

**As Introduced**

**126th General Assembly  
Regular Session  
2005-2006**

**H. B. No. 25**

**Representatives Wagner, J. Stewart, Hartnett, Carano, Otterman, Latta,  
Widener, Aslanides, S. Patton, Buehrer, Wolpert, Combs, Kearns, Webster,  
McGregor, Reidelbach, Law, Core, Schaffer, Faber, Chandler, Cassell, Hagan,  
Wagoner, Martin, Gilb**

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**A B I L L**

To amend section 2743.02 of the Revised Code to allow 1  
a state officer or employee who in a civil action 2  
is alleged to lack immunity from personal 3  
liability to participate fully in proceedings to 4  
determine whether the officer or employee is 5  
entitled to personal immunity. 6

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

**Section 1.** That section 2743.02 of the Revised Code be 7  
amended to read as follows: 8

**Sec. 2743.02.** (A)(1) The state hereby waives its immunity 9  
from liability, except as provided for the office of the state 10  
fire marshal in division (G)(1) of section 9.60 and division (B) 11  
of section 3737.221 of the Revised Code and subject to division 12  
(H) of this section, and consents to be sued, and have its 13  
liability determined, in the court of claims created in this 14  
chapter in accordance with the same rules of law applicable to 15  
suits between private parties, except that the determination of 16  
liability is subject to the limitations set forth in this chapter 17

and, in the case of state universities or colleges, in section 18  
3345.40 of the Revised Code, and except as provided in division 19  
(A)(2) of this section. To the extent that the state has 20  
previously consented to be sued, this chapter has no 21  
applicability. 22

Except in the case of a civil action filed by the state, 23  
filing a civil action in the court of claims results in a complete 24  
waiver of any cause of action, based on the same act or omission, 25  
which the filing party has against any officer or employee, as 26  
defined in section 109.36 of the Revised Code. The waiver shall be 27  
void if the court determines that the act or omission was 28  
manifestly outside the scope of the officer's or employee's office 29  
or employment or that the officer or employee acted with malicious 30  
purpose, in bad faith, or in a wanton or reckless manner. 31

(2) If a claimant proves in the court of claims that an 32  
officer or employee, as defined in section 109.36 of the Revised 33  
Code, would have personal liability for the officer's or 34  
employee's acts or omissions but for the fact that the officer or 35  
employee has personal immunity under section 9.86 of the Revised 36  
Code, the state shall be held liable in the court of claims in any 37  
action that is timely filed pursuant to section 2743.16 of the 38  
Revised Code and that is based upon the acts or omissions. 39

(B) The state hereby waives the immunity from liability of 40  
all hospitals owned or operated by one or more political 41  
subdivisions and consents for them to be sued, and to have their 42  
liability determined, in the court of common pleas, in accordance 43  
with the same rules of law applicable to suits between private 44  
parties, subject to the limitations set forth in this chapter. 45  
This division is also applicable to hospitals owned or operated by 46  
political subdivisions which have been determined by the supreme 47  
court to be subject to suit prior to July 28, 1975. 48

(C) Any hospital, as defined in section 2305.113 of the 49

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 officer or employee may fully participate in proceedings to  
determine whether the officer or employee is entitled to personal  
immunity under section 9.86 of the Revised Code.

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.

**Section 2.** That existing section 2743.02 of the Revised Code  
is hereby repealed.