

As Reported by the House Judiciary Committee

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Sub. 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 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) or (3) 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

(3)(a) Except as provided in division (A)(3)(b) of this 40
section, the state is immune from liability in any civil action or 41
proceeding involving the performance or nonperformance of a public 42
duty, including the performance or nonperformance of a public duty 43
that is owed by the state in relation to any action of an 44
individual who is committed to the custody of the state. 45

(b) The state immunity provided in division (A)(3)(a) of this 46
section does not apply to any action of the state under 47
circumstances in which a special relationship can be established 48
between the state and an injured party. A special relationship 49

under this division is demonstrated if all of the following 50
elements exist: 51

(i) An assumption by the state, by means of promises or 52
actions, of an affirmative duty to act on behalf of the party who 53
was allegedly injured; 54

(ii) Knowledge on the part of the state's agents that 55
inaction of the state could lead to harm; 56

(iii) Some form of direct contact between the state's agents 57
and the injured party; 58

(iv) The injured party's justifiable reliance on the state's 59
affirmative undertaking. 60

(B) The state hereby waives the immunity from liability of 61
all hospitals owned or operated by one or more political 62
subdivisions and consents for them to be sued, and to have their 63
liability determined, in the court of common pleas, in accordance 64
with the same rules of law applicable to suits between private 65
parties, subject to the limitations set forth in this chapter. 66
This division is also applicable to hospitals owned or operated by 67
political subdivisions which have been determined by the supreme 68
court to be subject to suit prior to July 28, 1975. 69

(C) Any hospital, as defined in section 2305.113 of the 70
Revised Code, may purchase liability insurance covering its 71
operations and activities and its agents, employees, nurses, 72
interns, residents, staff, and members of the governing board and 73
committees, and, whether or not such insurance is purchased, may, 74
to such extent as its governing board considers appropriate, 75
indemnify or agree to indemnify and hold harmless any such person 76
against expense, including attorney's fees, damage, loss, or other 77
liability arising out of, or claimed to have arisen out of, the 78
death, disease, or injury of any person as a result of the 79
negligence, malpractice, or other action or inaction of the 80

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

(D) Recoveries against the state shall be reduced by the 94
aggregate of insurance proceeds, disability award, or other 95
collateral recovery received by the claimant. This division does 96
not apply to civil actions in the court of claims against a state 97
university or college under the circumstances described in section 98
3345.40 of the Revised Code. The collateral benefits provisions of 99
division (B)(2) of that section apply under those circumstances. 100

(E) The only defendant in original actions in the court of 101
claims is the state. The state may file a third-party complaint or 102
counterclaim in any civil action, except a civil action for two 103
thousand five hundred dollars or less, that is filed in the court 104
of claims. 105

(F) A civil action against an officer or employee, as defined 106
in section 109.36 of the Revised Code, that alleges that the 107
officer's or employee's conduct was manifestly outside the scope 108
of the officer's or employee's employment or official 109
responsibilities, or that the officer or employee acted with 110
malicious purpose, in bad faith, or in a wanton or reckless manner 111
shall first be filed against the state in the court of claims, 112

which has exclusive, original jurisdiction to determine, 113
initially, whether the officer or employee is entitled to personal 114
immunity under section 9.86 of the Revised Code and whether the 115
courts of common pleas have jurisdiction over the civil action. 116
The officer or employee may participate in the immunity 117
determination proceeding before the court of claims to determine 118
whether the officer or employee is entitled to personal immunity 119
under section 9.86 of the Revised Code. 120

The filing of a claim against an officer or employee under 121
this division tolls the running of the applicable statute of 122
limitations until the court of claims determines whether the 123
officer or employee is entitled to personal immunity under section 124
9.86 of the Revised Code. 125

(G) Whenever a claim lies against an officer or employee who 126
is a member of the Ohio national guard, and the officer or 127
employee was, at the time of the act or omission complained of, 128
subject to the "Federal Tort Claims Act," 60 Stat. 842 (1946), 28 129
U.S.C. 2671, et seq., then the Federal Tort Claims Act is the 130
exclusive remedy of the claimant and the state has no liability 131
under this section. 132

(H) If an inmate of a state correctional institution has a 133
claim against the state for the loss of or damage to property and 134
the amount claimed does not exceed three hundred dollars, before 135
commencing an action against the state in the court of claims, the 136
inmate shall file a claim for the loss or damage under the rules 137
adopted by the director of rehabilitation and correction pursuant 138
to this division. The inmate shall file the claim within the time 139
allowed for commencement of a civil action under section 2743.16 140
of the Revised Code. If the state admits or compromises the claim, 141
the director shall make payment from a fund designated by the 142
director for that purpose. If the state denies the claim or does 143
not compromise the claim at least sixty days prior to expiration 144

of the time allowed for commencement of a civil action based upon 145
the loss or damage under section 2743.16 of the Revised Code, the 146
inmate may commence an action in the court of claims under this 147
chapter to recover damages for the loss or damage. 148

The director of rehabilitation and correction shall adopt 149
rules pursuant to Chapter 119. of the Revised Code to implement 150
this division. 151

Section 2. That existing section 2743.02 of the Revised Code 152
is hereby repealed. 153