the claim of the person; 185

(vi) Any other expenditures of an injured person, of a 186
person whose property was injured or destroyed, or of another 187
person on behalf of an injured person or a person whose property 188
was injured or destroyed, that the court determines represent an 189
actual loss experienced because of the personal or property 190
injury or property loss. 191

(b) "The actual loss of the person who is awarded the 192
damages" does not include either of the following: 193

(i) Any fees paid or owed to an attorney for any services 194
rendered in relation to a ~~person~~personal or property injury or 195
property loss; 196

(ii) Any damages awarded for pain and suffering, for the loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education of an injured person, for mental anguish, or for any other intangible loss.

(B) Notwithstanding any other provision of the Revised Code or rules of a court to the contrary, in an action against a state university or college to recover damages for injury, death, or loss to ~~persons~~ person or property caused by an act or omission of the state university or college itself, by an act or omission of any trustee, officer, or employee of the state university or college while acting within the scope of ~~his~~ employment or official responsibilities, or by an act or omission of any other person authorized to act on behalf of the state university or college that occurred while ~~he~~ the person was engaged in activities at the request or direction, or for the benefit, of the state university or college, the following rules shall apply:

(1) Punitive or exemplary damages shall not be awarded;

(2) ~~If a plaintiff receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits shall be disclosed to the court, and the amount of the benefits shall be deducted from any award against the state university or college recovered by the plaintiff. Recoveries against a state university or college shall be reduced by the aggregate of insurance proceeds, disability award, settlements, or any other collateral recovery the plaintiff receives or is entitled to receive. No insurer or other person is entitled to bring a civil action under a subrogation provision in an insurance or other~~

contract against a state university or college with respect to 227
~~such benefits~~ any of those collateral recoveries. 228

Nothing in this division affects or shall be construed to 229
limit the rights of a beneficiary under a life insurance policy 230
or the rights of sureties under fidelity or surety bonds. 231

(3) There shall not be any limitation on compensatory 232
damages that represent the actual loss of the person who is 233
awarded the damages. However, except in wrongful death actions 234
brought pursuant to Chapter 2125. of the Revised Code, damages 235
that arise from the same cause of action, transaction or 236
occurrence, or series of transactions or occurrences and that do 237
not represent the actual loss of the person who is awarded the 238
damages shall not exceed two hundred fifty thousand dollars in 239
favor of any one person. The limitation on damages that do not 240
represent the actual loss of the person who is awarded the 241
damages provided in this division does not apply to court costs 242
that are awarded to a plaintiff, or to interest on a judgment 243
rendered in favor of a plaintiff, in an action against a state 244
university or college. 245

Section 2. That existing sections 2743.02 and 3345.40 of 246
the Revised Code are hereby repealed. 247

Section 3. This act's amendment of section 3345.40 of the 248
Revised Code to provide that settlements received by a plaintiff 249
are collateral recoveries that are reduced from any recoveries 250
of a plaintiff in a civil action against a state university or 251
college for damages for injury, death, or loss to person or 252
property abrogates the decision of the Court of Appeals of the 253
Tenth District in *Adae v. Ohio*, 2013-Ohio-23, 2013 WL 85200, 254
cause dismissed and remanded to Court of Claims, 136 Ohio St.3d 255
1482 (2013), that settlement proceeds are not subject to 256

collateral set-off against recoveries by a plaintiff against a	257
state university or college.	258