

AN ACT

To amend sections 9.87, 2743.01, 2743.02, and 5502.52 and to enact sections 341.27 and 753.06 of the Revised Code to provide sheriffs, deputy sheriffs, municipal police officers, and county and municipal correctional officers with qualified immunity from damages caused or suffered by county or municipal prisoners or adult offenders imprisoned for offenses other than felonies of the first or second degree who are working on a work detail and volunteered for the work detail; to provide counties and municipal corporations in which such prisoners or offenders work on a work detail and that employ the sheriff, deputy sheriff, or officer and townships in which such prisoners work on a work detail with a similar qualified immunity; to adopt the "public duty rule" for lawsuits against the state in the Court of Claims pursuant to which the state generally is immune from liability in any civil action or proceeding involving the performance or nonperformance of a public duty; and to provide radio stations, television systems, cable systems, and their officials and employees with immunity from damages related to the broadcast or cablecast, or failure to broadcast or cablecast, information under an Amber Alert program.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 9.87, 2743.01, 2743.02, and 5502.52 be amended and sections 341.27 and 753.06 of the Revised Code be enacted to read as follows:

Sec. 9.87. (A) The state, except as provided in division (B) of this section, shall indemnify an officer or employee from liability incurred in the performance of ~~his~~ official duties by paying any judgment in, or amount negotiated in settlement of, any civil action arising under federal law, the law of another state, or the law of a foreign jurisdiction. The reasonableness of the amount of any consent judgment or settlement is subject to the review and approval of the attorney general and of the director, administrative chief, or governing body of the employer of the officer or employee who is to be indemnified. The maximum aggregate amount of indemnification paid directly from state funds to or on behalf of any officer or employee pursuant to this division shall be one million dollars per occurrence, regardless of the number of persons who suffer damage, injury, or death as a result of the occurrence.

(B) The state shall not indemnify an officer or employee under any of the following circumstances:

(1) To the extent the officer or employee is covered by a policy of insurance for civil liability purchased by the state;

(2) When the officer or employee acts manifestly outside the scope of ~~his~~ the officer's or employee's employment or official responsibilities, with malicious purpose, in bad faith, or in a wanton or reckless manner, as determined by the employer of the officer or employee or by the attorney general.

(3) For any portion of a judgment that represents punitive or exemplary damages, except that this prohibition does not apply if the employer of the officer or employee and the attorney general determine that the acts or omissions of the officer or employee were not within the terms of division (B)(2) of this section;

(4) For any portion of a consent judgment or settlement that is unreasonable.

(C) The director of administrative services may purchase a policy or policies of insurance on behalf of officers and employees of the state from an insurer or insurers licensed to do business in this state providing coverage for amounts in excess of one million dollars per occurrence incurred in connection with any civil action, demand, or claim against the officer or employee by reason of an act or omission by the officer or employee occurring in the performance of ~~his~~ the officer's or employee's duties and not coming within the terms of division (B)(2) of this section.

(D) This section does not affect any of the following:

(1) The waiver arising under division (A)(1) of section 2743.02 of the Revised Code;

(2) Any defense that would otherwise be available in an action alleging personal liability of an officer or employee;

(3) The operation of section 9.83 of the Revised Code.

(E) The indemnification of officers or employees against judgments or settlements pursuant to this section shall be accomplished only through the following procedure:

(1) If the employer of the defendant officer or employee to be indemnified determines that the actions or omissions of its officer or employee giving rise to the claim were not within the terms of division (B)(2) of this section, an indemnity agreement shall be prepared by the attorney general, specifying that the employer will indemnify the officer or employee from a particular judgment that has been rendered or a particular settlement amount that has been negotiated. The agreement shall name the person or entity to whom payment by the state of the judgment or settlement amount will be made, and the agreement shall not be effective until it is approved by the officer or employee to be indemnified, the director, administrative chief, or other governing body of the employer, and by the attorney general. The attorney general shall approve the indemnity agreement, unless ~~he~~ the attorney general finds that division (B) of this section prohibits the state from indemnifying the officer or employee, or prohibits the state from indemnifying the officer or employee for a portion of a judgment or settlement and the indemnity agreement would indemnify the officer or employee for all or a part of that portion.

(2) The attorney general shall forward a copy of the agreement to the director of budget and management.

(3) Any indemnification paid shall be charged by the director of budget and management against available unencumbered moneys in the appropriations of the employer of the officer or employee to be indemnified. The director of budget and management shall have sole discretion to determine whether or not unencumbered moneys in a particular appropriation are available for payment of the indemnification.

(4) The director of budget and management shall, upon receipt of the agreement from the attorney general pursuant to division (E)(2) of this section, provide for payment to the person or entity named in the agreement, in the amount specified in the agreement.

(5) If the director of budget and management determines that sufficient unencumbered moneys do not exist in the particular appropriations to pay the indemnification, ~~he~~ the director shall make application for payment of the indemnification out of the emergency purposes account or any other appropriation for emergencies or contingencies, and payment out of this

account or other appropriation shall be authorized if there are sufficient moneys greater than the sum total of then pending emergency purposes account requests, or requests for releases from the other appropriation.

(6) If sufficient moneys do not exist in the emergency purposes account or any other appropriation for emergencies or contingencies to pay the indemnification, the employer named in the agreement shall request the general assembly to make an appropriation sufficient to pay the indemnification, and no payment shall be made until the appropriation has been made. The employer shall make this appropriation request during the current biennium and during each succeeding biennium until a sufficient appropriation is made.

(7) If the indemnification is to be made by an employer whose funds are not handled by the director of budget and management, the employer shall pay the person or entity named in the agreement.

If the employer determines that sufficient unencumbered moneys do not exist to pay the indemnification, the employer shall make application for payment of the indemnification out of the emergency purposes account or any other appropriation for emergencies or contingencies, and payment out of this account or other appropriation shall be authorized if there are sufficient moneys greater than the sum total of then pending emergency purposes account requests, or requests for releases from the other appropriation.

If sufficient moneys do not exist in the emergency purposes account or any other appropriation for emergencies or contingencies to pay the indemnification, the employer named in the agreement shall request the general assembly to make an appropriation sufficient to pay the indemnification, and no payment shall be made until such an appropriation has been made. The employer shall make this appropriation request during the current biennium and during each succeeding biennium until a sufficient appropriation is made.

(F)(1) Subject to division (F)(2) of this section, if an employer or the attorney general fails to approve indemnification or limits indemnification of an officer or employee of the employer, the officer or employee may commence an action against the employer in the court of claims pursuant to sections 2743.01 to 2743.20 of the Revised Code to prove that ~~he~~ the officer or employee is entitled to indemnification pursuant to division (A) of this section and that division (B) of this section does not prohibit or limit ~~his~~ the officer's or employee's indemnification and seeking either a judgment against the employer for a sum of money that the officer or employee has paid to satisfy a judgment or settlement or an order directing the employer to

pay a judgment or settlement against the officer or employee that has not been satisfied. Section 109.365 of the Revised Code does not prohibit any information obtained by the attorney general in ~~his~~ the attorney general's investigation conducted pursuant to division (A) of section 109.362 of the Revised Code to determine whether to defend the officer or employee from being admitted as evidence in any action brought pursuant to this section.

An action brought pursuant to division (F)(1) of this section shall be commenced no later than two years after the cause of action arising under division (F)(1) of this section accrues. A cause of action arising under this section accrues upon the entry of a money judgment against the officer or employee if the time for filing an appeal in the action lapses without the filing of an appeal, upon the conclusion of the final appeal in any action in which a money judgment is entered against the officer or employee if an appeal is filed in the action, or upon execution of any settlement agreement requiring payment of money by the officer or employee.

(2) Notwithstanding division (F)(1) of this section, an officer or employee may not commence an action against the employer in the court of claims or in any other court regarding a refusal of the employer or the attorney general to indemnify punitive or exemplary damages pursuant to this section.

Sec. 341.27. (A) As used in this section:

(1) "County correctional facility" has the same meaning as in section 341.42 of the Revised Code.

(2) "County correctional officer" has the same meaning as in section 341.41 of the Revised Code.

(B) If all the prisoners or adult offenders working on a work detail administered by a county correctional facility and outside the facility have volunteered for the work detail and are imprisoned or reside in that facility for an offense other than a felony of the first or second degree and if the applicable county correctional officer complies with division (C) of this section, both of the following apply:

(1) No sheriff, deputy sheriff, or county correctional officer is liable for civil damages for injury, death, or loss to person or property caused or suffered by a prisoner or adult offender working on the work detail unless the injury, death, or loss results from malice or wanton or reckless misconduct of the sheriff, deputy sheriff, or county correctional officer.

(2) The county in which the prisoners or adult offenders work on the work detail and that employs the sheriff, deputy sheriff, or county correctional officer is not liable for civil damages for injury, death, or loss to person or property caused or suffered by a prisoner or adult offender

working on the work detail unless the injury, death, or loss results from malice or wanton or reckless misconduct of the sheriff or any deputy sheriff or county correctional officer.

(C) To qualify for the immunity described in division (B)(1) of this section regarding a work detail, a county correctional officer, prior to having the prisoners or adult offenders of the county correctional facility, work outside the facility on the work detail, shall inform each prisoner or adult offender on the work detail of the provisions of this section, including notifying the prisoner or adult offender that, by volunteering for the work detail, the prisoner or adult offender cannot hold the sheriff, deputy sheriff, or county correctional officer or the county liable for civil damages for injury, death, or loss to person or property unless the injury, death, or loss results from malice or wanton or reckless misconduct of the sheriff, deputy sheriff, or county correctional officer.

Sec. 753.06. (A) As used in this section:

(1) "Municipal correctional facility" has the same meaning as in section 753.32 of the Revised Code.

(2) "Municipal correctional officer" has the same meaning as in section 753.31 of the Revised Code.

(B) If all the prisoners working on a work detail administered by a municipal correctional facility and outside the facility have volunteered for the work detail and are imprisoned in that facility for an offense other than a felony of the first or second degree and if the applicable municipal correctional officer complies with division (C) of this section, both of the following apply:

(1) No member of the organized police department of the municipal corporation and no municipal correctional officer is liable for civil damages for injury, death, or loss to person or property caused or suffered by a prisoner working on the work detail unless the injury, death, or loss results from malice or wanton or reckless misconduct of the member of the organized police department of the municipal corporation or the municipal correctional officer.

(2) A municipal corporation in which the prisoners work on the work detail and that employs the member of the organized police department or the municipal correctional officer or a township in which the prisoners work on the work detail is not liable for civil damages for injury, death, or loss to person or property caused or suffered by a prisoner working on the work detail unless the injury, death, or loss results from malice or wanton or reckless misconduct of the member of the organized police department of the municipal corporation or a municipal correctional officer.

(C) To qualify for the immunity described in division (B)(1) of this section regarding a work detail, a municipal correctional officer, prior to having the prisoners of the municipal correctional facility work outside the facility on the work detail, shall inform each prisoner on the work detail of the provisions of this section, including notifying the prisoner that, by volunteering for the work detail, the prisoner cannot hold any member of the organized police department of the municipal corporation or any municipal correctional officer or the municipal corporation or township liable for civil damages for injury, death, or loss to person or property unless the injury, death, or loss results from malice or wanton or reckless misconduct of the member of the organized police department of the municipal corporation or the municipal correctional officer.

Sec. 2743.01. As used in this chapter:

(A) "State" means the state of Ohio, including, but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state of Ohio. "State" does not include political subdivisions.

(B) "Political subdivisions" means municipal corporations, townships, counties, school districts, and all other bodies corporate and politic responsible for governmental activities only in geographic areas smaller than that of the state to which the sovereign immunity of the state attaches.

(C) "Claim for an award of reparations" or "claim" means a claim for an award of reparations made under sections 2743.51 to 2743.72 of the Revised Code.

(D) "Award of reparations" or "award" means an award made under sections 2743.51 to 2743.72 of the Revised Code.

(E)(1) "Public duty" includes, but is not limited to, any statutory, regulatory, or assumed duty concerning any action or omission of the state involving any of the following:

(a) Permitting, certifying, licensing, inspecting, investigating, supervising, regulating, auditing, monitoring, law enforcement, or emergency response activity;

(b) Supervising, rehabilitating, or liquidating corporations or other business entities.

(2) "Public duty" does not include any action of the state under circumstances in which a special relationship can be established between the state and an injured party as provided in division (A)(3) of section 2743.02 of the Revised Code.

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, which 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 under this division is demonstrated if all of the following elements exist:

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

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

(iii) Some form of direct contact between the state's agents and the

injured party:

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

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

(C) Any hospital, as defined in section 2305.113 of the Revised Code, may purchase liability insurance covering its operations and activities and its agents, employees, nurses, interns, residents, staff, and members of the governing board and committees, and, whether or not such insurance is purchased, may, to such extent as its governing board considers appropriate, indemnify or agree to indemnify and hold harmless any such person against expense, including attorney's fees, damage, loss, or other liability arising out of, or claimed to have arisen out of, the death, disease, or injury of any person as a result of the negligence, malpractice, or other action or inaction of the indemnified person while acting within the scope of the indemnified person's duties or engaged in activities at the request or direction, or for the benefit, of the hospital. Any hospital electing to indemnify such persons, or to agree to so indemnify, shall reserve such funds as are necessary, in the exercise of sound and prudent actuarial judgment, to cover the potential expense, fees, damage, loss, or other liability. The superintendent of insurance may recommend, or, if such hospital requests the superintendent to do so, the superintendent shall recommend, a specific amount for any period that, in the superintendent's opinion, represents such a judgment. This authority is in addition to any authorization otherwise provided or permitted by law.

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

(E) The only defendant in original actions in the court of claims is the state. The state may file a third-party complaint or counterclaim in any civil

action, except a civil action for two thousand five hundred dollars or less, that is filed in the court of claims.

(F) A civil action against an officer or employee, as defined in section 109.36 of the Revised Code, that alleges that the officer's or employee's conduct was manifestly outside the scope of the officer's or employee's employment or official responsibilities, or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner shall first be filed against the state in the court of claims, which has exclusive, original jurisdiction to determine, initially, whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the civil action.

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

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

(H) If an inmate of a state correctional institution has a claim against the state for the loss of or damage to property and the amount claimed does not exceed three hundred dollars, before commencing an action against the state in the court of claims, the inmate shall file a claim for the loss or damage under the rules adopted by the director of rehabilitation and correction pursuant to this division. The inmate shall file the claim within the time allowed for commencement of a civil action under section 2743.16 of the Revised Code. If the state admits or compromises the claim, the director shall make payment from a fund designated by the director for that purpose. If the state denies the claim or does not compromise the claim at least sixty days prior to expiration of the time allowed for commencement of a civil action based upon the loss or damage under section 2743.16 of the Revised Code, the inmate may commence an action in the court of claims under this chapter to recover damages for the loss or damage.

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

Sec. 5502.52. (A) There is hereby created the statewide emergency alert program to aid in the identification and location of children who are under eighteen years of age, who are abducted, and whose abduction, as

determined by a law enforcement agency, poses a credible threat of immediate danger of serious bodily harm or death to a child. The program shall be a coordinated effort among the governor's office, the department of public safety, the attorney general, law enforcement agencies, the state's public and commercial television and radio broadcasters, and others as deemed necessary by the governor.

(B) The statewide emergency alert program shall not be implemented unless all of the following activation criteria are met:

(1) The local investigating law enforcement agency confirms that an abduction has occurred.

(2) An abducted child is under eighteen years of age.

(3) The abduction poses a credible threat of immediate danger of serious bodily harm or death to a child.

(4) A law enforcement agency determines that the child is not a runaway and has not been abducted as a result of a child custody dispute, unless the dispute poses a credible threat of immediate danger of serious bodily harm or death to the child.

(5) There is sufficient descriptive information about the child, the abductor, and the circumstances surrounding the abduction to indicate that activation of the alert will help locate the child.

(C) Nothing in division (B) of this section prevents the activation of a local or regional emergency alert program that may impose different criteria for the activation of a local or regional plan.

(D) Any radio broadcast station, television broadcast station, or cable television system participating in the statewide emergency alert program or in any local or regional emergency alert program, and any director, officer, employee, or agent of any such station or system, shall not be liable to any person for damages for any loss allegedly caused by or resulting from the station's or system's broadcast or cablecast of, or failure to broadcast or cablecast, any information pursuant to the statewide emergency alert program or the local or regional emergency alert program.

(E) As used in this section:

(1) "Abducted child" means a child for whom there is credible evidence to believe that the child has been abducted in violation of section 2905.01, 2905.02, 2905.03, or 2905.05 of the Revised Code.

(2) "Cable television system" means a cable system, as defined in section 2913.04 of the Revised Code.

(3) "Law enforcement agency" includes, but is not limited to, a county sheriff's office, the office of a village marshal, a police department of a municipal corporation, a police force of a regional transit authority, a police

force of a metropolitan housing authority, the state highway patrol, a state university law enforcement agency, the office of a township police constable, and the police department of a township or joint township police district.

SECTION 2. That existing sections 9.87, 2743.01, 2743.02, and 5502.52 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____