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The Honorable Jim Butler
Chair, House Civil Justice Committee
Ohio House of Representatives

Dear Chair Butler, Vice Chair Hughes and Ranking Member Boggs,

The Ohio Association for Justice, the statewide bar association for trial attorneys, is pleased to express its support for HB 267, legislation that does away with immunity for injuries and property damage occurring during a police or fire emergency run and makes a municipality liable for the damage their employees cause. Our member attorneys help Ohioans get back on their feet financially when they are injured or their property is damaged due to the carelessness of others.

By rolling back the immunity for emergency vehicles, HB 267 does not make a municipality automatically liable for damages. A person making a claim against a municipality must still prove that an officer, firefighter, or EMT was negligent in the operation of a vehicle and that the operator caused the vehicular collision.

HB 267 does not impose any new legal obligations on the driver of an emergency vehicle. 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 267 requires police and fire personnel to use ordinary care when they are on an emergency run. In this case, ordinary care will still be defined as the care that a reasonable emergency driver 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.

HB 267 preserves immunity in situations where a driver is fleeing the police at the time an accident occurs. HB 267 prevents recovery when a driver is at fault for setting an officer's actions into motion. In addition, HB 267 provides that a person's damages are reduced or taken away if the person is partially at fault.

What HB 267 does is protect innocent drivers from uninsured losses caused by emergency vehicle negligence. Uninsured losses may include property damage not covered by an insurance policy, medical expenses not covered by insurance, uncompensated wage loss or disability, and possibly even funeral expenses.

Municipalities still possess special legal protections provided in current law, such as the cap on non-economic damages and a ban against recovery for collateral sources. HB 267 does not change those provisions.

HB 267 is also needed to address a court ruling that stretched the definition of emergency run. The Ohio Supreme Court defined an "emergency" as any situation required by an officer's professional obligation. (*Colbert v City of Cleveland* (2003) 99 Ohio St. 3d 215) In that case, officers responded to a crime that was not yet in progress and while driving they failed to activate their lights or siren. They collided with an innocent person who had the right of way at an intersection. The Ohio Supreme Court granted them immunity. Today, all Ohio courts follow the Supreme Court's definition of emergency.

Further, this legislation will bring Ohio into accord with its neighboring states, which all provide protection for the innocent victim from loss due to an emergency vehicle operator's negligence.

Under HB 267, Ohio municipalities will not be liable when an emergency vehicle operator uses ordinary care during an emergency. On the other hand, under HB 267, the innocent driver will be protected from an emergency vehicle driver's carelessness.

We urge you to support HB 267 and report it favorably from committee.

Sincerely,



John Van Doorn