

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 267

Representative Ingram

Cosponsors: Representatives Becker, Dean, Howse, Kent, Reece

A BILL

To amend sections 2744.02 and 2744.05 of the 1
Revised Code to eliminate certain defenses to 2
political subdivision liability for an 3
employee's negligent operation of a motor 4
vehicle and to reduce damages recoverable 5
against a political subdivision in such actions 6
by the contributory fault of the plaintiff or 7
other parties. 8

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

Section 1. That sections 2744.02 and 2744.05 of the 9
Revised Code be amended to read as follows: 10

Sec. 2744.02. (A) (1) For the purposes of this chapter, the 11
functions of political subdivisions are hereby classified as 12
governmental functions and proprietary functions. Except as 13
provided in division (B) of this section, a political 14
subdivision is not liable in damages in a civil action for 15
injury, death, or loss to person or property allegedly caused by 16
any act or omission of the political subdivision or an employee 17
of the political subdivision in connection with a governmental 18

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 while~~ 42
~~responding to an emergency call and the operation of the vehicle~~ 43
~~did not constitute willful or wanton misconduct;~~ 44

~~(b) A member of a municipal corporation fire department or~~ 45
~~any other firefighting agency was operating a motor vehicle~~ 46
~~while engaged in duty at a fire, proceeding toward a place where~~ 47

~~a fire is in progress or is believed to be in progress, or~~ 48
~~answering any other emergency alarm and the operation of the~~ 49
~~vehicle did not constitute willful or wanton misconduct,~~ 50

~~(c) A member of an emergency medical service owned or~~ 51
~~operated by a political subdivision was operating a motor-~~ 52
~~vehicle while responding to or completing a call for emergency-~~ 53
~~medical care or treatment, the member was holding a valid-~~ 54
~~commercial driver's license issued pursuant to Chapter 4506. or~~ 55
~~a driver's license issued pursuant to Chapter 4507. of the~~ 56
~~Revised Code, the operation of the vehicle did not constitute~~ 57
~~willful or wanton misconduct, and the operation complies with~~ 58
~~the precautions of section 4511.03 of the Revised Code~~ 59
political subdivision is not liable in damages for injury, 60
death, or loss to person or property caused by an employee's 61
negligent operation of a motor vehicle if the plaintiff, at the 62
time of the alleged negligence, was attempting to flee from a 63
law enforcement officer so as to avoid apprehension for a 64
criminal offense. 65

(2) Except as otherwise provided in sections 3314.07 and 66
3746.24 of the Revised Code, political subdivisions are liable 67
for injury, death, or loss to person or property caused by the 68
negligent performance of acts by their employees with respect to 69
proprietary functions of the political subdivisions. 70

(3) Except as otherwise provided in section 3746.24 of the 71
Revised Code, political subdivisions are liable for injury, 72
death, or loss to person or property caused by their negligent 73
failure to keep public roads in repair and other negligent 74
failure to remove obstructions from public roads, except that it 75
is a full defense to that liability, when a bridge within a 76
municipal corporation is involved, that the municipal 77

corporation does not have the responsibility for maintaining or 78
inspecting the bridge. 79

(4) Except as otherwise provided in section 3746.24 of the 80
Revised Code, political subdivisions are liable for injury, 81
death, or loss to person or property that is caused by the 82
negligence of their employees and that occurs within or on the 83
grounds of, and is due to physical defects within or on the 84
grounds of, buildings that are used in connection with the 85
performance of a governmental function, including, but not 86
limited to, office buildings and courthouses, but not including 87
jails, places of juvenile detention, workhouses, or any other 88
detention facility, as defined in section 2921.01 of the Revised 89
Code. 90

(5) In addition to the circumstances described in 91
divisions (B) (1) to (4) of this section, a political subdivision 92
is liable for injury, death, or loss to person or property when 93
civil liability is expressly imposed upon the political 94
subdivision by a section of the Revised Code, including, but not 95
limited to, sections 2743.02 and 5591.37 of the Revised Code. 96
Civil liability shall not be construed to exist under another 97
section of the Revised Code merely because that section imposes 98
a responsibility or mandatory duty upon a political subdivision, 99
because that section provides for a criminal penalty, because of 100
a general authorization in that section that a political 101
subdivision may sue and be sued, or because that section uses 102
the term "shall" in a provision pertaining to a political 103
subdivision. 104

(C) An order that denies a political subdivision or an 105
employee of a political subdivision the benefit of an alleged 106
immunity from liability as provided in this chapter or any other 107

provision of the law is a final order. 108

Sec. 2744.05. Notwithstanding any other provisions of the 109
Revised Code or rules of a court to the contrary, in an action 110
against a political subdivision to recover damages for injury, 111
death, or loss to person or property caused by an act or 112
omission in connection with a governmental or proprietary 113
function: 114

(A) Punitive or exemplary damages shall not be awarded. 115

(B) (1) If a claimant receives or is entitled to receive 116
benefits for injuries or loss allegedly incurred from a policy 117
or policies of insurance or any other source, the benefits shall 118
be disclosed to the court, and the amount of the benefits shall 119
be deducted from any award against a political subdivision 120
recovered by that claimant. No insurer or other person is 121
entitled to bring an action under a subrogation provision in an 122
insurance or other contract against a political subdivision with 123
respect to those benefits. 124

The amount of the benefits shall be deducted from an award 125
against a political subdivision under division (B) (1) of this 126
section regardless of whether the claimant may be under an 127
obligation to pay back the benefits upon recovery, in whole or 128
in part, for the claim. A claimant whose benefits have been 129
deducted from an award under division (B) (1) of this section is 130
not considered fully compensated and shall not be required to 131
reimburse a subrogated claim for benefits deducted from an award 132
pursuant to division (B) (1) of this section. 133

(2) Nothing in division (B) (1) of this section shall be 134
construed to do either of the following: 135

(a) Limit the rights of a beneficiary under a life 136

insurance policy or the rights of sureties under fidelity or 137
surety bonds; 138

(b) Prohibit the department of medicaid from recovering 139
from the political subdivision, pursuant to section 5160.37 of 140
the Revised Code, the cost of medical assistance provided under 141
a medical assistance program. 142

(C) (1) There shall not be any limitation on compensatory 143
damages that represent the actual loss of the person who is 144
awarded the damages. However, except in wrongful death actions 145
brought pursuant to Chapter 2125. of the Revised Code, damages 146
that arise from the same cause of action, transaction or 147
occurrence, or series of transactions or occurrences and that do 148
not represent the actual loss of the person who is awarded the 149
damages shall not exceed two hundred fifty thousand dollars in 150
favor of any one person. The limitation on damages that do not 151
represent the actual loss of the person who is awarded the 152
damages provided in this division does not apply to court costs 153
that are awarded to a plaintiff, or to interest on a judgment 154
rendered in favor of a plaintiff, in an action against a 155
political subdivision. 156

(2) Any compensatory damages recoverable against a 157
political subdivision for an employee's negligent operation of a 158
motor vehicle shall be reduced by the percentage of contributory 159
fault attributable to the plaintiff or any other parties, 160
subject to sections 2307.22, 2307.23, and 2315.32 to 2315.36 of 161
the Revised Code. 162

(3) As used in this division, "the actual loss of the 163
person who is awarded the damages" includes all of the 164
following: 165

(a) All wages, salaries, or other compensation lost by the	166
person injured as a result of the injury, including wages,	167
salaries, or other compensation lost as of the date of a	168
judgment and future expected lost earnings of the person	169
injured;	170
(b) All expenditures of the person injured or another	171
person on behalf of the person injured for medical care or	172
treatment, for rehabilitation services, or for other care,	173
treatment, services, products, or accommodations that were	174
necessary because of the injury;	175
(c) All expenditures to be incurred in the future, as	176
determined by the court, by the person injured or another person	177
on behalf of the person injured for medical care or treatment,	178
for rehabilitation services, or for other care, treatment,	179
services, products, or accommodations that will be necessary	180
because of the injury;	181
(d) All expenditures of a person whose property was	182
injured or destroyed or of another person on behalf of the	183
person whose property was injured or destroyed in order to	184
repair or replace the property that was injured or destroyed;	185
(e) All expenditures of the person injured or of the	186
person whose property was injured or destroyed or of another	187
person on behalf of the person injured or of the person whose	188
property was injured or destroyed in relation to the actual	189
preparation or presentation of the claim involved;	190
(f) Any other expenditures of the person injured or of the	191
person whose property was injured or destroyed or of another	192
person on behalf of the person injured or of the person whose	193
property was injured or destroyed that the court determines	194

represent an actual loss experienced because of the personal or 195
property injury or property loss. 196

"The actual loss of the person who is awarded the damages" 197
does not include any fees paid or owed to an attorney for any 198
services rendered in relation to a personal or property injury 199
or property loss, and does not include any damages awarded for 200
pain and suffering, for the loss of society, consortium, 201
companionship, care, assistance, attention, protection, advice, 202
guidance, counsel, instruction, training, or education of the 203
person injured, for mental anguish, or for any other intangible 204
loss. 205

Section 2. That existing sections 2744.02 and 2744.05 of 206
the Revised Code are hereby repealed. 207